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Requirements and Procedures for Consumer Assistance To Recycle and Save Program; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 512 and 599

[Docket No. NHTSA–2009–0120]

RIN 2127–AK53

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 sets forth requirements and procedures for the voluntary vehicle trade-in and purchase/lease program under the Consumer Assistance to Recycle and Save Act of 2009. This program helps consumers pay for a new, more fuel efficient car or truck from a participating dealer when they trade in a less fuel efficient car or truck. The rule establishes a process by which dealers can register in order to participate in the program and establishes the criteria this agency will use to determine which disposal facilities are eligible to receive and either crush or shred the trade-in vehicles. It also sets forth the criteria that trade-in vehicles and new vehicles must meet in order for purchases and leases to qualify for assistance under this program and establishes the requirements that must be met by consumers, dealers, disposal facilities and others. Finally, the rule sets forth enforcement procedures and provisions for punishing fraud and other violations of the program requirements.

DATES: This final rule is effective July 29, 2009. *Petitions:* If you wish to petition for reconsideration of this rule, your petition must be received by September 14, 2009.

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: You may obtain additional information about the CARS program by calling the CARS Hotline at 1–866–CAR–7891. It is dedicated to calls about the program. For non-legal issues, you may call, Mr. Frank Borris, NHTSA Office of Enforcement, telephone (202) 366–8089. For legal issues, you may call David Bonelli, NHTSA Office of Chief Counsel, telephone (202) 366–5834.

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I. Background

On June 24, 2009, the President signed into law the Consumer Assistance to Recycle and Save Act of 2009 (the CARS Act or the Act) (Pub. L. 111–32). The Act establishes, within the National Highway Traffic Safety Administration (NHTSA or the agency), a temporary program under which an owner of a motor vehicle meeting statutorily specified criteria may trade in the vehicle and receive a monetary credit from the dealer toward the purchase or lease of a new motor vehicle meeting statutorily specified criteria.

Generally, the trade-in vehicle must have a combined fuel economy, as determined by the Environmental Protection Agency (EPA), below a specified value and the new vehicle must have an EPA combined fuel economy above a higher specified value. (Combined fuel economy is an EPA calculation representing the weighted average of a vehicle's city and highway fuel economy as determined according to the method described in EPA regulations at 40 CFR 600.210–08(c)). The program covers qualifying transactions that occur between July 1, 2009 and November 1, 2009, so long as funds appropriated by Congress are not exhausted. If all of the conditions of eligibility are met and the dealer provides NHTSA with sufficient documentation relating to the transaction, NHTSA will make an electronic payment to the dealer equal to the amount of the credit extended by the dealer to the consumer, not exceeding the statutorily authorized amount. The dealer must agree to transfer the trade-in vehicle to a disposal facility that will crush or shred it so that it will never be returned to the road, although parts of the vehicle, other than the engine block and drive train (unless the drive train is sold in separate parts), may be sold.

The CARS Act requires the Secretary of Transportation, acting through NHTSA, to issue final regulations within 30 days after enactment (*i.e.,* by July 24, 2009), ''notwithstanding'' the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553). The regulations must, among other things: (1) Provide for a means of registering dealers for participation in the program; (2) establish procedures for reimbursement of dealers participating in the program; (3) require that dealers use the credit in addition to any other rebate or discount advertised by the dealer or offered by the manufacturer and prohibit the dealer from using the credit to offset any such other rebate or

discount; (4) require that dealers disclose to the person trading in an eligible vehicle the best estimate of the scrappage value of such vehicle and permit dealers to retain $50 of the amount paid for the scrappage value as payment for any administrative costs of participation in the program; (5) establish requirements and procedures for the disposal of eligible trade-in vehicles; and (6) provide for the enforcement of penalties for violations of the program requirements.

Separate from the rulemaking requirement, the CARS Act directs the agency to establish a Web site to convey information about the program, including instructions on how to determine if a vehicle is an eligible trade-in vehicle, how to participate in the program and how to determine if a dealer is participating in the program. The agency established this Web site at *http://www.cars.gov.* Among other things, the Web site contains an interactive tool for determining eligible vehicles, a list of participating dealers and disposal facilities, responses to frequently asked questions, and information on how to determine the EPA combined fuel economy of trade-in vehicles and of new vehicles. In addition, NHTSA set up a hotline ((866) 227–7891) to answer questions about the program and, on July 2, 2009, published a document in the **Federal Register** (74 FR 31812) providing additional useful information, in advance of issuance of this final rule.

The Act provides that the program covers eligible transactions beginning on July 1, 2009, prior to today's final rule. NHTSA advised the public through the July 2 **Federal Register** document, the Web site, and the hotline that it was prudent to wait until the details of the program were specified in today's final rule. Nevertheless, if transactions occurring on or after July 1, 2009, but before today's final rule, meet all of the requirements identified in this final rule, registered dealers may follow the application procedures of the rule and apply for reimbursement for those transactions. To expedite processing, the rule relies, wherever possible, on electronic submissions through secure agency Web sites.

In order to implement this new program, NHTSA has had to quickly create a new organization. NHTSA has established the Office of the Car Allowance Rebate System within the Office of Enforcement. The new office will consist of three divisions. The Transaction Oversight Division will work closely with the contractor NHTSA has retained to review incoming requests for payment from dealers to ensure that those requests are reviewed correctly and in a timely way. The Data Analysis and Reporting Division will review data generated in connection with the program to help ensure the system's efficiency and detect problems with the process or indications of potential compliance issues. That division will also produce reports on all aspects of the system. The Compliance Division will work to detect and deter possible noncompliance related to the program and coordinate closely with NHTSA's Office of Chief Counsel when possible violations are found. That division will also coordinate closely with the DOT's Office of Inspector General on issues related to possible fraud in connection with the program.

The agency also has decided to use the name Car Allowance Rebate System (CARS) for its program implementing the Act. The use of the term ''rebate'' in the name NHTSA has chosen for the program is not intended to have any effect on how CARS transactions are treated under State or Federal tax laws. The CARS Act provides that the credit is not income to the purchaser, but does not address any other possible tax issues. NHTSA lacks expertise and authority in tax matters and makes no attempt here to provide any guidance on those matters.

II. Questions and Comments From the Public About the CARS Program

During the period between enactment of the CARS Act and publication of today's rule, the agency received numerous questions and comments about various provisions of the Act. The final rule seeks to address these comments and questions, and details appear later in this document. However, the agency provides here a brief summary discussion of some of the issues raised. As noted earlier, NHTSA's Web site for the CARS program contains responses to frequently asked questions by members of the public.

The CARS program assists consumers who trade in their older, less fuel efficient vehicles for new, more fuel efficient vehicles. The program is designed to remove these older, less fuel efficient vehicles from the road, by requiring the trade-in vehicle to be crushed or shredded. Some consumers were unaware that their trade-in vehicle must be destroyed as a statutory condition of participating in this program. Because of that condition, consumers purchasing or leasing a new vehicle under this program should not expect to receive the full trade-in value of their old vehicle when negotiating with a dealer.

As detailed below, the program has different requirements for different types of trade-in vehicles (*e.g.,* passenger cars, SUVs and vans, pickups, and trucks) because these vehicles have varying levels of EPA combined fuel economy. In general, passenger cars have the highest combined fuel economy. Therefore, even though a passenger car may be quite old and/or in poor condition, it may not be an eligible trade-in vehicle under the program because its combined fuel economy at the time of its manufacture (as measured by the EPA) exceeds statutory limits. Some consumers have expressed surprise at this result. However, the agency must follow the requirements of the statute. Larger, older pickups and SUVs, on the other hand, do not typically have very high fuel economy. The statutory requirements for trading in these vehicles are less strict than for trading in passenger cars. Consumers may find that more of the vehicles in these categories are eligible as trade-in vehicles under the program.

Questions have arisen as to which persons are eligible to participate in the program and whether a person can trade in a vehicle owned by someone else, such as a family member. The agency has concluded that individuals as well as legal entities, such as corporations and partnerships, may participate in the program. However, a person may not trade in a vehicle owned by someone else under the program. The Act's one-year insurance requirement is satisfied so long as the trade-in vehicle is insured, irrespective of the identity of the person holding the insurance policy. The specifics of these requirements are explained later in this document.

The agency has received questions regarding the value and disposition of the trade-in vehicle. The CARS Act specifies that while many parts of the trade-in vehicle are permitted to be removed and sold, in the end the residual vehicle, including the engine block, must be crushed or shredded. Therefore, the trade-in value of the vehicle is not likely to exceed its scrap value. Purchasers should not expect to receive the same trade-in value as they might if the vehicle were to remain on the road. The Act also requires dealers to disclose to purchasers the scrap value of the trade-in vehicle at the time of the trade-in and allows dealers to retain up to $50 of the scrap value of the vehicle for their administrative costs of participation in the program.

Some consumers have expressed concern that the combined fuel economy value of their vehicles, as determined on the *http://fueleconomy.gov* Web site of the EPA, is

not an accurate measure of the actual fuel economy they experience. EPA determines these values for each make, model, and model year with regard to each vehicle at the time of its manufacture. These consumers contend that if another means were used to calculate combined fuel economy, their vehicle would be an eligible trade-in vehicle under the program. The CARS Act is prescriptive in this regard, and requires NHTSA to use the EPA calculation, and not any other calculation, to determine whether a trade-in vehicle is eligible under the program.

Some consumers have asked whether they may participate in more than one reimbursed transaction, either singly or as joint-registered owners of a vehicle. The CARS Act specifies that each person may receive only one credit and that only one credit may be issued to the joint-registered owners of a single trade-in vehicle under the program. Consequently, a person may participate in a transaction that receives a credit under this program only once.

The CARS Act is specific as to the characteristics of the vehicle that may be traded in and the characteristics of the new vehicle that may be purchased or leased, and these two requirements are interdependent (*i.e.,* whether a new vehicle is eligible under the program depends, in part, on the characteristics of the trade-in vehicle). For example, the trade-in requirements for a large work truck differ from those of passenger cars under the program. Similarly, some vehicles—notably motorcycles—simply are not eligible under the CARS Act, either as trade-in vehicles or for purchase or lease, even though consumers have noted that transactions involving those vehicles might reduce fuel use and improve the environment.

III. Public Outreach and Consultation

The extremely short time afforded by the Act to develop and complete this rulemaking precluded publishing a proposed rule for notice and comment. Therefore, the agency took a variety of steps to obtain public input as it moved forward to develop this rule. It established a Web site that invited public inquiries. As it received inquiries, it posted a steadily growing list of questions and answers, which in turn led to additional inquiries. It hosted a ''webinar'' that elicited hundreds of inquiries. In addition, it met with representatives of a wide variety of environmental interest groups.

The agency also directly consulted with organizations representing original equipment manufacturers (OEMs), including the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers, to obtain information on franchised dealerships. The agency involved the OEMs because they possess comprehensive and readily available lists of new vehicle dealers licensed under State law. As detailed below, the agency is using lists of franchised dealers provided by the OEMs to aid in the process of registering dealers under the program.

NHTSA met with automobile dealers and dealer organizations, including the National Automobile Dealers Association and the American International Automobile Dealers Association, to better understand the typical vehicle trade-in and purchase/lease transaction. The agency consulted with groups representing disposal facilities, salvage auctions, and reporting entities, including the American Salvage Pool Association, the Automotive Recyclers Association, CoPart, Mannheim, Insurance Auto Auctions, the Institute of Scrap Recycling Industries, Inc., and the National Salvage Vehicle Reporting Program, to learn about the processes involved in recycling and scrapping old vehicles. The information learned by the agency from dealer and disposal facility organizations was critical to an informed rulemaking process.

The agency also consulted with officials from Texas, California and Germany. These officials provided valuable information to the agency, based on their experience administering and enforcing similar vehicle purchase and trade-in programs. Each of these officials cautioned NHTSA that it would need to be vigilant to guard against fraud.

Finally, as required under the CARS Act, the agency coordinated with appropriate Federal agencies. With respect to the National Motor Vehicle Title Information System (NMVTIS), the agency met with the Department of Justice and its NMVTIS program administrator, the American Association of Motor Vehicle Administrators, to develop procedures for updating the NMVTIS to reflect the crushing or shredding of trade-in vehicles under the program. The agency consulted with the EPA on the listing of categories of eligible vehicles and on the listing of disposal facilities and requirements and procedures for the proper disposal of refrigerants, antifreeze, mercury switches, and other substances prior to crushing or shredding the trade-in vehicle. The agency also consulted with EPA concerning a method to disable the engines of the vehicles that are traded in.

Memoranda providing the dates and summaries of meetings with these organizations and various other groups are included in the docket for this rule.

IV. The Regulation

As directed by the CARS Act, today's final rule sets forth requirements and procedures for registering participating dealers and listing participating disposal facilities, reimbursing dealers for qualifying transactions, disposing of trade-in vehicles, and enforcing penalties for program violations.

The rule is being issued without first providing a notice and an opportunity for public comment. As noted above, the Act provides that the rule shall be issued within 30 days after enactment, ''notwithstanding'' the requirements of 5 U.S.C. 553, the Federal law requiring notice and comment. Further, given that schedule and the necessity of quickly beginning to implement this 4-month program with a statutorily fixed end date, the agency finds for good cause that providing notice and comment is impracticable and contrary to the public interest. Drafting and issuing a proposed rule, providing a period for public comment, and addressing those comments in the final rule would have been highly impracticable in the time available and would have substantially delayed issuance of this final rule beyond the legislatively mandated issuance date of July 24. We think the public interest is best served by issuing this rule on the mandated date so that its requirements are known and can be followed by all participants. This is especially true because transactions since July 1 have been potentially eligible for credits under this program.

The CARS Act prescribes a rulemaking period of just 30 days before the program is to be fully implemented and capable of accommodating a potentially very large number of transactions. Mindful of this requirement, the agency placed significant emphasis on efficient transaction processes and data exchange. To that end, most of the transactional requirements imposed by today's rule are met through electronic online submissions. Where this is so, the rule identifies the particular data or information required in the electronic submission and, in one case, refers to an appendix with a facsimile of the electronic form for easy reference.

The Act requires the agency to develop certain lists to assist consumers and dealers (*e.g.*, a comprehensive list of new fuel efficient vehicles meeting the program requirements, a list of disposal

entities to which dealers may transfer eligible trade-in vehicles). Here, the rule makes use of references to the CARS Web site for convenient reference to these helpful lists.

Much of the CARS Act is specific and directive. However, where a statutory term or provision is not clear or gives the agency discretion, the rule generally strikes the balance in favor of an interpretation that promotes smooth and expeditious completion of transactions or one that decreases opportunities for fraud.

a. Definitions (§ 599.102)

The CARS Act defines a dealer as a person licensed by a ''State'' and identifies an eligible trade-in vehicle in terms of its insurance and registration status under ''State'' law. Read together, these statutory provisions restrict the transactions that are eligible for a credit under the CARS program. More specifically, a dealer must be a United States dealer and a trade-in vehicle must be insured and registered in the United States. However, nothing in the Act excludes U.S. territories from the reach of the program. Consequently, in section 599.102, the agency has defined ''State'' to include the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

The CARS Act uses the term ''person'' to describe those eligible to purchase or lease a new vehicle under the Program. *See* Sections 1302(c–d). In the absence of a definition of this term in the CARS Act, the agency relies on the universal definition that appears in 1 U.S.C. 1, which includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals. The agency adopts this definition for the term ''person'' in Section 599.102, and also defines a ''purchaser'' in that section as a person purchasing or leasing a new vehicle under the CARS program. Of course, each person is subject to the statutory restriction that precludes participation by any person in this program more than once.

b. Registration of Dealers (§ 599.200)

The Act requires the agency to provide for a means of registering dealers for participation in the program. (Section 1302(d)(1)). A dealer is defined under the Act as a person licensed by a State who engages in the sale of new automobiles to ultimate purchasers (Section 1302(i)(6)), a definition we have restated in Section 599.102. After consultation with dealer and OEM organizations, the agency is implementing the dealer registration requirement through a several step process. First, on June 30, 2009, the agency requested and later received a list of franchised dealers from their respective OEMs, including each dealer's legal business name, doing-business-as name, mailing address, point of contact, and OEM franchise identifier.[1] OEM franchised dealers, as a group, satisfy the requirement for State licensing. The agency has learned that, without an active OEM franchise agreement, a dealer is unable to offer manufacturer purchasing incentives and may not be able, in some cases, to extend the full manufacturer warranty to the new vehicles it sells. For this reason, the agency includes the requirement for a currently active OEM franchise agreement as part of the dealer registration process. (The OEMs have agreed to update this list weekly, to add newly franchised dealerships and remove dealerships that are no longer under franchise agreement.) The agency then contacted all listed dealers by mail, providing instructions on how to register under the program. Dealers received separate letters and were instructed to register separately for each make of vehicle they sell. Section 599.200(b) identifies the required dealer qualifications for registration, which flow from the statutory requirement for State licensing and from the need to perform transactions electronically. OEM franchised dealers should easily satisfy these requirements.

As set forth in section 599.200(c), dealers that have been contacted by mail by the agency and that wish to participate must register to do so electronically, using the authorization code and following the instructions provided in the mailing, and fill out an electronic screen providing, among other things, name and contact information and bank account and routing data for receiving payment under the program.[2] The agency will review this information to ensure completeness, and verify that the dealer has a still active franchise agreement (based on the continuously updated list provided by OEMs). Section 599.200(d) sets forth the procedures for approving and disapproving registration applications. Section 599.200(d)(1) provides that, where an application for registration is approved, the agency will notify the dealer of approval by e-mail, providing a user identification and password with which to conduct transactions, and add the dealer to the list of registered dealers on its Web site at *http://www.cars.gov*. Consumers may consult this list to identify registered dealers in their locality. Section 599.200(d)(2) provides that, where an application for registration is rejected, the agency will notify the dealer by e-mail, and provide the reasons for rejection. The agency anticipates that, unless rejected, confirmation of registration and addition to the list should occur within 2 to 4 business days after a dealer submits the required information.

Section 599.200(e)(1) provides that the agency may automatically revoke a registration as a matter of course for termination or discontinuance of a franchise but the dealer's registration may be reinstated upon a dealer's showing of proper and adequate license to sell new vehicles to ultimate purchasers. Section 599.200(e)(2) states that the agency may suspend or revoke a dealer's registration under the procedures in Section 599.504. Section 599.200(f) requires a registered dealer to immediately notify the agency of any change in the registration information it submitted or any change in the status of its State license or franchise. Finally, section 599.200(g) accommodates transactions that occurred after July 1, 2009, but prior to the publication of today's final rule, by permitting registration after a qualifying sale or lease transaction has occurred.[3]

The agency believes that this process is the most efficient and appropriate method to register dealers consistent with the requirements of the CARS Act. The Act requires that a dealer be licensed under State law, and the list provided by OEMs ensures that this is so. Using this list also allows the agency to verify dealer registration information in a timely manner. Since the OEMs have agreed to provide weekly updated lists, this process also will allow for registration of newly franchised dealers as they come into existence and the discontinuance of registrations for dealers that are no longer franchised. Newly franchised dealers will be contacted by mail with an authorization code, as the agency becomes aware of them from the weekly updated lists. A dealer whose franchise has been discontinued will be removed from the agency's list, and will no longer be eligible to receive credits for transactions under the program.

[1] The agency chose to involve the OEMs in this process to eliminate the opportunity for unscrupulous individuals or entities to identify themselves as franchised dealers.

[2] The registration process was made available to dealers beginning on July 24, 2009.

[3] As discussed later in this document, other requirements apply to these earlier transactions as well.

c. Identification of Disposal Facilities (§ 599.201)

Under the Act, the agency is required to provide a list of entities to which dealers may transfer eligible trade-in vehicles for disposal. (Section 1302(d)(5)). The Act also requires the Secretary to coordinate with the Attorney General to ensure that the National Motor Vehicle Title Information System (NMVTIS) is timely updated to reflect the crushing or shredding of trade-in vehicles and appropriate reclassification of their titles. (Section 1302(c)(2)(C)).

The agency met with groups representing auto recyclers and other disposal facilities and salvage auctions, as well as officials from AAMVA and the Department of Justice responsible for administering the NMVTIS, to get an understanding of the vehicle salvage and disposal process. From those meetings, the agency learned that there is a wide range of entities involved in various aspects of the vehicle salvage and disposal business. The agency also consulted with the EPA about the CARS program and the requirement to produce a list of disposal facilities for disposition of the trade-in vehicles. Mindful of environmental issues, NHTSA sought to identify a universe of disposal facilities that was attentive to these concerns, while achieving the objectives of the CARS program.

In the course of these consultations and based on advice from EPA, the agency identified the National Vehicle Mercury Switch Recovery Program (NVMSRP) as a comprehensive source of disposal facilities generally committed to meeting State and Federal environmental laws. The NVMSRP was established in 2006 under a memorandum of understanding (MOU) among the EPA, environmental groups, manufacturers and disposal facilities, to recover and recycle mercury switches from end-of-life vehicles before they are scrapped, crushed or shredded. This purpose is in alignment with the CARS Act's requirement for proper vehicle disposition, including the removal of mercury switches. The MOU authorizes the End of Life Vehicle Solutions (ELVS), a corporation established by vehicle manufacturers to carry out responsibilities of the NVMSRP, including establishing a process for participants to enroll in the program and maintaining a database of participants who recover and submit mercury switches.

Participants may enroll in the program by registering with ELVS. Information about ELVS can be found on its Web site at *http://www.elvsolutions.org.* Currently, approximately 7,700 disposal facilities are participants, and EPA estimates that approximately 1,500 of these facilities actively turn in the switches. The agency has determined that disposal facilities that are participants on the ELVS list present the best assurance of compliance with State and Federal environmental laws.

With this in mind, NHTSA has identified disposal facilities that are ELVS participants for listing as approved disposal facilities under this program, and these disposal facilities are listed on the agency's Web site at *http://www.cars.gov/disposal.* However, some entities on this list may dispose of mercury switches as part of their business (for example, auto repair businesses) but do not actually engage in dismantling or recycling of vehicles. Therefore, the fact that a facility is on the list does not automatically ensure that it is equipped to dispose of vehicles properly. To be eligible for participation in the CARS Program, a facility on the ELVS list must be able to crush or shred motor vehicles, either with its own equipment or by use of a mobile crusher. NHTSA was not able to obtain accurate lists of all entities that have this capacity within the time allowed, but is informed that many of the entities on the ELVS list are capable of at least obtaining the services of a mobile crusher. Dealers will have to inquire of specific entities concerning their capacity to crush or shred the vehicle. Any facility that does participate will have to certify that it has that capacity to crush or shred and will dispose of the vehicle through crushing or shredding.

These facilities must additionally agree to turn in mercury switches in accordance with the NVMSRP from any CARS trade-in vehicles they accept (to the extent the vehicles have such switches), by certifying that they will do so. In addition, because the CARS Act directs the agency to ensure that pollutants are removed from vehicles and properly disposed of, that vehicles are crushed or shredded, and that NMVITS is updated to reflect the disposition of the vehicle, as a condition of participation in the program, the listed participants must also agree to remove pollutants from the CARS trade-in vehicles in compliance with State and Federal law, crush or shred the vehicle, update NMVTIS to reflect the disposition of the vehicle, and certify to having done so. The certification requires the disposal facility to certify that it will dispose of refrigerants, antifreeze, lead products, mercury switches, and other toxic or hazardous vehicle components prior to crushing or shredding, in accordance with applicable Federal and State requirements. The rule does not impose additional requirements; for example, it does not require removal of all lead products such as lead solder connections that are ordinarily not removed during the shredding process.

NHTSA is aware, from consultations with EPA, that the State of Maine and the U.S. territories are not participants in the NVMSRP and that the ELVS list contains no disposal facilities in these areas. Maine has its own program for recycling mercury switches, which is comparable to the NVMSRP. Under Maine law, a vehicle may not be crushed without first removing and properly disposing of mercury switches, and disposal facilities are covered by that law. NHTSA obtained a list of disposal facilities in Maine from the State Bureau of Motor Vehicles, and these facilities are included along with the ELVS facilities from other states, on the agency's Web site at *http://www.cars.gov/disposal.* As a condition of participating, these Maine facilities must make the same certifications as required of the ELVS facilities.

In the case of the U. S. Territories, the agency is informed that participation in ELVS is currently impracticable for cost reasons related to sending mercury switches to the Continental United States. Therefore, the rule does not include disposal facilities on the list for the Territories, but allows dealers to select disposal facilities within the territories that are able to make the same certifications required of the ELVS and Maine facilities.

The agency plans to update this disposal facility list periodically, to add entities that become ELVS participants and to remove entities that are no longer ELVS participants or for other reasons discussed elsewhere in this document. The rule requires dealers to consult this list on the CARS Web site at the time of the transfer of the trade-in vehicle, as an entity that does not appear on the list on that date is not eligible to receive the vehicle for crushing or shredding.[4]

One issue that has arisen is the participation of entities that shred vehicles in the CARS process. Shredders turn crushed vehicles into materials useful in various industrial processes. Shredders are relatively few in number, with less than 300 shredding machines distributed nationwide. Disposal facilities with shredders may be ELVS participants and, if they are, they can

[4] Participants in the CARS program are cautioned to consult the list on NHTSA's CARS Web site, *http://www.cars.gov/disposal,* for eligible disposal facilities, not the list on the ELVS Web site.

participate fully in the CARS program. To the extent these facilities are not ELVS participants, they may still play a role in the ultimate disposition of the vehicle. The final rule places no restrictions on a trade-in vehicle once it is crushed. Once crushed, the agency assumes the vehicle will be transferred to a shredder so that its materials can be recycled. The rule does not require any tracking of this ultimate shredding of a crushed vehicle, so the entity receiving the crushed vehicle for shredding does not have to submit a CARS certification form.

Because of the requirement, discussed later in this document, that dealers must disable the trade-in vehicle's engine prior to transferring the vehicle to a disposal facility, the agency believes that the statutory interest in ensuring that the vehicle is not returned to use on the road in this or any other country is largely met before it leaves the dealer's possession. Prior engine disablement reduces the likelihood that a trade-in vehicle will be returned to use as an on-road automobile. With the extra assurance provided by engine disablement, the smooth operation of the program is better served if limitations on participation in the disposal stream are kept to a minimum, ensuring a reasonable geographic distribution of entities that may receive trade-in vehicles from dealers under the program.

With these points in mind, the agency consulted with representatives of the salvage auction industry. The agency believes it is practicable to provide for the participation of salvage auctions in the transfer of trade-in vehicles to disposal facilities under the CARS program, in order to broaden the avenues of disposal available to dealers. Therefore, salvage auctions may receive a CARS trade-in vehicle, provided that, as a condition of participation, these entities agree to limit their auction sales of CARS trade-in vehicles to the disposal facilities described above that appear on the agency's list. We believe that including listed disposal facilities, and requiring salvage auctions to sell at auction the scrap trade-in vehicles only to approved disposal facilities strikes the appropriate balance between program and environmental accountability, on the one hand, and geographic distribution and dealer access, on the other.

NHTSA was unable to develop a comprehensive list of salvage auctions within the time allowed. Although we heard from representatives of some of the largest auctions and their associations (including CoPart, Mannheim, the Insurance Auto Auctions, and the Automotive Salvage Pool Association), we concluded that simply listing their members, absent more information, would not be appropriate. However, we understand from representatives of those organizations and companies that they and their members are willing to restrict the sale of CARS trade-in vehicles to just those entities on the CARS program disposal facility list and make the necessary certifications about the disposal of those vehicles. Any other salvage auctions willing to abide by these restrictions and submit the necessary forms and certifications under penalty of law may participate in the CARS program. All participants must understand the specific requirements of this rule and the substantial penalties they may incur if they violate it or submit false information in connection with the program. Also, all who participate must understand that their records, premises, and CARS vehicles in their possession are subject to inspection by NHTSA and the DOT Office of Inspector General.

Section 599.201 implements the requirements for identification of salvage auctions and disposal facilities. Section 599.201(a) identifies the participating entities, including salvage auctions, disposal facilities listed on the agency's Web site, and disposal facilities in the U.S. territories. Section 599.201(b) describes the conditions these entities must follow in order to participate in the program.

d. Determining Eligibility of Trade-in Vehicles and New Vehicles (§ 599.300)

The CARS Act prescribes detailed requirements concerning eligible trade-in vehicles and eligible new vehicles for qualifying transactions under the Program. This final rule implements these requirements in close adherence to the statutory language.

1. Vehicle Definitions

The CARS Act divides eligible trade-in vehicles and new vehicles into four groups: passenger automobiles, category 1 trucks, category 2 trucks, and category 3 trucks.[5] The term ''passenger automobile'' and its definition are taken from the agency's fuel economy statute. The definition excludes vehicles that NHTSA has determined are (1) not manufactured primarily for transporting persons and (2) vehicles that are capable of off-highway operation. Vehicles not manufactured primarily for transporting persons include pickup trucks and certain vehicles that permit expanded use of the vehicle for cargo-carrying purposes, including vehicles which are designed to transport more than 10 persons; provide temporary living quarters, transport property on an open bed, provide greater cargo-carrying than passenger-carrying volume, or permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes. (*See* 49 CFR 523.5(a)).

Vehicles that are capable of off-highway operation include three groups of vehicles. (*See* 49 CFR 523.5(b)). The first includes vehicles that have 4-wheel drive and have at least four out of five specified physical characteristics relating to ground clearance.[6] The second includes vehicles that are rated at more than 6,000 pounds gross vehicle weight and have at least four out of five specified physical characteristics relating to ground clearance, but do not have 4-wheel drive. The third includes 2-wheel drive SUVs (regardless of GVWR) which came in a 4-wheel drive version that met four of five specified physical characteristics related to ground clearance. Beginning with the 2011 model year, NHTSA will reclassify this third group of vehicles as passenger cars. *See* Average Fuel Economy Standards—Passenger Cars and Light Trucks—Model Year 2011, Section XI (Vehicle Classification); 74 FR 14419, March 30, 2009. Although neither specified nor prohibited in the CARS Act, the agency has concluded that it is most appropriate to define passenger

[5] Section 1302(i) of the CARS Act defines those categories largely with reference to statutory categories of vehicles subject to the Corporate Average Fuel Economy (CAFE) Standards as follows: ''passenger automobile'' means a passenger automobile, as defined in section 32901(a)(18) of title 49, United States Code, that has a combined fuel economy value of at least 22 miles per gallon; ''category 1 truck'' means a non-passenger automobile, as defined in section 32901(a)(17) of title 49, United States Code, that has a combined fuel economy value of at least 18 miles per gallon, except that such term does not include a category 2 truck; ''category 2 truck'' means a large van or a large pickup, as categorized by the Secretary using the method used by the Environmental Protection Agency and described in the report entitled ''Light-Duty Automotive Technology and Fuel Economy Trends: 1975 through 2008''; ''category 3 truck'' means a work truck, as defined in section 32901(a)(19) of title 49, United States Code. Under regulations implementing the CAFE program (*see* 49 CFR Part 523), ''passenger automobiles'' currently include all passenger cars and ''non-passenger automobiles'' include all SUVs, vans and pickup trucks up to 8,500 pounds GVWR.

[6] The five ground clearance characteristics are: (1) An approach angle of not less than 28 degrees; (2) a breakover angle of not less than 14 degrees; (3) a departure angle of not less than 20 degrees; (4) a running clearance of not less than 20 centimeters; and (5) front and rear axle clearances of not less than 18 centimeters each. These characteristics are calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the automobile's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure. *See* 49 CFR Part 523.5(b)(2).

cars using the NHTSA regulations and policy which are applicable to 2010 and earlier model year vehicles. Therefore, the third group of vehicles will continue to be classified as trucks for CARS purposes (and will be excluded from the definition of a passenger automobile).

A ''category 1 truck'' is a non-passenger automobile. This category includes sport utility vehicles (SUVs), medium-duty passenger vehicles,[7] small and medium pickup trucks, minivans, and small and medium passenger and cargo vans. It does not include vehicles that are defined as category 2 trucks.[8]

A ''category 2 truck'' is a large van or a large pickup truck, based upon the length of the wheelbase (more than 115 inches for pickup trucks and more than 124 inches for vans). If the vehicle nameplate contains a variety of wheelbases, the size classification is determined by considering only the shortest wheelbase produced. In addition, some pickup trucks and cargo vans which exceed these thresholds are treated as category 3 trucks instead of category 2 trucks.

A ''category 3 truck'' is a work truck and is rated between 8,500 and 10,000 pounds gross vehicle weight. This category includes very large pickup trucks (those with cargo beds 72 inches or more in length) and very large cargo vans.

As previously stated, for category 1 and 2 trucks with a variety of wheelbases, the size classification is determined by considering only the shortest wheelbase produced. If a secondary manufacturer modifies and introduces into commerce a vehicle with only a limited portion of the wheelbases offered by the original equipment manufacturer (OEM), the size classification for the secondary manufacturer will be determined by (and consistent with) the size classification determined for the OEM. For example, if General Motors produces 2008 model year Chevrolet Colorado pickup trucks with wheelbases of 111, 119 and 126 inches, Colorado pickup trucks would be classified as category 1 trucks for CARS purposes (because the shortest wheelbase Colorado pickup truck was less than or equal to 115 inches). If a secondary manufacturer introduces into commerce 2008 model year Colorado ZZZ vehicles (high performance Colorado pickups with 126 inch wheelbase only), Colorado ZZZ models would also be classified as a category 1 pickup trucks.

The rule defines these four groups of vehicles in section 599.102 and makes use of these categories throughout sections 599.300(f) and 599.300(g).

2. Eligibility of Trade-in Vehicles

The CARS Act establishes four criteria for an eligible trade-in vehicle. The trade-in vehicle must:

(1) Be in drivable condition;

(2) Have been continuously insured, in accordance with State law, and registered in the same owner's name for the one-year period immediately prior to the trade-in;

(3) Have been manufactured not earlier than 25 years before the date of trade-in[9] and, in the case of a category 3 vehicle, also be from a model year not later than model year 2001; and

(4) Have a combined fuel economy value of 18 miles per gallon or less,[10] if it is a passenger automobile, a category 1 truck, or a category 2 truck.[11]

The agency must have a means of evaluating these criteria as it determines whether a transaction qualifies under this program.

(i) ''Drivable Condition''

The agency intends that ''drivable condition'' be demonstrated by several means. First, it must be confirmed by the trade-in vehicle being operated, under its own power, by the dealer on public roads on the date the vehicle is traded in. The dealer must then certify to the operation of the vehicle when it submits its request for reimbursement. Separately, the person trading in the vehicle must certify that it is in drivable condition. This latter certification also must be submitted by the dealer with its application requesting reimbursement. This approach is adopted in section 599.300(b)(1) of the final rule, and the required dealer and purchaser certifications are contained in the Summary of Sale/Lease and Certifications (Appendix A, certifications section). Note that the Summary of Sale/Lease and Certifications form has two components—a section for the dealer to input information summarizing the terms of the sale or lease transaction and a section containing certifications that must be made by both the dealer and the purchaser. The section summarizing the transaction is discussed later in this notice.

(ii) Insurance

In addressing the requirement that the trade-in vehicle be ''continuously insured consistent with the applicable State law'' for a period of not less than one year prior to the transaction, the agency notes the complication that not all States require vehicle owners to purchase automobile insurance coverage. Several States provide vehicle owners with the option, for example, to post a surety bond, leave a cash deposit or self-insure in lieu of purchasing automobile insurance. Two States have little or no insurance requirements.

The agency recognizes that insurance requirements differ throughout the country. However, the agency believes that the Act requires the continuous one-year insurance condition to be met as a threshold matter, with respect to any trade-in vehicle under the program. In a State where the conditions and requirements of insurance are specified in law (*e.g.,* liability minimums, deductible requirements), the insurance coverage would then need to be in accordance with those conditions and requirements. To qualify under this requirement, a purchaser must provide proof of insurance covering the trade-in vehicle for a period of at least one year prior to the date of the trade-in.

The agency is aware that, in some cases, consumers may have insurance cards that state clearly the period of insurance coverage, while in other cases, an insurance card is unavailable or does not convey the period-of-coverage information. To provide for an alternative, the agency consulted with several insurance associations, including the Insurance Information Institute, American Insurance

[7] Medium-duty passenger vehicles are defined in 49 CFR 523.2.

[8] As noted in footnote 2, the statutory definition of the term ''category 2 truck'' is based on the categorization method used by the Environmental Protection Agency and described in the report entitled ''Light-Duty Automotive Technology and Fuel Economy Trends: 1975 through 2008.'' (A copy of this report has been placed in the docket for this rule.) Based on that method of categorization, large vans and pickup trucks, which would otherwise fall within category 1, instead fall within category 2. The method is based primarily on published wheelbase data according to the following criteria: A small pickup is less than 105″, a midsize pickup is 105″ to 115″, a large pickup is more than 115″; A small van is less than 109″, a midsize van is 109″ to 124″, a large van is more than 124″; A small SUV is less than 100″, a midsize SUV is 100″ to 110″, a large SUV is more than 110″. This classification scheme is similar to that used in many trade and consumer publications.

For those vehicle nameplates with a variety of wheelbases, the size classification was determined by considering only the smallest wheelbase produced. The classification of a vehicle for this report is based on the author's engineering judgment and is not a replacement for definitions used in implementing automotive standards legislation. [Emphasis added.]

[9] This means that all pre-model year 1984 vehicles, and most model year 1984 vehicles, are not eligible as trade-in vehicles.

[10] As discussed in later in this preamble, under ''Requirements for qualifying transactions,'' the combined fuel economy of the trade-in vehicle must satisfy the statutory requirements related to the difference between its fuel economy and that of the new vehicle, as well as meeting this 18 miles per gallon absolute threshold.

[11] There is no minimum for category 3 trucks because they do not have fuel economy ratings.

Association, National Association of Mutual Insurance Companies, and Property Casualty Insurers Association of America. These entities agreed to assist the agency through their member insurance companies. They indicated that purchasers could contact their insurers to obtain proof of insurance in a form that provides the details needed to identify the insured vehicle and the one year period of coverage required under the program.

To implement this process, the agency is requiring the owner of the trade-in vehicle to provide proof, at the time the vehicle is traded in, that the trade-in vehicle has been insured continuously for one year prior to the trade-in. This proof may take one of three forms. The proof may consist of one or more insurance cards containing the make, model, model year, and vehicle identification number (VIN) of the insured vehicle, but only if, taken together, the cards display on their face a continuous one-year period of insurance coverage. The proof may also consist of insurance policy documents (*e.g.,* declarations pages) showing the same information. Finally, the proof may consist of a signed letter, on insurance company letterhead, identifying the same vehicle identification information (*i.e.,* make, model, model year, and VIN) of the insured vehicle and the period of continuous coverage, which must be for at least one year prior to the date of the trade-in. In addition, for each of the three options, the consumer must certify that the trade-in vehicle has been continuously insured for the requisite period. This proof of insurance, along with the consumer certification, must be submitted by the dealer in its application to the agency requesting reimbursement. Section 599.300(b)(2) and Appendix A, certifications section, implement these requirements.

(iii) Registration

The requirement that the trade-in vehicle be registered to the same owner for a continuous period of one year prior to the transaction requires clarification. The agency interprets this provision as requiring the trade-in vehicle to be registered to and owned by the person purchasing or leasing the new vehicle under the program. In a transaction involving more than one person, the trade-in vehicle must have been registered to and owned by at least one of the persons purchasing or leasing the vehicle under the program.

To qualify under this requirement, the purchaser will need to provide proof of registration covering the trade-in vehicle for a period of at least one year prior to the date of the trade-in. The agency recognizes that this proof of registration presents complications for purchasers. In several States, registration cards or documents do not indicate a period of coverage of more than one year. In some of these States, purchasers have a difficult time obtaining prior registration information from the State. Seeking a less burdensome alternative, the agency evaluated the capabilities of commercial vehicle information services, such as Polk and Experian, to determine the type of vehicle information that is readily available to consumers. The agency discovered that purchasers may obtain a history of vehicle registration information from these services.

To implement this process, the agency has determined that proof of registration may be demonstrated by any of the following: a current State registration document or series of registration documents in the name of the purchaser evidencing registration for a period of not less than one year immediately prior to the trade-in; a current State registration document showing registration in the name of the purchaser and a document of title that confers title on the purchaser not less than one year immediately prior to the trade-in; or a current State registration document showing registration in the name of the purchaser and a document from a commercially available vehicle history provider evidencing registration for a period of not less than one year immediately prior to the trade-in. Changes in ownership during this period to delete a co-owner due to death or divorce do not interrupt the continuity of the registration, so long as the purchaser has been shown as an owner on the registration for the entire period. In addition, for each of the three options, the consumer must certify that the trade-in vehicle was continuously registered for the requisite period. This proof of registration, along with the consumer certification, must be submitted by the dealer in its application to the agency requesting reimbursement. Section 599.300(b)(3) and Appendix A, certifications section, implements these requirements.

(iv) Manufacture Date

The requirement that the trade-in vehicle be manufactured not earlier than 25 years before the date of trade-in is straightforward, and is implemented in section 599.300(b)(4). Ordinarily, the model year of the vehicle, which appears on the title, will serve to satisfy this requirement. Where that information is inconclusive (*e.g.,* certain model year 1984 and 1985 vehicles), the month and year of manufacture may be retrieved from the safety standard certification label that appears on the frame or edge of the driver's door in most vehicles. The rule allows the 25-year period to be satisfied provided it falls any time within the month that the vehicle is traded in. Section 599.300(f) implements the additional requirement, in the case of a category 3 vehicle, that the trade-in vehicle be manufactured not later than model year 2001. The dealer must certify that the trade-in vehicle meets this manufacturing date requirement. (Appendix A, certifications section).

(v) Combined Fuel Economy

The specified combined fuel economy rating of 18 mpg or less for the trade-in vehicle (excepting category 3 vehicles) is implemented throughout sections 599.300(f) and 599.300(g).[12] Under the Act, combined fuel economy for an eligible trade-in vehicle is defined as the number posted under the words ''Estimated New EPA MPG'' and above the word ''Combined'' for vehicles of model year 1984 through 2007, or posted under the words ''New EPA MPG'' and above the word ''Combined'' for vehicles of model year 2008 or later on the fueleconomy.gov Web site of the Environmental Protection Agency for the make, model, and year of such vehicle. (Section 1302(i)(5)(B)). The agency adopts this definition in section 599.102, but includes language limiting its application to combined fuel economy based on gasoline. This treatment of trade-in vehicles is consistent with the CARS Act requirements for defining the combined fuel economy of new vehicles.[13]

EPA changed the way it calculated fuel economy ratings starting in Model Year 2008, and has estimated the revised ratings for Model Years 1985–2007. Therefore, as described above, eligibility is determined by the revised ratings rather than the original EPA sticker on the vehicle. Since the revised ratings reflect a lower fuel economy, vehicles that would not be eligible under their original EPA rating may qualify for trade-in.

3. Eligibility of New Vehicles

The Act specifies that a new vehicle must be a passenger automobile, a category 1 truck, a category 2 truck, or

[12] The trade-in vehicle is also subject to statutory requirements related to the difference between its combined fuel economy and that of the new vehicle.

[13] As described later in this document, the combined fuel economy of new vehicles is derived from the Monroney label, which lists only fuel economy based on gasoline.

a category 3 truck. The characteristics of these vehicles were described earlier under Section c.1, ''Vehicle Definitions,'' and they are defined in section 599.102. To further assist consumers in determining the eligibility of new vehicles, the CARS Web site, at *http://www.cars.gov,* contains an interactive tool. Consumers may identify their trade-in vehicle, select a new vehicle, and determine whether the transaction qualifies for a credit (and the amount of the credit) under the program.

In addition to the definitional categories, the new vehicle purchased or leased under the program must achieve a minimum combined fuel economy level. For new passenger automobiles the combined fuel economy must be at least 22 miles per gallon, for category 1 trucks it must be at least 18 miles per gallon, and for category 2 trucks it must be at least 15 miles per gallon. Category 3 trucks have no minimum fuel economy requirement. Under the Act, combined fuel economy for new vehicles is defined as the number, expressed in miles per gallon, centered below the words ''Combined Fuel Economy'' on the label required to be affixed or caused to be affixed on a new automobile pursuant to subpart D of part 600 of title 40 Code of Federal Regulations (''Monroney Label''). (Section 1302(i)(5)(A)). The agency adopts this definition, without change, in section 599.102.

The new vehicle must also have a manufacturer's suggested retail price (MSRP) of $45,000 or less to be eligible for purchase or lease under the program. The agency interprets this requirement to be the base MSRP—the price on the Monroney label affixed to the vehicle before any dealer accessories, optional equipment, taxes or destination charges are added to the price. This interpretation is consistent with the Automobile Information Disclosure Act, which identifies the retail price separately from the retail delivered price with optional equipment. *See* 15 U.S.C. 1232(f)(1). To implement this approach, we have added a definition of the term MSRP in section 599.102 and stated the limitation in section 599.300(c)(2).

The CARS Act allows the new vehicle to be either purchased or leased. In the case of a lease, the Act requires the lease to be for a period of not less than 5 years. The agency implements this requirement in section 599.300(c)(1). Additionally, the agency has added a definition of ''lease'' in section 599.102, specifying its minimum duration and making clear that a lease that incorporates a balloon payment at any time prior to five years does not meet the statutory requirement.

e. Requirements for Qualifying Transactions (§§ 599.300 and 301)

1. Vehicle Categories and Credit Amounts

The preceding section described eligibility requirements for the trade-in vehicle and for the purchased or leased new vehicle. Under the CARS Act, a transaction does not qualify for a credit unless the trade-in vehicle and the new vehicle, considered together, satisfy all requirements. In addition, the amount of the credit (either $3,500 or $4,500) is dependent on the category and fuel economy of the two vehicles making up the transaction.

For example, in a transaction involving a trade-in vehicle that is a passenger automobile, a category 1 truck, or a category 2 truck and a new vehicle that is a passenger automobile, each meeting the eligibility criteria discussed in the last section, if the new vehicle has a combined fuel economy that is 4 to 9 miles per gallon higher than the trade-in vehicle, the credit is $3,500. If the new vehicle has a combined fuel economy that is at least 10 miles per gallon higher than the trade-in vehicle, the credit is $4,500.

If the transaction involves a trade-in vehicle that is a passenger automobile, a category 1 truck, or a category 2 truck and a new vehicle that is a category 1 truck each meeting the eligibility criteria, a gain of 2 to 4 miles per gallon results in a credit of $3,500; a gain of at least 5 miles per gallon results in a credit of $4,500.

In the case of a new category 2 or category 3 truck, the trade-in vehicle categories are different. For a new category 2 truck, the trade-in vehicle must be a category 2 or a category 3 truck. If the transaction involves two category 2 trucks each meeting the eligibility criteria, a gain of 1 mile per gallon results in a credit of $3,500; a gain of at least 2 miles per gallon results in a credit of $4,500. A category 3 truck that is traded in for a new category 2 truck is entitled to a $3,500 credit, without fuel economy restriction. (Category 3 trucks are not rated for fuel economy by EPA.) A category 3 truck that is traded in for another category 3 truck is entitled to a $3,500 credit if the new vehicle is ''smaller or similar in size.'' In view of the fact that Congress has not spoken directly to the precise meaning of this term, consistent with available information, NHTSA has incorporated this statutory requirement as satisfied if the gross vehicle weight rating of the new category 3 truck is no greater than that of the trade-in category 3 truck.

The full universe of qualifying transactions, together with the corresponding amount of the credit, is set forth in sections 599.300(f) and 599.300(g).

The CARS Act limits the amount of funds that can be used to provide credits for purchases or leases of work trucks (category 3 trucks) to 7.5 percent of the funds appropriated for the program. Once that limit is reached, NHTSA will stop making payments for these transactions. The total amount available for the program is $1 billion, with $50 million available to the agency to administer the program. NHTSA intends to provide ongoing information about the balance of funds remaining available for these and all other categories of transactions under the program.[14]

2. Special Requirements for Trade-in Vehicles

The CARS Act requires dealers to disclose to purchasers trading in an eligible vehicle the best estimate of the scrap value of the vehicle, and permits the dealer to retain $50 of any amount paid to the dealer for scrappage of the vehicle as payment for the administrative costs of participation in the program. The agency has restated this requirement in section 599.300(d)(1) and in the dealer certifications in Appendix A, certifications section.

The CARS Act requires a dealer that receives an eligible trade-in vehicle under the program to certify to the Secretary of Transportation, as prescribed by rule, that the dealer will transfer the vehicle (including the engine block), ''in such manner as the Secretary prescribes,'' to a entity that will ensure that the vehicle will be crushed or shredded, and will not be sold, leased, or exchanged. While Congress authorized the agency to promulgate a rule, it did not define ''manner'' or otherwise speak directly to its meaning. NHTSA interprets ''manner'' [15] to include the methods

[14] NHTSA intends to maintain an up-to-date running balance of available funds on the Web site at *http://www.cars.gov*.

[15] We note that a definition of manner is ''the mode or method in which something is done or happens.'' *Webster's Third New International Dictionary* 1376 (2002). Among the definitions of mode are ''a condition or state of being,'' ''a particular form or variety of something'' and ''a manner of doing something or of performing a particular function or activity.'' Ibid. at 1451. We further note generally that, to the extent that there are ambiguities or questions of interpretation in statutes within an agency's jurisdiction to administer, Congress has delegated authority to the

applied by the dealer and the condition of the vehicle transferred by the dealer. Specifically, the agency is prescribing in today's rule that the dealer is to transfer the trade-in vehicle with its engine permanently disabled, as detailed below.

In enacting the CARS Act, the Congress was concerned about fraud. *See* Section 1302(a)(4). The agency is aware of the significant disparity in value that exists between a vehicle that is in ''drivable condition,'' as the trade-in vehicle must be under this program, and a vehicle that is scrapped and ultimately destroyed, which is the required disposition for that trade-in vehicle. A substantial opportunity exists for fraudulent diversion of the trade-in vehicle, largely because its still-functioning engine makes it attractive to return the vehicle to the road rather than relegate it to the scrap yard.[16] Moreover, continued use of the trade-in vehicle completely defeats the environmental purpose of the CARS Act, which is to remove these vehicles from the road permanently.

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 parts of the vehicle are never again used on the highway. Taking the above considerations into account, including the Secretary's authority to prescribe the manner in which the trade-in vehicle, including its engine block, is transferred to a disposal facility, the agency has determined that the prudent course of action, consistent with Congressional concerns about crushing or shredding, resale and fraud, is to require permanent disablement of the trade-in vehicle's engine block as a part of the qualifying transaction under this program.

In this context, we note that the statutory term engine block is not defined and that Congress did not speak directly to its meaning. In general, the term engine block may refer to the block casting, or to a short block or long block. The short and long blocks contain the block casting and, among others, a crank shaft, connecting rods, bearings and pistons. Long blocks also include the cylinder head(s) and the cam(s). In a pushrod engine, the short block contains the cam. We interpret ''engine block'' to mean the part of the engine containing the cylinders and typically incorporating water cooling jackets and also including the crank, rods, pistons, bearings, cam(s) and cylinder heads. In the case of a rotary engine, the block includes the rotor housing and rotor. In light of the statute's purpose of removing fuel inefficient vehicles from the nation's highways, which of course are powered by engines that consume substantial amounts of fuel the agency believes it is reasonable to read the word ''engine block'' in a way that includes engine parts traditionally considered part of the ''long block.'' We do not believe that parts from the engine such as the pistons and cylinder head that could be removed and used to reconstruct the engine from the trade in-vehicle should remain available to recreate the fuel consuming engine. Finally, the engine disabling procedure using sodium silicate can not be performed if the engine parts such as the head(s) are removed.

The agency has determined that a quick, inexpensive, and environmentally safe process exists to disable the engine of the trade-in vehicle while in the dealer's possession. Removing the engine oil from the crankcase, replacing it with a 40 percent solution of sodium silicate (a substance used in similar concentrations in many common vehicle applications, including patching mufflers and radiators), and running the engine for a short period of time at low speeds renders the engine inoperable. Generally, this will require just two quarts of the sodium silicate solution. The retail price for two quarts of this solution (enough to disable the largest engine under the program) is under $7, and the time involved should not substantially exceed that of a typical oil change. The agency has tested this method at its Vehicle Research and Test Center and found it safe, quick, and effective. As with many materials used in the vehicle service area of a dealership, certain common precautions need to be taken when using sodium silicate. The same is true with regard to workers who may come in contact with the substance during the crushing or shredding of the engine block. We have discussed the matter with the EPA and the Occupational Safety and Health Administration (OSHA) and are aware of no detrimental effects related to the disposal of the engine block with this material in it.

The agency considered several possible methods of rendering the engine inoperable. The agency was looking for a method that was safe for workers involved, completely effective, environmentally sound, and relatively inexpensive for a dealer to use. NHTSA's Vehicle Research and Test Center (VRTC) tested various methods and prepared a report (placed in the docket) summarizing the tests. VRTC evaluated four options: (1) The use of sodium silicate solution in the manner the agency has now adopted; (2) destroying the oil filter sealing land and threaded fastener boss; (3) drilling a hole in the engine block; and (4) running the engine without oil. VRTC concluded that the sodium silicate method was the best option. The other methods all had significant problems related to their effectiveness, practical limitations based on vehicle variations, and/or safety risks for workers involved.

Sodium Silicate solution is a mixture of water and sodium silicate solids. When, after draining the oil, it is introduced into the engine oil system, the oil pump is able to distribute the solution throughout the engine oiling system. The heat of the operating engine then dehydrates the solution leaving solid sodium silicate distributed throughout the engine's oiled surfaces and moving parts. These solids quickly abrade the bearings causing the engine to seize while damaging the moving parts of the engine and coating all of the oil passages. Only a small amount of sodium silicate remains in solution after completion of the process. Many of the engine parts will be unaffected by this process such as: intake and exhaust manifolds, bolt-on components, and fuel system components.

The agency reviewed available information about sodium silicate and its properties, including a toxicology report and material safety data sheets that are available in the docket. Sodium silicate is a commonly used substance found in a wide range of products, including even dishwasher detergent. The Food and Drug Administration lists it as a GRAS (Generally Regarded as Safe) substance. It is used to treat hazardous wastes, and is frequently used in the automotive industry as a rust inhibitor in cooling systems, and to seal leaks in cooling systems, head gaskets, and exhaust systems. Neither our review of available information nor our discussions with other agencies (EPA and OSHA) gave the agency reason to be concerned about the use of sodium silicate as a significant health or environmental issue.

It is important to note that there are many varieties of sodium silicates, which are differentiated by weight ratio (the ratio of the silicon dioxide and sodium oxide that make up the compound). The weight ratios range from 1.0 to 3.5, with the higher ratio formulations being less irritating for humans and less corrosive in an engine environment. The material that dealers will be required to use under this rule

agency to fill the statutory gap or make an interpretation in a reasonable fashion.

[16] We understand that this very kind of continued use of the vehicle as an automobile has occurred in at least Germany's program despite certifications that the vehicle had been disposed of.

is at the higher end of the range—3.2—which means that it is far less of a potential health or environmental issue than other lower range formulations of the product.

Like many household and workplace products, sodium silicate solution can be harmful if swallowed or inhaled and can cause irritation to the eyes or respiratory tract if used improperly. Employers whose employees may come in contact with the material need to provide them with adequate warning of these risks and appropriate protection. Because sodium silicate has been used in automotive repair for decades, it has long been present both in repair shops and in vehicles at various stages of recycling. It is reasonable to assume, therefore, that dealerships, scrap yards, and shredder facilities are well equipped to take appropriate measures to protect their workers.

Nor did we find reason to have significant concerns about the environmental effects of sodium silicate in this application. The EPA does not regulate it as a hazardous substance. Given the high weight ratio of the formulation that will be used to disable the engines, the risk of its causing corrosion is very low. In a report prepared for the agency, a toxicology expert reviewed the process required by this rule concluded: ''Provided adequate safety equipment is used by personnel in dealerships and shredder operations, and dust control measures are employed at shredder operations to minimize airborne particulates, the use of sodium silicate solutions to disable automobile engines is not expected to adversely affect occupationally exposed workers, nor are sodium silicate particulates expected to harm the environment.'' [17]

The agency has decided to implement this process in the rule, requiring a dealer that receives an eligible trade-in vehicle under the CARS program to disable that vehicle's engine prior to transferring the vehicle to a disposal facility, and to provide a certification to the agency that it has done so at the time the dealer submits its request for reimbursement. Section 599.300(d)(2) specifies the requirement for the dealer to disable the engine, Appendix B sets forth, in a simple and precise manner, the procedures that the dealer must follow to disable the engine and the workplace precautions that should be taken, and Appendix A, certifications section, contains the required dealer certification.

The rule contains one exception to the general requirement that the dealer disable the engine prior to transferring the vehicle to the disposal facility. With regard to transactions that occurred prior to the effective date of this rule, the dealer may have already transferred the vehicle to a disposal facility, whether or not using a salvage auction to transfer the vehicle. In that case, the rule permits the dealer to locate the vehicle at the disposal facility and either disable the engine at that location or, if the vehicle, including the engine block and drive train (unless the transmission, drive shaft, and rear end are sold separately), has already been crushed or shredded, to obtain proof, in the form of the affidavit, from the disposal facility that the crushing or shredding has occurred. Section 599.300(e) implements this exception. The agency is making this allowance only to accommodate dealers who, rather than waiting for the final rule to be issued as the agency had advised, proceeded to conduct transactions that were otherwise completely in accordance with this final rule. Dealers should note that all other requirements of this rule, except for the disposal facility certifications, apply to these transactions.

Although there was not time to provide notice and an opportunity to comment prior to issuance of this final rule, NHTSA did engage in extensive outreach prior to its issuance with representatives of those entities most knowledgeable about the subject matter. In those discussions, the method NHTSA has now chosen for disabling the engine block was identified as an option NHTSA might adopt. Several of the organizations that participated in the discussions wrote to NHTSA concerning that methodology. (These letters are in the docket.)

In its letter of July 21, 2009, NADA contends that Congress did not assign the task of making the engine inoperable to the dealers, and that if required to accomplish this task the dealers should be compensated. As discussed above, the agency interprets the CARS Act as giving NHTSA substantial discretion in determining the manner in which the vehicle, including the engine block, is to be transferred for ultimate disposal. We believe that having the engine permanently disabled at the dealer greatly reduces the risk of fraud and helps ensure that the statute's environmental objectives will be achieved. We believe that the dealers can disable the engine using the prescribed method at very low cost, which we estimate to be no greater than $30. It is possible that the total of the cost of performing this task and the dealer's other costs related to the program may exceed the $50 the dealer is allowed to retain from the trade-in's scrappage value to cover its administrative costs. Nevertheless, we think the importance of having this task performed by the dealer is sufficient reason to require dealers to perform it. The CARS Act does not preclude NHTSA from imposing costs necessary to the proper implementation of the program.

The Automotive Recyclers Association (ARA), which represents more than 4,500 scrap and junk yards, wrote to NHTSA on July 20. ARA argues that the use of sodium silicate will damage more than the engine block and jeopardize the resale of parts such as pistons, cams, and cylinder heads. ARA apparently believes that ''block'' has only one meaning, *i.e.,* the so-called ''short block,'' which generally refers only to the cast iron or aluminum casting. As discussed above, NHTSA has defined ''engine block'' in a way that includes the engine parts that ARA contends are not part of the block. NHTSA's definition is a reasonable reading of the term ''block,'' and is consistent with a Congressional purpose to prevent these fuel inefficient engines from ever being operated again. Moreover, even if ARA's more restrictive reading of ''block'' were to prevail, the statute merely permits the disposal facility to sell parts that are not part of the block; it does not preclude NHTSA from requiring measures that might affect some of those parts. ARA also contends that use of sodium silicate would contaminate the recycling of motor oil. ARA seems not to understand that, under the procedure set out in this rule, the dealer would drain the oil and recycle it as it would normally do.

The Institute of Scrap Recycling Industries (ISRI) represents, among others, companies that shred vehicles that have previously been crushed, either at their facility or at another disposal facility that lacks a shredder. ISRI wrote to NHTSA on July 20. ISRI contends, based on the judgment of its own director of environmental management, that the use of sodium silicate could pose hazards to workers at shredders and could cause certain metals to corrode, which could lead to excess metal ions in storm water runoff, which in turn could make storm water compliance more challenging. ISRI's contentions appear to be based on an incorrect assumption as to the quantity of sodium silicate that would be in each CARS trade-in vehicle; the procedure in most cases will require no more than two quarts, while ISRI assumes three to four quarts. ISRI asserts that a substantial portion of the material will

[17] Expert Report of Margaret H. Whittaker, Ph.D., M.P.H., D.A.B.T., July 23, 2009.

remain unreacted after the procedure, which is not the case.

As discussed previously, NHTSA has no reason to believe that the use of sodium silicate will expose any workers, including those at shredders, to unreasonable risks. Those who manage the shredders will simply need to require their employees to take the precautions necessary to protect themselves from exposure to sodium silicate. Presumably those who work at shredders are appropriately trained and equipped to deal with hazards that may be related to the materials with which they are working. More importantly, sodium silicate has been present in motor vehicles for decades because of its common use in the repair of mufflers, radiators—and engines. We assume that shredders have taken note of the presence of the material before now. The use of dust respirators would be advisable.

With regard to the potential environmental risks, ISRI has not made an effective case, and NHTSA has no reason to believe that any such risk exists with regard to sodium silicate. The heart of ISRI's argument is that the unreacted portion of the sodium silicate could cause corrosion of metals during the shredding process. As noted above, the formulation of sodium silicate used in the engine disablement procedure is among those least likely to have a severe corrosive effect. In fact, sodium silicate is used in vehicle cooling systems to inhibit corrosion and is used in metal pipes to help prevent corrosion that could increase lead levels in drinking water. In any event, the agency has no reason to believe that the untoward environmental effects that ISRI suggests may occur are a realistic possibility.

The rule also requires that, prior to submitting a copy of the title along with its request for reimbursement, the dealer clearly mark the title on both sides with the words, ''Junk Automobile, CARS.gov.'' Section 599.300(d)(3) implements this requirement. The marking must be placed so as not to obscure the vehicle owner's name, VIN, or other writing. Having this special label or brand on the title will inform all who subsequently handle it that the vehicle is a trade-in under this program and should not be registered or titled for further use as an automobile. State registration officials should pay special attention to this marking on a title because it indicates that the vehicle has been traded in under the CARS program with the understanding that it would never again be used as an automobile in this or any other country and is suitable only to be used for scrap or parts.

3. Restrictions and Limitations on Transactions

The CARS Act places some restrictions and limitations on qualifying transactions under the program. Section 1302(c)(1)(A) of the Act provides that a credit may be issued only for a qualifying transaction that occurs between July 1, 2009 and November 1, 2009. Additionally, section1302(c)(1)(B) provides that not more than 1 credit may be issued for a single person and not more than 1 credit may be issued for the joint registered owners of a single eligible trade-in vehicle, and § 1302(c)(1)(C) provides that only 1 credit issued under the Program may be applied toward the purchase or qualifying lease of a single new vehicle. Reading these requirements together, the agency has determined that only one credit may be issued for each transaction under the program and that once a person participates in a transaction, whether as an individual owner or a joint-registered owner of either an eligible trade-in vehicle, a new vehicle, or both, the person may not receive another credit or be named in a transaction receiving a credit under the program. These time and transaction limitations are specified in sections 599.301(a), (b), and (c).

One additional restriction, although not specifically stated in the CARS Act, flows naturally from its operation. The agency has concluded that in order to be entitled to reimbursement under the program, a dealer must obtain clear title to the trade-in vehicle. Without clear title, the dealer is not in a position to make the statutorily required legal certification as to disposal of the trade-in vehicle that serves as a prerequisite to reimbursement. Similarly, disposal facilities would generally be unable to crush or shred the trade-in vehicle, as required under the Act. The agency is informed that in many new car purchases involving trade-in vehicles, the title to the trade-in vehicle is not immediately available, either because it is held by a lienholder or for some other reason. Nevertheless, the dealer proceeds with the transaction, even though title is obtained and transferred to the dealer at a later time. In some small percentage of such transactions, the dealer is unable to obtain clear title to the trade-in vehicle. Were that to occur under this program, the dealer would not be able to ensure that the trade-in vehicle would be disposed of in accordance with the Act. If NHTSA had already reimbursed the dealer for the credit amount, NHTSA would have provided the credit under circumstances beyond its authority under the statute and would have to recover the funds. NHTSA does not believe it has a duty to fund any such tentative deal and will not do so. Such a transaction does not qualify for reimbursement under the program until the dealer obtains the title (assuming that other eligibility criteria are met). Consequently, the dealer may not submit an application for reimbursement (discussed later in this document) until title to the trade-in vehicle, free of all liens and encumbrances, is transferred to it. If the title to the trade-in vehicle has been lost, the owner will need to acquire duplicate title from the State. Section 599.301(d) implements this requirement for transfer of the trade-in title.

The agency recognizes that five States—Georgia, Maine, New Hampshire, Rhode Island and Vermont—do not issue titles in transactions involving some older vehicles that may be eligible for trade-in under this program. In some of these States, liens may be documented on the registrations. In these States and for these vehicles, a current registration in the name of the person intending to purchase the new vehicle, with no evidence of lien, and a bill of sale conferring ownership of the trade-in vehicle from the purchaser of the new vehicle to the dealer, serves in lieu of the title. Section 599.301(e) of the rule allows use of a current registration and bill of sale in lieu of a title in these limited situations.

f. Requirements for Dealer Reimbursement (§§ 599.302–304)

As a precondition for reimbursing a dealer for a qualifying transaction under the Program, NHTSA must have a means of verifying that all the statutory conditions have been met. The rule requires a dealer to submit an application for reimbursement to NHTSA, containing the information and certifications necessary for NHTSA to do so. The dealer must use its user account and password (discussed earlier) to access a secure Web site and submit an application. The application consists of an electronic transaction form (portion reproduced in Appendix C) that requires inputting of information into relevant fields, attaching electronic copies of supporting documents, and making applicable certifications.

The electronic form requires the dealer to input and attach several pieces of information about the vehicle purchaser, trade-in vehicle, and new vehicle. For a purchaser, a dealer must collect individual or entity name, address and State or corporate identification number (*e.g.,* driver's license number, State identification

number, corporate tax identification number). This information is used to verify the identity of the purchaser and to confirm no prior participation in the program. For the trade-in vehicle and new vehicle, the dealer must input characteristics of the vehicle (*e.g.,* make, model, model year, combined fuel economy, odometer reading, VIN, base MSRP, engine and transmission description), and input and attach evidence of vehicle insurance, registration and title. This information is used to determine that each of these vehicles is eligible under the Program and that the transaction meets the requirements for fuel economy improvement.

The dealer must also attach additional information to verify the transaction, including a copy of the purchase contract or lease agreement, the Manufacturer's Certificate of Origin or Manufacturer's Statement of Origin, and certifications from the salvage auction or disposal facility. The dealer must also complete and attach a Summary of Sale/Lease and Certifications Form (Appendix A, certifications section). This form conveys that the dealer has extended a CARS credit, as well as any other rebate and manufacturer incentive, and has disclosed the scrappage value of the trade-in vehicle to the purchaser. The form also sets forth required dealer and purchaser certifications. The dealer and purchaser must sign this form, attesting that each has followed the requirements of the CARS Act and its implementing regulations. In addition to the certifications on this form, the dealer must also make required certifications listed on the electronic transaction form. Finally, the agency requests that the dealer attach a completed customer survey (Appendix D). This survey should be presented to the customer for completion prior to the submission of an application for reimbursement. The information in the survey is important for the agency to meet its Congressional reporting requirement. The requirements associated with dealer applications are implemented in section 599.302.

Upon receipt of the application, the agency will review the application to determine whether it is complete and satisfies all the requirements of a qualifying transaction. An application that meets the requirements of the CARS Program will be approved for payment and the agency will reimburse the dealer, by electronic transfer to the account identified under the registration process in section 599.200.

If an application is incomplete or otherwise fails to meet all the requirements of for a qualifying transaction, the application will be rejected and the submitter will be informed electronically of the reason for rejection. A dealer may correct and resubmit a rejected application for reimbursement without penalty, but the application will be treated as a new application as of the date it is resubmitted. The requirements concerning application review and payment of dealers are implemented in sections 599.303 and 304.

g. Disposal of Trade-In Vehicles (§§ 599.400–403)

In addressing the trade-in vehicle disposal process (Section III.b., Identification of Disposal Facilities), the agency decided to include disposal facilities participating in the ELVS program (currently numbering approximately 7,700) [18] on the list of facilities that may participate in the disposal process, subject to certain conditions and certifications. As a condition of accepting transfer of the trade-in vehicle, the disposal facility must certify that it meets all applicable State and Federal laws and has a currently active State license to operate as a disposal facility in that State. The disposal facility must also certify that it will not sell, lease, exchange, or otherwise dispose of the vehicle for use as an automobile in the United States or any other country, that the vehicle will be crushed or shredded onsite within six months after the date of its transfer from the dealer, and that the vehicle will not be transferred to another disposal facility prior to being crushed or shredded. Finally, it must certify that it will update NMVTIS, within 7 days after receiving the trade-in vehicle and again within 7 days after crushing or shredding the vehicle. During the six-month period prior to the required crushing or shredding of the trade-in vehicle, the disposal facility may sell any parts of the vehicle other than the engine block [19] or drive train (unless the drive train is dismantled and sold in parts). These requirements for disposal facilities are implemented in sections 599.400(b) and 401 and Appendix E.

The agency also has determined that, in lieu of direct transfer to a disposal facility that appears on the agency's list, the dealer may opt to transfer the trade-in vehicle to a salvage auction, subject to certain conditions and certifications. As a condition of accepting transfer of the trade-in vehicle, the salvage auction must certify that it meets all applicable State and Federal laws and has a currently active State license to conduct business as a salvage auction in that State. The salvage auction must also certify that it will not sell, lease, exchange, or otherwise dispose of the vehicle for use as an automobile in the United States or any other country. It must certify that it will limit participation in the auction of a trade-in vehicle under the CARS program to a disposal facility that currently appears on the agency's CARS list of disposal facilities and will obtain from the disposal facility the same certification the disposal facility would have provided upon direct transfer of a trade-in vehicle from the dealer, and provide that certification to NHTSA. Finally, the salvage auction must certify that it will update NMVTIS, within 3 days after receipt of the trade-in vehicle from the dealer, or prior to auction, whichever is earlier. These requirements for salvage auctions are implemented in sections 599.400(c) and 402 and Appendix F. Finally, a dealer receiving certifications from a disposal facility or a salvage auction under these procedures is required to send them to the agency within 7 days of receipt. Section 599.403 sets forth this requirement.

It is important to note that the requirement under the CARS Act and its implementing regulations for disposal facilities and salvage auctions participating in the CARS program to update NMVTIS are distinct from the monthly reporting requirement imposed on junk and salvage yards pursuant to 49 U.S.C. 30504. In accordance with regulations implemented by the Department of Justice at 28 CFR 25.56, any individual or entity engaged in the business of operating a junk yard or salvage yard within the United States shall provide, or cause to be provided on its behalf, to the operator of NMVTIS and in a format acceptable to the operator, an inventory of all junk automobiles or salvage automobiles obtained in whole or in part by that entity in the prior month. Updates by junk and salvage yards to NMVTIS under the CARS Act and its implementing regulations, however, may fulfill this separate NMVTIS monthly reporting requirement regarding such vehicles, provided the updates contain all of the information required by the Department of Justice under 28 CFR Part 25.

The procedures described above allow a trade-in vehicle to be transferred no more than two times subsequent to the

[18] The agency also decided to include certain disposal facilities in the State of Maine, as explained earlier in this document. The list does not include disposal facilities for the territories. However, disposal facilities in the territories must make the certification discussed in this paragraph.

[19] Section 599.102 contains a definition of the term ''engine block.''

dealer taking title and prior to its crushing or shredding, either directly to an entity currently appearing on the list of eligible disposal facilities, where the vehicle must remain until it is crushed or shredded, or to a salvage auction that subsequently transfers the vehicle to that entity. This approach for the vehicle disposal process is adopted in Subpart D and the required certifications appear in Appendices E and F. Nothing in the rule proscribes further transfer of a crushed vehicle to another disposal facility, including a shredder.

h. Enforcement (§§ 599.500–517)

1. Prevention of Fraud

The funds Congress provided for the CARS program are intended only for qualifying transactions, and the requirement to destroy the trade-in vehicle is an important part of the program. To protect the taxpaying public, NHTSA will enforce the Act and this implementing regulation strictly and will work with the DOT Inspector General, the Department of Justice, and other government agencies to punish violations and fraud.

In the rule being issued today, NHTSA has taken a number of steps to minimize the potential for fraud in the first instance. Among other things, NHTSA has created a system that will provide payments only for qualifying transactions under the CARS program. NHTSA will make electronic funds transfers only to a registered dealer that has submitted the required proof and made the required certifications under penalty of law. The rule establishes a registration system to identify licensed, franchised new vehicle dealers and to obtain the information necessary for making secure electronic transfers. Only registered dealers will have access to the payment system.

At the time of the transaction at the dealer, a purchaser who is trading in a vehicle will need to provide evidence of ownership and proof that the vehicle has been continuously registered to that owner and insured throughout the last 12 months. To prevent repeated use of the program by the same person, the consumer will need to provide evidence of identity and permit that information to become part of the documentation of the transaction.

We believe that dealers will have every reason to avoid entering into a transaction for which the dealer cannot be reimbursed under this program. Dealers will be expected to verify that the trade-in vehicle and the vehicle being purchased or leased are both eligible under the program. For both vehicles, the dealer will need to verify the combined fuel economy. With regard to the trade-in vehicle, the dealer will need to verify that the registration and insurance information is accurate and that the vehicle is in drivable condition.

Also, this rule provides measures to ensure that the trade-in vehicle is never used again as an automobile in this or any other country. These measures include requiring the dealer to disable the trade-in vehicle's engine prior to transferring the vehicle, requiring binding certifications from all entities involved in handling these vehicles, updating the NMVTIS system at all crucial junctures to ensure the availability of information about the vehicle's status, and labeling the title of those vehicles as ''junk automobiles'' to defer further sale of them as vehicles authorized for on-road use.

The process set out in this rule includes obtaining certifications from purchasers, dealers, salvage auctions, and disposal facilities involved with CARS transactions. Those certifications will be made on paper or electronic forms that make clear that there are significant penalties for submitting false information. NHTSA, working with DOT's Office of Inspector General and the Department of Justice, will vigorously pursue actions against anyone it believes has submitted false information in connection with this program.

The agency will conduct inspections of records, premises and vehicles to detect possible violations. Should NHTSA identify a violation or fraud, we intend to enforce the CARS Act's requirements vigorously. The public is encouraged to contact NHTSA if it suspects any fraud is occurring in connection with the CARS program. Please call 1–866–CAR–7891, which is NHTSA's dedicated hotline for calls about the program, Monday–Friday 8 a.m. to 10 p.m., TTY: 1–800–424–9153.

Anyone who thinks illegal activity related to this program has occurred may also call the Hotline of the Office of the Inspector General (OIG) at the U.S. Department of Transportation. The toll free number is 1–800–424–9071. The OIG Hotline is an important tool for reporting allegations of fraud, waste, abuse, or mismanagement in the Department's programs or operations, including the CARS program. The Hotline is set-up to receive allegations in a variety of forms, including by e-mail (*hotline@oig.dot.gov*), regular mail (DOT Inspector General, P.O. Box 708, Fredericksburg, VA 22404), fax (540–373–2090), and the toll free number identified above. The OIG Hotline is open 24 hours a day, seven days a week.

Those who think the Internet has been used to commit a crime related to this program may also contact the Internet Crime Complaint Center (IC3), a partnership among the Federal Bureau of Investigation *http://www.fbi.gov* (FBI), the National White Collar Crime Center *http://www.nw3c.org/* (NW3C), and the Bureau of Justice Assistance *http://www.ojp.usdoj.gov/BJA/* (BJA). IC3's mission is to serve as a vehicle to receive, develop, and refer criminal complaints regarding the rapidly expanding arena of cyber crime. The IC3 gives the victims of cyber crime a convenient and easy-to-use reporting mechanism that alerts authorities of suspected criminal or civil violations.

2. Civil Penalties and Other Sanctions

While NHTSA expects that the vast majority of activities under the CARS Act will comply with it and the implementing regulations, NHTSA intends to penalize violators. Section 1302(d)(6) of the CARS Act requires NHTSA's regulations implementing the program to provide for the enforcement of the penalties described in Section 1302(e). Section 1302(e)(1) provides that it shall be unlawful for any person to violate any provision under this section (*i.e.,* under the CARS Act) or any regulations issued pursuant to the CARS Act.

Section 1302(e)(2) provides that any person who commits a violation described in Section 1302(e)(1) shall be liable to the United States Government for a civil penalty of not more than $15,000 for each violation, and that the Secretary shall have the authority to assess and compromise such penalties and to require from any entity the records and inspections necessary to enforce this program. In determining the amount of the civil penalty, the severity of the violation and the intent and history of the person committing the violation shall be taken into account.

As authorized by Section 1302(e)(2) of the CARS Act, which grants NHTSA the authority to require from any entity the records and inspections necessary to enforce this program, NHTSA will use information gathering mechanisms comparable to those it currently employs under other statutes the agency administers.

In the rule being issued today, NHTSA has established administrative procedures to assess civil penalties quickly and fairly once a likely violation is identified. These procedures are set forth at subpart E. Under these procedures, any person may report an apparent violation to NHTSA. When a

report of an apparent violation is received, or when an apparent violation has been detected by any person working for NHTSA, the matter may be investigated or evaluated by NHTSA enforcement personnel. If NHTSA enforcement personnel believe that a violation may have occurred, a report of the investigation will be prepared and sent to the NHTSA Chief Counsel for review. The Chief Counsel will review the report to determine if there is sufficient information to establish a likely violation. If the Chief Counsel determines that a violation has likely occurred, the Chief Counsel may issue a Notice of Violation to the party, or make other enforcement recommendations, such as suspensions or revocations. The alleged violator will have an opportunity to present its views to NHTSA and reach a settlement of the civil penalty case. If the alleged violator instead requests a hearing, the Chief Counsel will forward a case file to a Hearing Officer, with a recommended action. The Hearing Officer's functions are separate from those of NHTSA's enforcement personnel and Chief Counsel, and the Hearing Officer has no other responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties.

A party receiving the Notice of Violation may pay the proposed penalty or decline the Notice of Violation. If the Notice of Violation is timely declined, the regulations provide for a hearing prior to a final assessment of a penalty by the Hearing Officer. Failure to either pay the proposed penalty on the Notice of Violation or request a hearing within 30 days of the date shown on the Notice of Violation will result in a finding of default, and NHTSA will assess the civil penalty in the amount proposed on the Notice of Violation without a hearing.

The hearings will be held at the headquarters of the U.S. Department of Transportation in Washington, DC, either telephonically or in person, before a Hearing Officer. Unlike another statute administered by NHTSA, the CARS Act does not require a hearing on the record before assessing civil penalties. For example, Section 508(a)(1) of the Motor Vehicle Information and Cost Savings Act (formerly 15 U.S.C. 2008 (1994), and now codified at 49 U.S.C. 32911), provided that if fuel economy calculations indicate that any manufacturer has violated specified provisions, the Secretary shall commence a proceeding. Section 508(a)(2) of the Cost Savings Act then went on to state that, if on the record after opportunity for agency hearing, the Secretary determines that such manufacturer has violated provisions, the Secretary shall assess the penalties provided for under subsection (b). This provision was recodified at 49 U.S.C. 32911(b) and 32912 so as to clearly provide for ''an opportunity for a hearing on the record'' to decide whether a violation has been committed. In view of the language in the Cost Savings Act, NHTSA adopted regulations establishing formal Administrative Procedure Act (APA) adjudicative hearing procedures before an administrative law judge (ALJ), which may result in civil penalties. *See* 49 CFR Part 511, Adjudicative Procedures. In view of the absence of any statutory requirement in the CARS Act for an on-the-record hearing or, in fact, for any hearing, as set forth in the regulatory text, the formal APA adjudication procedures set forth at 5 U.S.C. 554, 556 and 557 do not apply to civil penalty proceedings under the CARS Act and NHTSA need not employ an ALJ as the hearing officer. There is no right to discovery. In receiving evidence, the Hearing Officer is not bound by strict rules of evidence. At the conclusion of the hearing, the Hearing Officer assesses civil penalties, if appropriate. If civil penalties are in excess of $100,000.00, the Hearing Officer's decision may be appealed to the NHTSA Administrator.

NHTSA also has the authority under the CARS Act to compromise (*i.e.,* settle) civil penalties, and parties receiving notices of violations will be given the opportunity early in the process to settle with the Government, should they choose to do so. Finally, we note that these penalties are not exclusive. For example, violators could also face penalties under the False Claims Act or criminal prosecution.

V. Confidential Information and Privacy

Administration of the CARS program requires that information about qualifying transactions be submitted to NHTSA from different entities and individuals. Some of this data is sensitive. As discussed below, NHTSA is amending its existing regulations governing confidential treatment, found at 49 CFR Part 512, to address these issues.

a. Determinations of the Confidentiality of CARS Data Based on FOIA Exemptions 4 and 6

The confidentiality of most CARS data is based on Freedom of Information Act (FOIA) Exemptions 4 and 6, 5 U.S.C. 552(b)(4) and (b)(6). FOIA Exemption 4 allows withholding of trade secrets and commercial or financial information obtained from a person and privileged or confidential. Under Exemption 4, the standard for assessing the confidentiality of information that parties are required to submit to the government is whether disclosure of the information is likely to have either of the following effects: (1) To impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial competitive harm to the competitive position of the person from whom the information was obtained.[20] *National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765, 770 (D.C. Cir. 1974). Because of the nature of the information at issue here, our discussion is limited to examination of the competitive harm test even though other standards could justify non-disclosure.[21]

Under the competitive harm test of *National Parks,* there must be actual competition and a likelihood of substantial competitive injury from disclosure of the information. *CNA Financial Corp.* v. *Donovan,* 830 F.2d 1132, 1152 (D.C. Cir. 1987). This standard requires only that disclosure of information would ''likely'' cause competitive harm. *McDonnell Douglas Corp.* v. *U.S. Dept. of the Air Force,* 375 F.3d 1182, 1187 (D.C. Cir. 2004); *see also Occidental Petroleum Corp.* v. *SEC,* 873 F.2d 325, 341 (D.C. Cir. 1989). Under this test, the agency assesses the likelihood of substantial injury; it does not make that assessment and then further balance it against other matters such as the public's interest in the information. *Public Citizen Health Research Group* v. *FDA,* 185 F.3d 898, 904–05 (D.C. Cir. 1999).

Exemption 6 of the FOIA addresses the withholding of ''personnel and

[20] The term ''trade secrets'' has been narrowly defined by the Court of Appeals for the District of Columbia Circuit for the purpose of FOIA Exemption 4 as encompassing a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. *Public Citizen Health Research Group* v. *FDA,* 704 F.2d 1280, 1288 (D.C. Cir. 1983).

[21] Impairment to the Government's ability to obtain the information in the future serves as an independent basis for withholding under Exemption 4. *See National Parks,* 498 F.2d at 770. Case law also strongly points to the availability of a ''third prong'' protecting other governmental interests, such as compliance and program effectiveness. *See Critical Mass* v. *NRC,* 975 F.2d 871, 879 (D.C. Cir. 1992) (noting that Exemption 4 can protect interests beyond impairment and competitive harm. *See also 9 to 5 Org. for Women Office Workers* v. *Bd. of Governors of the Fed. Res. System,* 721 F.2d 1, 11 (1st Cir. 1983) (adopting a third prong under Exemption 4 based on the government's interest in administrative efficiency and effectiveness).

medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy'' to the subject of those files. *See* 5 U.S.C. 52(b)(6). The first inquiry in examining withholding information under Exemption 6 is a determination of what data is at stake and the nature and degree of any privacy interest in the information. The second step is an assessment of the public interest in disclosure. Under Exemption 6, the concept of public interest is limited to shedding light on the government's performance of its statutory duties. *U.S. Dep't of Justice* v. *Reporters Comm. for Freedom of the Press,* 489 U.S. 749, 773 (1989); *National Ass'n of Retired Federal Employees* v. *Horner,* 879 F.2d 873, 879 (D.C. Cir. 1989); *cf., DOD* v. *FLRA,* 510 U.S. 487, 497 (1994). Finally, there is a weighing of the privacy interests at stake against the public interest in disclosure. *Ripkis* v. *Dept. Hous. and Urban Dev.,* 746 F.2d 1, 3 (D.C. Cir. 1984).

Data submitted under the CARS program includes personally identifying information for consumers. This information falls within the classification of ''similar files'' under Exemption 6. In *Center for Auto Safety* v. *National Highway Traffic Safety Administration,* 809 F. Supp. 148 (D.D.C. 1993), an advocacy group sought the release of names and addresses of consumers filing complaints directly to NHTSA. The Court found that the complainant's names and addresses invoked a privacy interest within the scope of Exemption 6 and ruled in favor of non-disclosure because there was no ascertainable public interest of sufficient significance or certainty to outweigh a complainant's privacy right justifying release of the information.

b. Approach—Class Determinations vs. Individual Assessments

As employed in the agency's regulations governing confidentiality determinations (49 CFR Part 512), class determinations declare that certain categories of data submitted to NHTSA will be kept confidential. Under this approach, submitters need not request confidential treatment; such treatment is given automatically.

NHTSA is promulgating class determinations on the confidentiality of some categories of CARS data. In adopting this approach, we have considered a number of matters. First, NHTSA may adopt categorical rules to manage the tasks Congress assigned to it under the CARS Act. *Public Citizen* v. *Mineta,* 427 F. Supp. 2d 7, 13 (D. D.C. 2006). Second, we have identified and assessed the alternatives. One alternative is to require entities to submit individual requests for confidentiality for each transaction. A second alternative is presumptive categorical determinations of confidentiality. A third alternative is to adopt binding class determinations. Concerns involved in considering these alternatives include providing clear direction to CARS participants, predictability, consistency and efficiency.

Requiring individual requests for confidential treatment of CARS data would force thousands of entities, almost all of them small businesses, to submit requests for confidentiality for each transaction. These entities, having virtually no experience in making such requests, would likely submit a wide variety of documents written in different ways. Some requests would meet the applicable standards for confidential treatment and some would not. Given our past experience with first-time requests, many would not meet procedural requirements, would be denied and would then be followed by reconsideration requests. The burden imposed on entities requesting confidential treatment and on the agency would be substantial. NHTSA already receives about 550 requests for confidential treatment every year. Adding the expected number of CARS submissions to the existing confidentiality request workload would overwhelm the agency and lead to a huge backlog. Consistent with our practice, information would be withheld until NHTSA decides if it is confidential. Disclosure of rightfully public information would be delayed and the public interest would be impacted, particularly if other agency resources were diverted to address the backlog. In view of the foregoing, requiring and processing individual requests for confidential treatment for CARS data is not a viable alternative.

A second alternative is presumptive class determinations. Presumptive determinations are a middle ground between ad hoc determinations and binding class determinations. Unlike the latter, that operate automatically, presumptive determinations require submitters to provide abbreviated written requests and supporting justifications. In our view, presumptive confidentiality determinations are inappropriate for CARS. While presumptive determinations would provide direction to NHTSA's clients and avoid inconsistent confidentiality determinations, they would not eliminate individual confidentiality requests and the significant burdens those requests would impose.

A third alternative is to proceed by binding rule. Binding determinations for CARS data are appropriate mechanisms to address the confidentiality of sensitive data. CARS reports are submitted by filling out standardized electronic templates that are used repeatedly. Each manufacturer, dealer and salvage yard files the same reports as other CARS participants in the same category.

Binding determinations provide direction to the regulated community. They also assure consistency and avoid resource burdens, particularly for small businesses. They conserve agency resources that would otherwise be used to respond to thousands of individual confidentiality requests and allow more rapid disclosure of information that is not confidential. This is in the public interest. In view of the foregoing, NHTSA believes that binding determinations are appropriate.

c. Class Determinations Based on FOIA Exemption 4

FOIA Exemption 4 covers commercial or financial information obtained from a person that is privileged or confidential. 5 U.S.C. 552(b)(4). The terms ''commercial'' or ''financial'' information are given their ordinary meanings. *Public Citizen Health Research Group* v. *FDA,* 704 F.2d 1280, 1290 (D.C. Cir. 1983). Some CARS data meet this element of Exemption 4.[22] Second, the information must be obtained from a ''person.'' The word ''person'' encompasses business establishments, including corporations. *See FlightSafety Servs.* v. *Dep't of Labor,* 326 F.3d 607, 611 (5th Cir. 2003). CARS data from manufacturers, dealers and salvage auctions and disposal facilities is obtained from persons within the meaning of Exemption 4. Third, the information must be confidential. As noted above, the *National Parks* Court declared that commercial or financial data is ''confidential'' for the purposes of Exemption 4 if disclosure of the information would be likely to cause substantial competitive harm to the competitive position of the person from whom the information was obtained. 498 F.2d at 770. Actual competitive harm need not be demonstrated; actual competition and a likelihood of substantial competitive injury is all that need be shown. *CNA Financial Corp.* v.

[22] *See* the discussion of the categories of CARS information below. Those discussions demonstrate that the submitters have a commercial interest in the data.

Donovan, 830 F.2d 1132, 1152 (D.C. Cir. 1987).

We now turn to certain categories of information that manufacturers, dealers and disposal facilities must submit under the CARS rule.

d. Data Submitted to NHTSA for the CARS Program

1. Manufacturer Data

Vehicle manufacturers will provide NHTSA with both dealer and vehicle information needed for administration of the CARS program. The dealer information is used to identify dealers and determine if they are authorized new car dealers for a particular make. Manufacturers will provide NHTSA with information about the vehicles they manufacture.

2. Dealer Information and Transaction Data

New car dealers participating in the CARS program must submit information related to their business as well as data for individual sales. To take part in the CARS program, dealers must register with NHTSA. The required registration data includes identifying information and the identity and contact information for a designated CARS contact person. Once registered, dealers have to submit information needed to establish a CARS account. This includes the registration data discussed above and additional data needed for financial transactions. For each individual sale, dealers also submit dealer data, new vehicle purchaser data, trade-in vehicle data, and new vehicle data.

3. Disposal Facility Information and Destruction Data

Disposal Facilities are required to submit certifications to NHTSA regarding their business operations and to verify proper destruction of CARS trade-in vehicles.

e. CARS Data Class Determinations Based on FOIA Exemption 4

With a few exceptions, the data submitted by businesses participating in the CARS program is already a matter of public record. Dealer addresses, telephone numbers, fax numbers and e-mail addresses are freely given. Other information, such as a dealer or salvage yard business license number, legal name and legal address, are available through public records. Still more data can be ascertained through publicly available search engines. For example, Employer Identification Numbers (EINs) for businesses are routinely released on tax forms, public filings and, in some instances, on employee pay stubs. As a result, an employer's EIN may be searched and retrieved by name from a number of Web based providers for a nominal fee. Nonetheless, some data provided to NHTSA under the CARS program is not publicly available and entitled to confidential treatment. This data is discussed below.

1. Manufacturer Assigned Dealer Identification

Vehicle manufacturers assign identification codes to their individual dealers. One manufacturer, Ford, indicates that these codes are confidential and that release of this information would be likely to cause competitive harm by increasing the possibility of fraud perpetrated by impostors using dealer codes. Because fraudulent use of this information would be likely to cause competitive harm, this final rule establishes a class determination extending confidential treatment to these manufacturer assigned dealer codes.

2. Dealer Bank Name, ABA Routing Number, Bank Account Number

Participating dealers will be identifying their bank, its American Banking Association (ABA) routing number and a bank account number in forms submitted to NHTSA. This information is kept confidential by these dealers and its release would cause substantial harm to those dealers. Public disclosure of this information presents an open and obvious potential for fraud or abuse that could result in serious financial loss. Indeed, even the inadvertent disclosure of a bank account number and a subsequent change to another account can cause significant disruption in business operations. The agency believes that a class determination is an appropriate means for protecting this information.

3. CARS Dealer ID and CARS Authorization Codes

NHTSA will provide participating dealers with unique identifiers for CARS purposes and issue CARS authorization codes for individual CARS transactions. Dealers must use this unique identifier and authorization code when submitting requests for reimbursement. Public disclosure of a dealer's unique CARS ID and authorization code increases the potential that this identifier will be used improperly or to perpetuate fraud. Unauthorized and improper use of the unique CARS ID and code would be likely to cause the ''owner'' of the ID to suffer competitive harm. The legitimate ''owner'' of the ID and authorization code may be subject to financial claims, suspension or removal from the CARS program and other costs associated with improper use of a CARS code and ID. Accordingly, this final rule establishes a class determination according confidential treatment to this data.

f. Class Determination Based on FOIA Exemption 6

The CARS rule requires dealers to provide NHTSA with the name, address, telephone number, state identification number, trade-in vehicle VIN, trade-in insurance information and new vehicle VIN for consumers participating in the CARS program. NHTSA has long held the view that Exemption 6 of the FOIA authorizes confidential treatment of consumer personally identifying information. *See* 5 U.S.C. 552(b)(6). Accordingly, consumer names, addresses and telephone numbers are routinely accorded confidential treatment. The agency's policy has been to redact personal identifiers from owner complaints (whether filed directly with the agency or from documents obtained from manufacturers in the course of a defect investigation) before placing them on the public record.

The privacy interest in protecting personal identifiers and contact information is no less compelling when a consumer purchases a new vehicle under the CARS program. Furthermore, disclosure of personal identifiers and the erosion of privacy that would result might dissuade consumers from participating in CARS. This would frustrate achievement of the program's principal goal—to encourage replacement of older less fuel efficient vehicles with new more fuel-efficient cars and trucks.

The consumer data at issue—name, address, telephone number, state identification number and vehicle identification number (VIN)—is within the scope of Exemption 6. VINs, when coupled with other data, can be used to identify vehicle owners and obtain other personal data. As this data has privacy implications, the next inquiry is an assessment of the public interest in disclosure. Congress has directed the disclosure of trade-in vehicle VINs to the commercial market to help verify destruction of these vehicles. For the remaining personal data, the concept of public interest under Exemption 6 is limited to shedding light on the government's performance of its statutory duties. *United States Department of Justice* v. *Reporters Comm. for Freedom of the Press,* 489 U.S. 749, 773 (1989); *National Ass'n of Retired Federal Employees* v. *Horner,* 879 F.2d 873, 879 (D.C. Cir. 1989); cf., *DOD* v. *FLRA,* 510 U.S. 487, 497 (1994).

With the limited redaction of part of the VIN under this rulemaking, the public would be able to review identification of the make, model and model year of the new vehicle. This apprises the public of information central to the core purpose of the CARS program. Disclosing additional VIN information, with the sequential number unique to the vehicle, that would enable someone to identify the owner of the new vehicle and other personal information would not, however, further serve the public interest. If disclosed, it would not answer the question of ''what the government is up to.'' *Reporters Comm.,* 489 U.S. at 773 (1989).

The final step in an Exemption 6 analysis is weighing the competing privacy and public interests against one another. *See Ripskis* v. *HUD,* 746 F.2d 1, 3 (D.C. Cir. 1984). In the case of the CARS VIN information, there is a privacy interest in not being contacted about a new vehicle purchase, such as by companies selling warranties. On the other hand, the public interest, in terms of information that reveals ''what the government is up to'' is better served by other publicly available information. On balance, NHTSA has concluded that the privacy interests in non-disclosure of consumer personal identifying information outweigh the limited public interest served by disclosing this information when other data is available to better address public concerns.

NHTSA is amending 49 CFR Part 512 by revising Appendix E to provide new class determinations applying to information provided for the CARS program. These class determinations do not apply as a rule of general application to the agency's treatment of similar information in other instances. Revising Appendix E requires addition of a new Appendix F to accommodate information previously found in Appendix E.

VI. Costs and Benefits

The CARS Act will have various economic, employment, safety and environmental effects. The employment impacts of the Act will affect NHTSA, and may affect manufacturer and dealer employment. At this time, NHTSA is planning to hire 30 employees and over 200 contractor employees to handle this program over a period of 6 months. Manufacturers' and dealers' employment levels are unlikely to be impacted by the Act. The impact of the Act will most likely not be large enough to increase production by manufacturers, and dealers on average will only be selling an additional 12 vehicles (250,000 estimated number of vehicles sold during the program divided by 19,700 dealers as of early 2009) during the course of the program.

Another benefit of the program is the increased incorporation of improved fuel efficiency into the on-road vehicle fleet. This will decrease greenhouse gases and criteria pollutants by decreasing fuel consumption, resulting in air pollution benefits. These benefits are ultimately dependent upon which types of vehicles consumers purchase.

Certain costs may be incurred by dealers. However, the CARS Act provides that dealers may retain up to $50 from the scrap value of trade-in vehicles to offset any administrative costs of participating in the program. Disposal facilities and salvage auctions will also incur some costs in complying with the Act. Related industries, such as auto repair shops, may lose some profit due to foregone repairs by vehicle owners. Additionally, the Act may shorten the vehicle life cycle depending on the age and condition of the trade-in vehicles.

Cost and benefit information associated with this rulemaking is set forth in the final regulatory impact analysis prepared by NHTSA and included in the public docket.

VII. Statutory Basis for This Action

This final rule implements the Consumer Assistance to Recycle and Save Act (Cars Act) (Pub. L. 111–32), which directs the Secretary to issue final regulations within 30 days after enactment.

VIII. 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 this Act. The agency finds that it has good cause to make this rule effective fewer than 30 days after the publication in the **Federal Register**. The CARS program is a short-term program that Congress expected NHTSA to implement promptly. Under the CARS Act, a credit issued under the Program may be used only in connection with the purchase or qualifying lease of new fuel efficient automobiles that occur between July 1, 2009, and November 1, 2009. In view of the fact that the regulations being published today have not been previously available, sales of new vehicles under the program have not begun in volume. It would, therefore, be inconsistent with Congressional intent, impracticable, and contrary to the public interest, to delay the effective date of the regulations, which would, in turn, delay the implementation of the program and effectively compress its applicability.

This rulemaking is also major under Chapter 8 of 5 U.S.C. (Congressional Review of Agency Rulemakings) because it has an annual effect on the economy of $100,000,000 or more. For the same reasons noted in the prior paragraph, we find good cause under section 808 of Title 5 that notice and public procedure are impracticable and contrary to the public interest, and that the rule shall take effect upon publication in the **Federal Register**.

Accordingly, the effective date of this final rule is July 29, 2009.

IX. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking is economically significant. Accordingly, OMB reviewed it under Executive Order 12866. The rule is also significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures. The agency has prepared a Final Regulatory Impact Analysis (FRIA) and placed it in the docket and on the agency's Web site.

B. National Environmental Policy Act

NHTSA has considered this rulemaking action for the purposes of the National Environmental Policy Act (NEPA). It is established law that NEPA compliance is required unless there is a clear conflict of statutory authority.

Calvert Cliffs' Coordinating Committee, inc. v. *Atomic Energy Commission,* 449 F.2d 1109 (D.C. Cir 1971). NEPA analysis is not required where, as here, a statutorily-mandated time frame for the Government's action does not permit it. *See, e.g., Flint Ridge Development Co.* v. *Scenic Rivers Ass'n of Oklahoma,* 426 U.S. 776 (1976) and *Kandra* v. *U.S.,* 145 F. Supp.2d 1192 (D. Or. 2001). The Consumer Assistance to Recycle and Save Act of 2009 requires the Secretary of Transportation, through NHTSA, to issue final regulations within 30 days after enactment (*i.e.,* by July 24, 2009) and since it is impossible to perform a NEPA analysis within this tight time frame, no NEPA analysis is required prior to issuing the final regulation.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to provide for notice and comment for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The agency has not prepared a final regulatory flexibility analysis for this final rule because the Regulatory Flexibility Act does not require such an analysis when a final rule was not required to be preceded by an NPRM.[23] As noted elsewhere in this preamble, the agency determined that an NPRM was not required for this rulemaking. Nevertheless, the agency has examined impacts on small entities, including small businesses, and included them in its regulatory analysis for this final rule.

D. Executive Order 13132, Federalism

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. The agency also may not issue a regulation with federalism implications that preempts a State law without consulting with State and local officials.

NHTSA has examined today's final rule pursuant to Executive Order 13132 and concluded that consultation with States, local governments, or their representatives is not required. The agency has concluded that the rule does not have federalism implications, because the rule does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government. This rule will have no effect on the ability of States to adopt and/or implement their own incentive plans.

E. Executive Order 12988

Pursuant to Executive Order 12988, ''Civil Justice Reform'' the agency has considered whether this final rule would have any retroactive effect. Agencies may promulgate retroactive rules pursuant to the express authority of Congress to do so. *See, e.g., Bowen* v. *Georgetown Univ. Hospital,* 488 U.S. 204, 208 (1988); *National Mining Association* v. *Dep't of Labor,* 292 F.3d 849, 859 (D.C. Cir. 2002). On June 24, 2009, the President signed the CARS Act into law (Pub. L. 111–32). The CARS Act required the Secretary of Transportation, acting through NHTSA, to issue final regulations to implement the program within 30 days after enactment (*i.e.,* by July 24, 2009). However, the CARS Act provides that the program covers eligible transactions beginning on July 1, 2009, prior to today's final rule. Accordingly, as set forth in today's final rule, if transactions occurring on or after July 1, 2009 but prior to July 29, 2009 meet all of the requirements identified in this final rule, registered dealers may follow the application procedures of the rule and apply for reimbursement for those transactions.

F. 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 among other matters, request information from persons to register as participating dealers, provide a list of eligible vehicles and process credit transactions under the program.

The agency has received approval from OMB to collect the following information:

Title: CARS Program; Dealer Information, OMB Control No. 2127–0657, *Expiration Date:* December 31, 2009.

This approval covers NHTSA Form 1070. NHTSA has been given OMB approval to collect 57,000 responses, for a total of 11,395 burden hours.

Title: CARS Program; Disposal Facility and Salvage Auction Information, OMB Control No. 2127–0658, *Expiration Date:* January 31, 2010.

This approval covers NHTSA Form 1073, ''Disposal Facility Certification Form'' and NHTSA Form 1074, ''Salvage Auction Certification Form.'' NHTSA has been given OMB approval to collect 3,750,000 responses, for a total of 31,248 burden hours.

Title: CARS Program; Survey of Customer Response to CARS Initiative, OMB Control No. 2127–0659, *Expiration Date:* January 31, 2010.

This approval covers NHTSA Form 1075, ''Survey of Consumer Response to CARS Initiative.'' NHTSA has been given OMB approval to collect 168,750 responses, for a total of 9,375 burden hours.

Title: CARS Program; Dealer and Buyer Transaction Information, OMB Control No. 2127–0660, *Expiration Date:* January 31, 2010.

This approval covers NHTSA Form 1071 ''Transaction Form'' (an electronic form) and NHTSA Form 1072 ''Certifications and Summary of Sale Language.'' NHTSA has been given OMB approval to collect 500,000 responses, for a total of 108,334 burden hours.

G. The Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate

[23] The initial sentence of subsection (a), Section 604, Final regulatory flexibility analysis, of the Regulatory Flexibility Act provides that when an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis.

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 (adjusted for inflation with a base year of 1995). This requirement, however, only applies to ''a final rule for which a general notice of proposed rulemaking was published''; as noted earlier in this final rule, an NPRM was not published.

H. 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.

I. 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 512

Administrative procedure and practice, Confidential business information, Freedom of information, Motor vehicle safety, Reporting and record keeping requirements.

49 CFR Part 599

Fuel economy, Motor vehicle safety.

■ In consideration of the foregoing, NHTSA hereby amends 49 CFR Chapter V as set forth below.

PART 512—CONFIDENTIAL BUSINESS INFORMATION

■ 1. The authority citation for Part 512 continues to read as follows:

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166, 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.50.

■ 2. Revise Appendix E to Part 512 to read as follows:

Appendix E to Part 512—Consumer Assistance to Recycle and Save (CARS) Class Determinations

(a) The Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR part 599, if released, is likely to cause substantial harm to the competitive position of the entity submitting the information:

(1) Vehicle Manufacturer Issued Dealer Identification Code;

(2) Dealer Bank Name, ABA Routing Number and Bank Account Number; and

(3) CARS Dealer Code and Authorization Code.

(b) The Chief Counsel has determined that the disclosure of the new vehicle owner's name, home address, telephone number, state identification number and last six (6) characters, when disclosed along with the first eleven (11) characters, of the new vehicle identification numbers reported in transactions submitted to the agency under 49 CFR Part 599 will constitute a clearly unwarranted invasion of personal privacy within the meaning of 5 U.S.C. 552(b)(6).

■ 3. Add Appendix F to part 512 to read as follows:

Appendix F to Part 512—OMB Clearance

The OMB clearance number for this part 512 is 2127–0025.

■ 4. Add part 599 to read as follows:

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

Subpart A—General

Sec.
599.100 Purpose.
599.101 Scope.
599.102 Definitions.

Subpart B—Participating Dealers, Salvage Auctions and Disposal Facilities

599.200 Registration of participating dealers.
599.201 Identification of salvage auctions and disposal facilities.

Subpart C—Qualifying Transactions and Reimbursement

599.300 Requirements for qualifying transactions.
599.301 Limitations and restrictions on qualifying transactions.
599.302 Dealer application for reimbursement—submission, contents.
599.303 Agency disposition of dealer application for reimbursement.
599.304 Payment to dealer.

Subpart D—Disposal of Trade-in Vehicle

599.400 Transfer or consignment by dealer of trade-in vehicle.
599.401 Requirements and limitations for disposal Facilities that receive trade-in vehicles under the CARS program.
599.402 Requirements and limitations for salvage auctions that are consigned trade-in vehicles under the CARS program.
599.403 Requirements and limitations for dealers.

Subpart E—Enforcement

599.500 Definitions.
599.501 Generally.
599.502 Record retention.
599.503 Access to records.
599.504 Suspension, revocation, and reinstatement of registration and participation eligibility.
599.505 Reports and investigations.
599.506 Notice of violation.
599.507 Disclosure of evidence.
599.508 Statements of matters in dispute and submission of supporting information.
599.509 Hearing officer.
599.510 Initiation of action before the hearing officer.
599.511 Counsel.
599.512 Hearing location and costs.
599.513 Hearing procedures.
599.514 Assessment of civil penalties.
599.515 Appeals of civil penalties in excess of $100,000.00.
599.516 Collection of assessed or compromised civil penalties.
599.517 Other sanctions.
Appendix A to Part 599—Summary of Sale/Lease and Certifications
Appendix B to Part 599—Engine Disablement Procedures for the CARS Program
Appendix C to Part 599—Electronic Transaction Screen
Appendix D to Part 599—CARS Purchaser Survey
Appendix E to Part 599—Disposal Facility Certification Form
Appendix F to Part 599—Salvage Auction Certification Form

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

Subpart A—General

§ 599.100 Purpose.

This part establishes requirements and procedures implementing the program authorized under the Consumer Assistance to Recycle and Save Act of 2009.

§ 599.101 Scope.

The requirements of this part apply to new vehicle purchase or lease transactions, in combination with trade-in vehicle transactions that occur on or after July 1, 2009 up to and including November 1, 2009, and to the disposal of trade-in vehicles under the CARS Act.

§ 599.102 Definitions.

As used in this part—

Agency or NHTSA means the National Highway Traffic Safety Administration.

CARS Act means the Consumer Assistance to Recycle and Save Act of 2009, Public Law 111–32, 123 Stat. 1859 (June 24, 2009).

CARS Program means the program authorized under the Consumer Assistance to Recycle and Save Act of 2009, which NHTSA refers to as the Car Allowance Rebate System.

Category 1 truck means a non-passenger automobile, as defined in section 49 U.S.C. 32901(a)(17) and 49 CFR 523.3, except that such term does not include a category 2 truck.

Category 2 truck means a large van with a wheelbase of 124 inches or more, or a large pickup with a wheelbase of 115 inches or more.

Category 3 truck means a work truck, as defined in 49 U.S.C. 32901(a)(19).

Clear title means title to a vehicle that is free from all liens and encumbrances.

Combined Fuel Economy means—

(1) With respect to an eligible new vehicle, the number, expressed in miles per gallon, centered below the words ''Combined Fuel Economy'' on the label required to be affixed or caused to be affixed on a new automobile pursuant to subpart D of 40 CFR part 600.

(2) With respect to an eligible trade-in vehicle of model year 1985 or later, the number posted under the words ''Estimated New EPA MPG'' or ''New EPA MPG'' and above the word ''Combined,'' except that for a bi-fuel, dual fuel, or flexible fueled vehicle, that number must also be below the word ''Gasoline,'' on the fueleconomy.gov Web site of the Environmental Protection Agency for the make, model, and year of such vehicle.

Credit means an electronic payment to a dealer for a qualifying transaction under the program.

Dealer means a person licensed by a State who engages in the sale of a new automobile to a person who in good faith purchases such automobile for purposes other than resale.

Disposal facility means a facility listed on *http://www.cars.gov/disposal* as eligible to receive a trade-in vehicle for crushing or shredding under the CARS program, except in the case of a U.S. territory.

End-of-Life Vehicle Solutions or ELVS means an entity established under the National Vehicle Mercury Switch Recovery Program for the collection, recycling and disposal of elemental mercury from automotive switches.

Engine block means the part of the engine containing the cylinders and typically incorporating water cooling jackets and also including the crank shaft, connecting rods, pistons, bearings, cam(s), and cylinder head(s). In a rotary engine, the block includes the rotor housing and rotor.

GVWR means gross vehicle weight rating.

Lease means a lease of a new vehicle for a period of not less than 5 years, excluding any lease with a balloon payment due prior to the elapsing of 5 years.

Manufacturer's Suggested Retail Price or *MSRP* means the base Manufacturer's Suggested Retail Price, excluding any dealer accessories, optional equipment, taxes and destination charges.

National Motor Vehicle Title Information System or *NMVTIS* means the online system established under the oversight of the Department of Justice that enables consumers and others to access vehicle history information, including salvage history, total loss information, and title branding and odometer information, and to which insurance companies and salvage yards must report vehicle status information. (*http://www. nmvtis.gov.*)

New Vehicle means an automobile or work truck, the equitable or legal title of which has not been transferred to any person other than the purchaser.

Non-titling Jurisdiction means a State that does not issue a title for certain typically older vehicles.

Passenger automobile means a passenger automobile, as defined in section 49 U.S.C. 32901(a)(18) and 49 CFR 523.4.

Person means an individual, corporation, company, association, firm, partnership, society, or joint stock company.

Purchaser means a person purchasing or leasing a new vehicle under the CARS Program.

Salvage auction means an entity that receives a CARS trade-in vehicle from a dealer and is authorized to sell it only to a disposal facility on the Disposal Facility List and that will make all the necessary certifications for salvage auctions under the CARS program.

State means any one of the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

Subpart B—Participating Dealers, Salvage Auctions and Disposal Facilities

§ 599.200 Registration of participating dealers.

(a) *In general.* A dealer may apply for a credit under the CARS Program only if it meets the Required Dealer Qualifications for Registration under this subpart, is registered in accordance with this subpart, and is currently registered at the time it submits an application for reimbursement.

(b) *Required dealer qualifications for registration.* A dealer seeking to register must have:

(1) A currently operating new automobile dealership and business address within a State in the United States;

(2) A currently active business license under the law of the State where the new automobile dealership is located to operate that dealership;

(3) A currently active franchise agreement to sell new automobiles with an original equipment manufacturer of automobiles;

(4) A bank account in a U.S. bank in a State and a bank account routing number for electronic transfer of funds;

(5) The ability to submit application materials and perform transactions electronically using the Internet; and

(6) Not been convicted of a crime involving motor vehicles or any fraud or financial crime under State or Federal law.

(c) *Registration procedures.*

(1) Using comprehensive lists of franchised dealers provided by original equipment manufacturers, as updated by these manufacturers, the agency will mail a letter to each listed dealer describing a secure electronic process and providing an authorization code by which the dealer, following the process in paragraph (c)(2) of this section, can effect registration.

(2) A dealer contacted in accordance with paragraph (c)(1) of this section may register electronically as a participating dealer under the CARS Program by using the authorization code and following the instructions provided in the letter mailed under paragraph (c)(1) of this section, and submitting the following information electronically or validating the information, where it exists already on an electronic form:

(i) Dealer's Federal Tax Identification Number (TIN) and OEM assigned dealer franchise number;

(ii) Legal business name, doing business as name (if applicable), dealership physical and mailing address, telephone number, and fax number;

(iii) Name and title of dealer representative authorized to submit transactions under this program, and phone number and e-mail address of representative; and

(iv) Name of U.S. bank used by dealership, bank account number, and bank account routing number.

(3) A dealer must register separately, following the process under paragraph (c)(2) of this section, for each make of vehicle it sells, using the authorization code associated with that vehicle make.

(d) *Disposition of registration application.* The agency will review the registration application for compliance

with this part, including completeness, and notify the dealer as follows:

(1) For an approved registration:

(i) By e-mail notification to the authorized dealer representative, with a user identification and password that will allow the submission of transactions; and

(ii) By listing the ''doing business as'' name, physical address, and general telephone number of the dealer on the agency Web site at *http://www.cars.gov.*

(2) For a disapproved registration, by withholding the dealer identification information from the agency's Web site and providing e-mail notification to the authorized dealer representative of the reasons for rejecting the application.

(e) *Revocation of Dealer Registration.*

(1) *Termination or Discontinuance of Franchise.*

(i) A dealer whose franchise agreement with an original equipment manufacturer (OEM) has expired without renewal, has been terminated, or otherwise is no longer in effect shall be automatically removed as a matter of course, subject to paragraph (e)(1)(iii), from the agency's list of registered dealers and may no longer receive a credit for new transactions under the CARS Program submitted for repayment on or after the date that the franchise expired or no longer is in effect.

(ii) Paragraph (e)(1)(i) of this section does not preclude a dealer registered under other franchise agreements from receiving a credit for transactions under those agreements that have not expired or been discontinued.

(iii) A dealer whose name is removed from the agency's list of registered dealers under paragraph (e)(1)(i) shall be reinstated to the list of registered dealers upon a showing to NHTSA of proper and adequate license to sell new vehicles to ultimate purchasers.

(2) *Other suspension or revocations actions.* The agency may also suspend or revoke the registration of a dealer as provided in § 599.504.

(f) *Notification of changes.* A registered dealer shall immediately notify the agency of any change to the information submitted under this section and any change to the status of its State license or franchise.

(g) *Pre-registration transactions.* An otherwise qualifying transaction that occurs during the time period prescribed under § 599.301(a) is not a non-complying transaction solely because a dealer is not registered at the time of the transaction, except that the dealer must be eligible to register and must register under § 599.200 in order to be entitled to reimbursement for a credit extended under the CARS program.

§ 599.201 Identification of salvage auctions and disposal facilities.

(a) *Participating entities.* Subject to the conditions and requirements of paragraph (b), participation in the transfer and disposal of a trade-in vehicle under the CARS program is limited to the following entities:

(1) A salvage auction that will transfer trade-in vehicles received under this program only to a disposal facility identified in paragraph (b)(2) or (b)(3) of this section.

(2) A disposal facility listed on the Web site at *http://www.cars.gov/disposal;* or

(3) A facility that disposes of vehicles in Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(b) *Conditions of Participation.* A participating entity identified in paragraph (a) of this section must:

(1) Comply with all the provisions and restrictions and make all the required certifications contained in subpart D of this part.

(2) In the case of a disposal facility identified in paragraph (a)(2) of this section, be currently listed on the Web site at *http://www.cars.gov/disposal,* as of the date of its participation in the disposal of the trade-in vehicle.

(c) *Removal of authority to participate.*

(1) A disposal facility that qualifies as such by active membership in ELVS and that fails to maintain active ELVS membership may be automatically removed as a matter of course from the agency's list of disposal facilities maintained at *http://www.cars.gov/disposal* authorized to participate in the CARS program.

(2) The agency may also suspend or remove a salvage auction's or disposal facility's authority to participate in the CARS program in accordance with the procedures of § 599.504.

Subpart C—Qualifying Transactions and Reimbursement

599.300 Requirements for qualifying transactions.

(a) *In general.* To qualify for a credit under the CARS Program, a dealer must sell or lease a new vehicle that meets eligibility requirements to a purchaser, obtain a trade-in vehicle that meets eligibility requirements from the purchaser, satisfy combined fuel economy requirements for both the new and trade-in vehicles, disable the engine of the trade-in vehicle, satisfy the limitations and restrictions of the program, arrange for disposal of the trade-in vehicle at a qualifying disposal facility or through a qualifying salvage auction, and register and submit a complete application for reimbursement to NHTSA, demonstrating that it meets all the requirements of this part.

(b) *Threshold eligibility requirements that apply to all trade-in vehicles.* The trade-in vehicle must be:

(1) In drivable condition, as demonstrated by actual operation of the motor vehicle on public roads by the dealer and by certification by the dealer and by the purchaser, as provided in Appendix A to this part, certifications section, that the vehicle was in drivable condition on the date of the qualifying transaction;

(2) Continuously insured consistent with the applicable State law for a period of not less than 1 year immediately prior to the trade-in, as demonstrated by:

(i) One or more current insurance cards specifying the make, model, model year, and vehicle identification number (VIN) of the insured vehicle and displaying a continuous one-year period of insurance coverage; or a copy of an insurance policy document (*e.g.,* a declarations page or pages) showing a continuous one-year period of insurance coverage for the vehicle; or a signed letter, on insurance company letterhead, specifying the same vehicle identification information (*i.e.,* make, model, model year, and VIN) of the insured vehicle and identifying the period of continuous coverage, which must be for at least one year prior to the date of the trade-in; and

(ii) By certification by the purchaser, as provided in Appendix A to this part, certifications section, that the vehicle was so insured;

(3) Continuously registered in a State to the purchaser for a period of not less than one year immediately prior to the trade-in, as demonstrated by:

(i) A current State registration document or series of registration documents in the name of the purchaser evidencing registration for a period of not less than one year immediately prior to the trade-in; or a current State registration document showing registration in the name of the purchaser and a title that confers title on the purchaser not less than one year immediately prior to the trade-in; or a current State registration document showing registration in the name of the purchaser and a document from a commercially available vehicle history provider evidencing registration for a period of not less than one year immediately prior to the trade-in; and

(ii) By certification by the purchaser, as provided in Appendix A to this part,

certifications section, that the vehicle was so registered;

(4) Manufactured less than 25 years before the date of the trade-in, as demonstrated by model year information on the title or, where that information is inconclusive, by direct observation by the dealer of the month and year of the vehicle's manufacture, which appears on the safety standard certification label of the vehicle, provided that on the 25th year, the 25-year requirement is satisfied if the manufacture date falls anytime within the month 25 years before the date of trade-in, and by certification by the dealer, as provided in Appendix A to this part, certifications section, that the manufacture date is less than 25 years before the date of trade-in.

(c) *Threshold eligibility requirements that apply to all new vehicles.* The new vehicle must:

(1) Be either purchased or leased for a lease period of not less than 5 years;

(2) Have a manufacturer's suggested retail price of $45,000 or less.

(d) *Trade-in vehicle—disclosure of scrap value, engine disablement, and title marking.* As part of a qualifying transaction under this part, and prior to submitting an application for reimbursement under § 599.302, the dealer shall:

(1) During the transaction, disclose to the person purchasing or leasing an eligible new vehicle and trading in an eligible trade-in vehicle, the best estimate of the scrap value of the trade-in vehicle, inform that person that the dealer is authorized to retain $50 of this amount as payment for its administrative costs of participation in the program, and certify, as provided in Appendix A to this part, certifications section, that it has made such disclosure;

(2) Except as provided in paragraph (e) of this section, disable the engine of the eligible trade-in vehicle, following the procedures set forth in Appendix B to this part, and certify, as provided in Appendix A to this part, certifications section, that it has disabled the engine; and

(3) Legibly mark the front and back of the trade-in vehicle's title in prominent letters that do not obscure the owner's name, VIN, or other writing as follows: ''Junk Automobile, CARS.gov.''

(e) *Dealer transfers prior to July 24, 2009.*

(1) Subject to the provisions of paragraph (e)(2) of this section, if the dealer transferred the vehicle prior to July 24, 2009, the dealer may either:

(i) Locate the vehicle, disable its engine following the procedures set for the in Appendix B to this part, and provide the certification in Appendix A to this part, certifications section, that it has disabled the engine; or

(ii) Obtain a sworn affidavit from a disposal facility that it has crushed or shredded the vehicle, including the engine block, and provide supporting documents sufficient to establish that fact.

(2) The dealer and disposal facility must comply with all other requirements of this part, including the requirement that the trade-in vehicle be crushed or shredded, except that the affidavit and supporting documents provided for under paragraph (e)(1)(ii) of this section may substitute for the disposal facility certification form.

(f) *Qualifying transactions ($3,500 Credit).* Subject to the requirements of paragraphs (b), (c), and (d), and, if applicable, paragraph (e) of this section and the additional requirements of §§ 599.301, 599.302, and 599.303 of this subpart, each of the following transactions qualifies for a credit of $3,500 under this program:

(1) The new vehicle is a passenger automobile with a combined fuel economy of at least 22 mpg, the eligible trade-in vehicle has a combined fuel economy of 18 mpg or less and is a passenger automobile, category 1 truck, or category 2 truck, and the combined fuel economy of the new vehicle is at least 4 mpg, but less than 10 mpg higher than the combined fuel economy of the eligible trade-in vehicle.

(2) The new vehicle is a category 1 truck with a combined fuel economy of at least 18 mpg, the eligible trade-in vehicle has a combined fuel economy of 18 mpg or less and is a passenger automobile, category 1 truck, or category 2 truck, and the combined fuel economy of the new vehicle is at least 2 mpg, but less than 5 mpg higher than the combined fuel economy of the eligible trade-in vehicle.

(3) The new vehicle is a category 2 truck with a combined fuel economy of at least 15 mpg, the eligible trade-in vehicle has a combined fuel economy of 18 mpg or less and is a category 2 truck, and the combined fuel economy of the new vehicle is 1 mpg higher than the combined fuel economy of the eligible trade-in vehicle.

(4) The new vehicle is a category 2 truck with a combined fuel economy of at least 15 mpg and the eligible trade-in vehicle is a category 3 truck of model year 2001 or earlier.

(5) The new vehicle is a category 3 truck, the eligible trade-in vehicle is a category 3 truck of model year 2001 or earlier, and the new fuel efficient vehicle has a GVWR less than or equal to the GVWR of the eligible trade-in vehicle.

(g) *Qualifying transactions ($4,500 Credit).* Subject to the requirements of paragraphs (b), (c), and (d), and, if applicable, paragraph (e) of this section and the additional requirements of §§ 599.301, 599.302, and 599.303 of this subpart, each of the following transactions qualifies for a credit of $4,500 under this program:

(1) The new vehicle is a passenger automobile with a combined fuel economy of at least 22 mpg, the eligible trade-in vehicle has a combined fuel economy of 18 mpg or less and is a passenger automobile, category 1 truck, or category 2 truck, and the combined fuel economy of the new vehicle is at least 10 mpg higher than the combined fuel economy of the eligible trade-in vehicle.

(2) The new vehicle is a category 1 truck with a combined fuel economy of at least 18 mpg, the eligible trade-in vehicle has a combined fuel economy of 18 mpg or less and is a passenger automobile, category 1 truck, or category 2 truck, and the combined fuel economy of the new vehicle is at least 5 mpg higher than the combined fuel economy of the eligible trade-in vehicle.

(3) The new vehicle is a category 2 truck with a combined fuel economy of at least 15 mpg, the eligible trade-in vehicle has a combined fuel economy of 18 mpg or less and is a category 2 truck, and the combined fuel economy of the new vehicle is at least 2 mpg higher than the combined fuel economy of the eligible trade-in vehicle.

(h) *No other qualifying transactions.* Transactions described under paragraphs (f) and (g) of this section are the only transactions that qualify for payment of a credit to a dealer under the CARS Program.

§ 599.301 Limitations and restrictions on qualifying transactions.

(a) *Date of transaction.* A qualifying transaction may not occur on a date before July 1, 2009 or after November 1, 2009, and is subject to available agency funds for the CARS Program.

(b) *One credit per transaction.* Only one credit may be applied towards the purchase or lease price of each new vehicle.

(c) *One credit per person.* A person that participates in a transaction for which a credit is issued under the CARS Program, whether as a single owner or a joint-registered owner of either an eligible trade-in vehicle, a new vehicle, or both, may not participate or be named in another transaction for which a credit is issued under the CARS program, either as a registered owner of

the trade-in vehicle or as a purchaser of the new vehicle.

(d) *Transfer of title.*

(1) Except as provided in paragraph (d)(2) of this section, a dealer may not apply for or receive reimbursement for a credit extended to a purchaser under a CARS program transaction unless it has been conveyed clear title and physically possesses the title to the trade-in vehicle.

(2) In the case of a trade-in vehicle registered in a State that is a non-titling jurisdiction and that, in accordance with State law, has no title, the requirement in paragraph (d)(1) of this section that clear title be conveyed is satisfied if the purchaser shows proof of registration in the purchaser's name and provides a bill of sale conferring ownership of the trade-in vehicle to the dealer.

§ 599.302 Dealer application for reimbursement—submission, contents.

(a) *In general.* A dealer's application for reimbursement must demonstrate that the requirements and limitations governing qualifying transactions in § 599.300 and § 599.301 of this subpart have been met, and must comply with the submission and contents requirements of this section.

(b) *Electronic submission.* The application for reimbursement must be submitted by using the login and password provided under § 599.200(d)(1) and following the procedures provided in the letter mailed under § 599.200(c)(1) of this part.

(c) *Application contents.* An application shall consist of an electronic transaction form (portion reproduced in Appendix C to this part) requiring input of information into relevant fields, electronic copies of supporting documents, and applicable certifications, as provided in Appendix A to this part, certifications section. As its application for each transaction, the dealer shall:

(1) Input the following information into relevant fields on the transaction form:

(i) *Purchaser information.*

(A) *Name.* The first name, middle initial and last name of each purchaser, if an individual, or the full legal name of the company, association or other organization that is the purchaser.

(B) *Residence address (or, for an organization, business address).* The full address of each purchaser.

(C) *Driver's license or State identification number.* The State driver's license or State identification number of each purchaser or, for an organization, its tax identification number.

(ii) *Trade-in vehicle information.*

(A) *Make.* The make of the vehicle.

(B) *Model.* The model of the vehicle.

(C) *Model year.* The model year of the vehicle.

(D) *Vehicle identification number (VIN).* The 17 digit VIN of the vehicle.

(E) *CARS Act vehicle category.* The category of vehicle as defined under the CARS Act. (Enter, as applicable, passenger automobile, category 1 truck, category 2 truck or category 3 truck.)

(F) *State of title.*

(G) *State of registration.*

(H) *Start date of registration.*

(I) *Start date of insurance.*

(J) *End date of registration.*

(K) *Odometer reading.* The odometer reading of the vehicle at the time of the trade-in.

(L) *EPA combined fuel economy.* The listed EPA combined fuel economy of the vehicle.

(M) *Vehicle description.* The exact ''vehicle description'' for the vehicle found on *http://www.fueleconomy.gov.*

(iii) *New vehicle information.*

(A) *Make.* The make of the vehicle.

(B) *Model.* The model of the vehicle.

(C) *Model year.* The model year of the vehicle.

(D) *Vehicle identification number (VIN).* The 17 digit VIN of the vehicle.

(E) *EPA combined fuel economy.* The listed EPA combined fuel economy of the vehicle.

(F) *CARS Act vehicle category.* The category of vehicle as defined under the CARS Act. (Enter, as applicable, passenger automobile, category 1 truck, category 2 truck or category 3 truck.)

(G) *Base manufacturer's suggested retail price (MSRP).* The price of the new vehicle affixed to the Monroney label prior to the addition of any options, features, taxes or destination charges.

(H) *Vehicle description.* The exact ''vehicle description'' for the vehicle found on *http://www.fueleconomy.gov.*

(iv) *Trade-in vehicle disposition information.*

(A) *Identification of entity.* The name, address and telephone number of the disposal facility or salvage auction to which the vehicle will be or has been transferred or consigned.

(B) *Disposal facility number.* The unique identifier assigned to the disposal facility identified on the CARS Web site, and to which the vehicle is being transferred or consigned.

(v) *Transaction information.*

(A) *Date of sale or lease.* The date on which the vehicle transaction with the purchaser occurred.

(B) *Transaction request amount.* The amount of the credit for which the dealer is applying.

(2) Attach the following supporting documentation in electronic format (pdf, tif, jpeg) in the following order:

(i) *Proof of title.* A copy of the front and back of the title of the trade-in vehicle, showing assignment to the dealer free and clear of any lien or encumbrance on the vehicle's title, with the ''Junk Automobile, CARS.gov'' marking on both sides.

(ii) *Proof of insurance.* A copy of insurance policy cards or documents for the trade-in vehicle to confirm that the trade-in vehicle insurance was continuous for a period of not less than one year prior to trade in.

(iii) *Proof of registration.* A copy of the registration card or documents for the trade-in vehicle identifying the owner, the vehicle, and dates of registration to confirm that the vehicle was registered to the purchaser for a period of not less than one year prior to trade in.

(iv) *Purchaser identification.*

(v) *Summary of sale/lease and certifications form* (Appendix A to this part, summary section).

(vi) *Manufacturer certificate of origin or manufacturer statement of origin of the new vehicle.*

(vii) *CARS purchaser survey.*

(viii) *Fueleconomy.gov side-by-side comparison of the trade-in vehicle and the new vehicle.*

(ix) *Certification from salvage auction or disposal facility.*

(x) *Copy of vehicle sales or lease contract.*

(3) Make the certifications provided in Appendix A to this part, certifications section.

599.303 Agency disposition of dealer application for reimbursement.

(a) *Application review.* Upon receipt of an application for reimbursement, the agency shall review the application to determine whether it is complete and satisfies all the requirements of this subpart.

(b) *Complying application.* An application that is determined to meet all the requirements of this subpart shall be approved for payment, in accordance with the provisions of § 599.304.

(c) *Non-complying application.* An application that is incomplete or that otherwise fails to meet all the requirements of this subpart shall be rejected, and the submitter shall be informed electronically of the reason for rejection. NHTSA shall have no obligation to correct a non-conforming submission.

(d) *Electronic rejection.* An application is automatically rejected, with system notification to the tendering dealer, if the transaction falls

outside of the permissible time period, exceeds the permissible MSRP, identifies a purchaser that has participated in a previous transaction, or identifies the vehicle identification number of a new or trade-in vehicle that was involved in a previous transaction.

(e) *Correction and resubmission.* A dealer may correct and resubmit a rejected application for reimbursement, without penalty.

§ 599.304 Payment to dealer.

Upon completion of review of an application for reimbursement from a registered dealer that satisfies all the requirements of this part, the agency shall reimburse the dealer, by electronic transfer to the account identified under the process in § 599.200(c) of this part.

Subpart D—Disposal of Trade-in Vehicle

§ 599.400 Transfer or consignment by dealer of trade-in vehicle.

(a) *In general.*

(1) A trade-in vehicle accepted as part of an eligible transaction may be provided for disposal by a dealer either to a disposal facility or to a salvage auction, as described in and subject to the conditions of § 599.201 of this part.

(2) Dealers, disposal facilities, and salvage auctions involved in the disposal of the trade-in vehicle must each comply with the applicable provisions of this subpart.

(b) *Transfer by dealer or salvage auction to a disposal facility.* If the trade-in vehicle is transferred by the dealer or salvage auction to a disposal facility, the disposal facility must, as a condition of the transfer:

(1) Make the certifications contained in the Disposal Facility Certification Form in Appendix E to this part, signed by an official with authority to bind the disposal facility;

(2) At the time of the transfer, deliver the signed Disposal Facility Certification Form to the dealer or salvage auction that transferred the trade-in vehicle; and

(3) Comply with the requirements and limitations of § 599.401.

(c) *Consignment by dealer to a salvage auction.* If the trade-in vehicle is consigned by the dealer to a salvage auction, the salvage auction must, as a condition of the consignment:

(1) Make the certifications contained in the Salvage Auction Certification Form in Appendix F to this part, signed by an official with authority to bind the salvage auction;

(2) At the time of the consignment, deliver the signed Salvage Auction Certification Form to the dealer that authorized the salvage auction to sell the trade-in vehicle.

(1) Make the certifications contained in the Salvage Auction Certification Form to the dealer that authorized the salvage auction to sell the trade-in vehicle; and

(3) Comply with the requirements and limitations of § 599.402.

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

(a) The disposal facility must:

(1) Not more than 7 days after receiving the vehicle, report the vehicle to NMVTIS as a scrap vehicle.

(2) Remove and dispose of all refrigerants, antifreeze, lead products, mercury switches, and such other toxic or hazardous vehicle components prior to crushing or shredding in accordance with applicable Federal and State requirements;

(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 180 days after receipt of the vehicle from the dealer or salvage auction;

(4) Not more than 7 days after the vehicle is crushed or shredded, report the vehicle to NMVTIS as crushed or shredded.

(b) The disposal facility may not sell or transfer the engine block of the vehicle or, except as allowed under paragraph (c)(2) of this section, the drive train before they are crushed or shredded or otherwise allow the vehicle to leave the disposal facility before it is crushed or shredded.

(c) The disposal facility may:

(1) Sell any part of the vehicle other than the engine block or drive train;

(2) Notwithstanding paragraph (c)(1) of this section, sell the drive train provided the transmission, drive shaft, and rear end are sold as separate parts;

(3) Retain the proceeds from parts sold under this paragraph.

§ 599.402 Requirements and limitations for salvage auctions that are consigned trade-in vehicles under the CARS program.

(a) The salvage auction must:

(1) Within 3 days after the date the dealer consigns the vehicle or prior to auctioning the vehicle, whichever is earlier, report the status of the vehicle to NMVTIS;

(2) Limit participation in the auction to disposal facilities that, when the auction is held:

(i) Appear on the list identified in § 599.201(a)(2) or are described in § 599.201(a)(3); and

(ii) Agree to make the certifications in the Salvage Auction Certification Form (Appendix F to this part).

(3) As a condition of transferring title to the disposal facility, obtain from that facility the signed Disposal Facility Certification Form (Appendix E to this part), insert on the top of the form the appropriate CARS invoice number received from the dealer, if known, and provide the form to NHTSA at *disposal@cars.gov,* and include that invoice number in the e-mail subject line.

(b) [Reserved]

§ 599.403 Requirements and limitations for dealers.

A dealer receiving a Disposal Facility Certification Form or Salvage Auction Certification Form under § 599.400(b)(2) or (c)(2) shall insert on the top of the form the appropriate CARS invoice number, if known, and within 7 days of receipt, submit such certification form to NHTSA at *disposal@cars.gov.*

Subpart E—Enforcement

§ 599.500 Definitions.

As used in this subpart—

Administrator means the Administrator of the National Highway Traffic Safety Administration, or his or her designee.

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

Hearing Officer means a NHTSA employee who has been delegated the authority to assess civil penalties.

NHTSA Enforcement means the NHTSA Associate Administrator for Enforcement, or his or her designee.

Notice of violation means a notification of violation and preliminary assessment of penalty issued by the Chief Counsel to a party.

Party means the person alleged to have committed a violation of the CARS Act, regulations thereunder, or other applicable law, and includes an individual, a public or private corporation, and a partnership or other association.

Violation means any non-conformance with the CARS Act or the regulations in this part except § 599.200(e)(1)(i) and § 599.201(c)(1), the submission of incomplete or inaccurate information to NHTSA or an entity identified under this part, or the failure to maintain records, to permit access to records or to update information that has been submitted to NHTSA under this part, but does not include a clerical error. In the context of dealer registration and disposal facility or salvage auction participation eligibility, *violation* also includes any

conviction of a crime involving motor vehicles or any fraud or financial crime under State or Federal law.

§ 599.501 Generally.

The provisions of 5 U.S.C. 554, 556 and 557 do not apply to any proceedings conducted pursuant to this subpart.

§ 599.502 Record retention.

(a) Manufacturers, dealers, salvage auctions, and disposal facilities shall keep records of all transactions under the CARS Act and regulations thereunder for a period of five calendar years from the date on which they were generated or acquired by the manufacturer, salvage auction, dealer, or disposal facility, and shall promptly make those records available to NHTSA Enforcement or DOT's Office of the Inspector General upon request.

(b) Records to be retained under this subpart include all documentary materials and other information-storing media that contain information concerning transactions under the CARS Program, including any material generated or communicated by computer, electronic mail, or other electronic means. Such records include, but are not limited to, lists, compilations, certifications, dealer application information, salvage auction or disposal facility information, owner eligibility information, vehicle eligibility information (including vehicle fuel economy), dealer applications for reimbursement under the program, vehicle identification number data, vehicle ownership information, vehicle title, registration and insurance information, sales agreements, bills of sale, lease agreements, manufacturer's certificate or statement of origin, other rebate and/or incentive programs used in conjunction with transactions under the program, bank account and routing number information, electronic funds transfer and payment information, reports made to the National Motor Vehicle Title Information System (NMVTIS), reports regarding vehicle scrappage values and payment, reports in connection with the transfer of vehicles to salvage auctions and disposal facilities; reports from disposal facilities in connection with the crushing or shredding of vehicles under the program, and any other documents that are related to transactions.

(c) Duplicate copies need not be retained. Information may be reproduced or transferred from one storage medium to another (*e.g.,* from electronic format to CD–ROM) as long as no information is lost in the reproduction or transfer, and when so reproduced or transferred the original form may be treated as a duplicate.

§ 599.503 Access to records.

The Administrator shall have the right to enter onto the premises of manufacturers, dealers, salvage auctions and disposal facilities during normal business hours in order to: access, inspect and audit records and other sources of information maintained by any of these entities under this Program; to inspect vehicles traded in or sold under this program, including taking all actions necessary to determine whether trade-in vehicles have operative engines; and/or to interview persons who may have relevant knowledge.

§ 599.504 Suspension, revocation, and reinstatement of registration and participation eligibility.

(a) *Suspension or revocation of dealer registration, or salvage auction or disposal facility participation eligibility.*

(1) When the NHTSA Chief Counsel determines that a violation has likely occurred, the Administrator may notify the dealer, salvage auction or disposal facility in writing of the facts giving rise to the allegation of a violation and the proposed length of a suspension, if applicable, or revocation of registration, in the case of a dealer, or participation eligibility in the case of a salvage auction or disposal facility.

(2) The notice shall afford the dealer, salvage auction or disposal facility an opportunity to present data, views, and arguments, in writing and/or in person, within 30 days of the date of the notice, as to whether the violation occurred, why its registration or participation eligibility ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. The Administrator may, for good cause, reduce the time allowed for response.

(3) If the Administrator decides, on the basis of the available information, that the dealer, salvage auction or disposal facility has committed a violation, the Administrator may suspend or revoke the dealer registration or the participation eligibility of the salvage auction or disposal facility.

(4) The Administrator shall notify the dealer, salvage auction or disposal facility in writing of the decision, including the reasons for it. The decision shall reflect the gravity of the offense.

(5) A suspension or revocation is effective as of the date of the Administrator's written notification, unless another date is specified therein.

(6) The Administrator shall state the period of any suspension in the notice to the dealer, salvage auction or disposal facility.

(7) There shall be no opportunity to seek reconsideration of the Administrator's decision issued under this paragraph (a).

(b) *Reinstatement of suspended registration or participation eligibility.*

(1) When a registration or participation eligibility has been suspended under this subpart, the registration or participation eligibility will be reinstated after the expiration of the period of suspension specified by the Administrator, or such earlier date as the Administrator may subsequently decide is appropriate.

(2) Reinstatement is automatically effective as of the date previously set forth in the Administrator's written notification of suspension, unless another date is specified by the Administrator in writing.

(c) *Effect of suspension or revocation of registration or participation eligibility.*

(1) If a dealer's registration or a salvage auction or disposal facility's participation eligibility is suspended or revoked, as of the date of suspension or revocation, the dealer, salvage auction or disposal facility will not be considered registered or eligible to participate in the CARS Program, and must cease participating in the program.

(2) A dealer whose registration has been suspended will not be entitled to any rights or reimbursement of funds for new transactions submitted as of the effective date of the suspension or revocation.

(3) NHTSA may take such action as appropriate, including publication, to provide notice that a dealer's registration, or salvage auction's or disposal facility's participation eligibility has been suspended or revoked.

§ 599.505 Reports and investigations.

(a) Any person may report an apparent violation of the CARS Act or regulations issued thereunder to NHTSA.

(b) NHTSA may independently monitor for violations of the CARS Act or regulations issued thereunder.

(c) When a report of an apparent violation has been received by NHTSA, or when an apparent violation has been detected by any person working for NHTSA, the matter may be investigated or evaluated by NHTSA Enforcement. If NHTSA Enforcement believes that a violation may have occurred, NHTSA Enforcement may prepare a report and send the report to the NHTSA Chief Counsel.

(d) The NHTSA Chief Counsel will review the reports prepared by NHTSA Enforcement to determine if there is sufficient information to establish a likely violation.

(1) The matter may be returned to NHTSA Enforcement for further investigation, if warranted.

(2) The Chief Counsel may close a matter. A matter may be closed if, for example, the investigation has established that a violation did not occur, the alleged violator is unknown, there is insufficient information to support the existence of a violation and little likelihood of discovering additional relevant facts, or the magnitude of the matter is, under the circumstances, including availability of resources, insufficient to be pursued further.

(3) If the Chief Counsel determines that a violation has likely occurred, the Chief Counsel may:

(i) Issue a Notice of Violation to the party, and/or

(ii) In the case of a dealer recommend that the Administrator suspend or revoke registration in the program or in the case of a salvage auction or disposal facility, recommend that the Administrator suspend or revoke participation eligibility in the program.

(4) In the case of either paragraphs (d)(3)(i) or (ii) of this section, the NHTSA Chief Counsel will prepare a case file with recommended actions. A record of any prior violations by the same person or entity, shall be forwarded with the case file.

§ 599.506 Notice of Violation.

(a) The agency has the authority to assess a civil penalty for any violation of the CARS Act or this part. The penalty may not be more than $15,000 for each violation.

(b) The Chief Counsel may issue a Notice of Violation to a party. Notice of Violation will contain the following information:

(1) The name and address of the party;

(2) The alleged violation and the applicable law or regulations violated;

(3) The amount of the maximum penalty that may be assessed for each violation;

(4) The amount of proposed penalty;

(5) A statement that payment of the proposed penalty within 30 days will settle the case without admission of liability;

(6) The place to which, and the manner in which, payment is to be made;

(7) A statement that the party may decline the Notice of Violation and that if the Notice of Violation is declined, the party has the right to a hearing prior to a final assessment of a penalty by a Hearing Officer.

(8) A statement that failure to either pay the proposed penalty on the Notice of Violation or to decline the Notice of Violation and request a hearing within 30 days of the date shown on the Notice of Violation will result in a finding of violation by default and that NHTSA will proceed with the civil penalty in the amount proposed on the Notice of Violation without processing the violation under the hearing procedures set forth in this subpart.

(c) The Notice of Violation may be delivered to the party by:

(1) Hand-delivery to the party or an employee of the party;

(2) Mailing to the party (certified mail is not required);

(3) Use of an overnight or express courier service; or

(4) Facsimile transmission or electronic mail (with or without attachments) to the party or an employee of the party.

(d) If a party submits a written request for a hearing as provided in the Notice of Violation within 30 days of the date shown on the Notice of Violation, the case file will be sent to the Hearing Officer for processing under the hearing procedures set forth in this subpart.

(e) If a party pays the proposed penalty on the Notice of Violation or an amount agreed on in compromise within 30 days of the date shown on the Notice of Violation, a finding of ''resolved with payment'' will be entered into the case file. Such payment shall not be an admission of liability.

(f) If the party agrees to pay the proposed penalty, but has not made payment within 30 days of the date shown on the Notice of Violation, NHTSA will enter a finding of violation by default in the matter and NHTSA will proceed with the civil penalty in the amount proposed on the Notice of Violation without processing the violation under the hearing procedures set forth in this subpart.

(g) If within 30 days of the date shown on the Notice of Violation a party fails to pay the proposed penalty on the Notice of Violation; and fails to request a hearing, then NHTSA will enter a finding of violation by default in the case file, and will assess the civil penalty in the amount set forth on the Notice of Violation without processing the violation under the hearing procedures set forth in this subpart.

(h) NHTSA's order assessing the civil penalty following a party's default is final agency action.

§ 599.507 Disclosure of evidence.

The alleged violator may, upon request, receive a free copy of all the written evidence in the case file, except material that would disclose or could lead to the disclosure of the identity of a confidential source. Following a timely request for a hearing, other evidence or material, if any, of whatever source or nature, may be examined at the Hearing Officer's offices or such other places and locations that the Hearing Officer may, in writing, direct, if there are adequate safeguards to prevent loss or tampering.

§ 599.508 Statements of matters in dispute and submission of supporting information.

(a) Within 30 days of the date shown on the Notice of Violation, the party, or counsel for the party, shall submit to NHTSA at the person or office listed in the Notice of Violation two complete copies via hand delivery, use of an overnight or express courier service, facsimile or electronic mail of:

(1) A detailed statement of factual and legal issues in dispute; and,

(2) All statements and documents supporting the party's case.

(b) One copy of the party's submission set forth above shall be labeled ''For Hearing Officer.''

(c) Failure to specify any non-jurisdictional issue in the party's submission will preclude its consideration.

§ 599.509 Hearing Officer.

(a) If a party timely requests a hearing after receiving a Notice of Violation, the Hearing Officer shall hear the case.

(b) The Hearing Officer is solely responsible for the case referred to him or her. The Hearing Officer has no other responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties.

(c) The Hearing Officer decides each case on the basis of the information before him or her, and must have no prior connection with the case.

§ 599.510 Initiation of action before the Hearing Officer.

(a) After the Hearing Officer receives a case file from the Chief Counsel, the Hearing Officer notifies the party in writing of:

(1) The date, time and location of the hearing and whether the hearing will be conducted telephonically or at the DOT Headquarters building in Washington, D.C.;

(2) The right to be represented at all stages of the proceeding by counsel as set forth in § 599.511; and,

(3) The right to a free copy of all written evidence in the case file as set forth in § 599.507.

(b) On the request of a party, or at the Hearing Officer's direction, multiple proceedings may be consolidated if at any time it appears that such consolidation is necessary or desirable.

§ 599.511 Counsel.

A party has the right to be represented at all stages of the proceeding by counsel. A party electing to be represented by counsel must notify the Hearing Officer of this election in writing, after which point the Hearing Officer will direct all further communications to that counsel. A party represented by counsel bears all of its own attorneys' fees and costs.

§ 599.512 Hearing location and costs.

(a) Unless the party requests a hearing at which the party appears before the Hearing Officer in Washington, DC, the hearing shall be held telephonically. The hearing is held at the headquarters of the U.S. Department of Transportation in Washington, DC.

(b) The Hearing Officer may transfer a case to another Hearing Officer at a party's request or at the Hearing Officer's direction.

(c) A party is responsible for all fees and costs (including attorneys' fees and costs, and costs that may be associated with travel or accommodations) associated with attending a hearing.

§ 599.513 Hearing procedures.

(a) There is no right to discovery in any proceedings conducted pursuant to this subpart.

(b) The material in the case file pertinent to the issues to be determined by the Hearing Officer is presented by the Chief Counsel or his or her designee.

(c) The Chief Counsel may supplement the case file with information prior to the hearing. A copy of such information will be provided to the party no later than 3 days before the hearing.

(d) At the close of the Chief Counsel's presentation of evidence, the party has the right to examine, respond to and rebut material in the case file and other information presented by the Chief Counsel.

(e) In receiving evidence, the Hearing Officer is not bound by strict rules of evidence. In evaluating the evidence presented, the Hearing Officer must give due consideration to the reliability and relevance of each item of evidence.

(f) A party may present the testimony of any witness either through a written statement or a personal appearance. If a party wishes to present testimony through a personal appearance, the party is responsible for obtaining that personal appearance, including any costs associated with such appearance. The Hearing Officer may, at his or her discretion, accept a stipulation in lieu of testimony.

(g) At the close of the party's presentation of evidence, the Hearing Officer may allow the introduction of rebuttal evidence that may be presented by the Chief Counsel. The Hearing Officer may allow the party to respond to any such evidence submitted.

(h) The Hearing Officer may take notice of matters which are subject to a high degree of indisputability and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking notice of a matter, the Hearing Officer shall give the party an opportunity to show why notice should not be taken. In any case in which notice is taken, the Hearing Officer places a written statement of the matters as to which notice was taken in the record, with the basis for such notice, including a statement that the party consented to notice being taken or a summary of the party's objections.

(i) After the evidence in the case has been presented, the Chief Counsel and the party may present argument on the issues in the case. The party may also request an opportunity to submit a written statement for consideration by the Hearing Officer and for further review. If granted, the Hearing Officer shall allow a reasonable time for submission of the statement and shall specify the date by which it must be received. If the statement is not received within the time prescribed, or within the limits of any extension of time granted by the Hearing Officer, the Hearing Officer prepares the decision in the case.

(j) A verbatim transcript of the hearing will not normally be prepared. A party may, solely at its own expense, cause a verbatim transcript to be made. If a verbatim transcript is made, the party shall submit two copies to the Hearing Officer not later than 15 days of the hearing. The Hearing Officer shall include such transcript in the record.

§ 599.514 Assessment of civil penalties.

(a) Not later than 30 days following the close of the hearing, the Hearing Officer shall issue a written decision on the Notice of Violation, based on the hearing record. The decision shall set forth the basis for the Hearing Officer's assessment of a civil penalty, or decision not to assess a civil penalty. In determining the amount of the civil penalty, the severity of the violation and the intent and history of the party committing the violation shall be taken into account. The assessment of a civil penalty by the Hearing Officer shall be set forth in an accompanying final order.

(b) If the Hearing Officer assesses civil penalties in excess of $100,000.00, the Hearing Officer's decision contains a statement advising the party of the right to an administrative appeal to the Administrator. The party is advised that failure to submit an appeal within the prescribed time will bar its consideration and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in its appeal before the Administrator.

(c) The filing of a timely and complete appeal to the Administrator of a Hearing Officer's order assessing a civil penalty shall suspend the operation of the Hearing Officer's penalty.

(d) There shall be no administrative appeals of civil penalties of $100,000.00 or less.

§ 599.515 Appeals of civil penalties in excess of $100,000.00.

(a) A party may appeal the Hearing Officer's order assessing civil penalties over $100,000.00 to the Administrator within 21 days of the date of the issuance of the Hearing Officer's order.

(b) The Administrator will affirm the decision of the Hearing Officer unless the Administrator finds that the Hearing Officer's decision was unsupported by the record as a whole.

(c) If the Administrator finds that the decision of the Hearing Officer was unsupported, in whole or in part, then the Administrator may:

(1) Assess or modify a civil penalty;

(2) Rescind the Notice of Violation; or

(3) Remand the case back to the Hearing Officer for new or additional proceedings.

(d) In the absence of a remand, the decision of the Administrator in an appeal is a final agency action.

§ 599.516 Collection of assessed or compromised civil penalties.

(a) Payment of a civil penalty, whether assessed or compromised, shall be made by check, postal money order, or electronic transfer of funds, as provided in instructions by the agency. A payment of civil penalties shall not be considered a request for a hearing.

(b) The party must remit payment of any assessed civil penalty to NHTSA within 30 days after receipt of the Hearing Officer's order assessing civil penalties or, in the case of an appeal to the Administrator, within 30 days after receipt of the Administrator's decision on the appeal. Failure to make timely payment may result in the institution of appropriate action under the Federal Claims Collection Act, as amended, the

regulations issued thereunder, and other applicable law.

(c) The party must remit payment of any compromised civil penalty to NHTSA on the date and under such terms and conditions as agreed to by the party and NHTSA. Failure to pay a compromised civil penalty to NHTSA on the date and under such terms and conditions as agreed to by the party and NHTSA may either result in the institution of appropriate action under the Federal Claims Collection Act, as amended, the regulations issued thereunder, and other applicable law, or NHTSA entering a finding of violation by default and assessing a civil penalty in the amount proposed in the Notice of Violation without processing the violation under the hearing procedures set forth in this part.

§ 599.517 Other sanctions.

The procedures and penalties described in this subpart are not the only procedures and penalties that may apply to someone who violates the CARS Act or submits a false certification required by this rule. Anyone who submits false information on these forms or otherwise violates the CARS Act or this part may not only be subject to the procedures and penalties described in this subpart, but also civil and criminal penalties. Such civil and criminal penalties may include penalties three times any amount falsely claimed to be due from the United States pursuant to the False Claims Act (31 U.S.C. 3729), or imprisonment of up to 5 years and fines of up to $250,000 (18 U.S.C. 1001). In addition, NHTSA may request that the Attorney General seek appropriate injunctive relief to address violations of the CARS Act or this part.

BILLING CODE 4910–59–P

Appendix A to Part 599 – Summary of Sale/Lease and Certifications

NHTSA
www.nhtsa.gov

CARS
car allowance rebate system

Summary of Sale/Lease & Certifications Form

SUMMARY OF SALE OR LEASE

OMB 2127-0660 Exp. 1/31/2009

Date of Sale or Lease	
Purchaser Name(s)	
Purchaser Address	
Purchase or Lease (please specify)	
Make	
Model	
Model Year	
New Vehicle VIN	
Trade-In Vehicle VIN	
New Vehicle Base MSRP	
CARS Credit Applied ($3,500 or $4,500)	
Dealer's Best Estimate of Trade-In Vehicle Scrappage Value	
Dealer Rebate(s) or Discount(s) (please specify; if none, enter "none.")	
Manufacturer Rebate(s) or Discount(s) (please specify; if none, enter "none.")	
Other available Federal, State, or local incentive(s) or State-issued voucher(s) (please specify; if none, enter "none.")	
Other Rebate(s) or Discount(s) (please specify; if none, enter "none.")	

WARNING

This is a legal document that contains certifications under penalty of law. There are significant civil and criminal penalties for submitting false information. Please read each certification and ensure that the information that you are certifying by signing this document is, to the best of your knowledge and belief, true, accurate, and complete.

DEALER CERTIFICATIONS

The person signing this document as "Dealer" certifies under penalty of law that:

Registration in the CARS Program

- The dealer has been approved as a registered dealer under the CARS program.
- The dealer has a currently active business license under State law to operate a new automobile dealership.
- The dealer has a currently active franchise agreement with an original equipment manufacturer to sell new automobiles.

Summary of Sale or Lease

- The summary of sale or lease set forth above is true and correct.

Purchaser and Trade-In Vehicle Eligibility for the CARS Program

- I have verified the identity of the person signing this document under "Purchaser" (hereinafter simply "Purchaser").
- I have verified that the trade-in vehicle is in drivable condition, and I or an employee under my direction or supervision has operated the trade-in vehicle to confirm that the trade-in vehicle is in drivable condition.
- I have verified that the trade-in vehicle has been continuously insured for a period of not less than one (1) year prior to the date of this transaction.
- I have verified that the Purchaser has been the registered owner of the trade-in vehicle continuously for a period of not less than one (1) year prior to the date of this transaction.
- I have observed the trade-in vehicle's date of manufacture (both month and year) as it appears on the trade-in vehicle's safety standard certification label, and have verified that the trade-in vehicle was manufactured less than 25 years before the date of the trade-in.
- I have verified that the trade-in vehicle's fuel economy is eligible for the CARS program.

New Vehicle Eligibility for the CARS Program

- The new vehicle is being purchased or, in the case of a lease, leased for a period of not less than five (5) years.
- I have verified that the CARS program credit amount requested (i.e., either $3,500.00 or $4,500.00, as applicable) corresponds to the difference between the trade-in vehicle's fuel economy and the new vehicle's fuel economy under the requirements of the CARS program.
- The new vehicle has a base manufacturer's suggested retail price (MSRP) as shown on the Monroney label affixed to the new vehicle of $45,000 or less (exclusive of any accessories, optional equipment, taxes or destination charges).

Transaction Conforms to the Requirements of the CARS Program

- I have reduced the price of the new vehicle that is being purchased or leased by the CARS Program credit amount requested (i.e., either $3,500.00 or $4,500.00, as applicable).

- I have disclosed to the Purchaser the best estimate of the scrappage value of the trade-in vehicle.
- I have retained no more than $50.00 of the scrappage value as payment for any of the dealer's administrative costs in connection with this CARS transaction.
- I have not charged the Purchaser any additional fees for participating in the CARS program in this transaction.
- I have applied the credit under the CARS program in addition to any other rebate or discount advertised by the dealer or offered by the manufacturer for the new vehicle, and have not used the CARS program credit to offset any such other rebate or discount.
- I have not reduced the value of the CARS program credit amount requested (i.e., either $3,500.00 or $4,500.00, as applicable) by any other available Federal, State, or local incentive or a State-issued voucher for the purchase or lease of a new fuel efficient automobile.

Disposal of the Trade-in Vehicle

- The trade-in vehicle has not been, and will not be, sold, leased, exchanged or otherwise disposed of for use as an automobile in the United States or in any other country.
- I have either: (a) rendered the engine block of the trade-in vehicle inoperable under the procedures of the CARS Program prior to further transfer of the trade-in vehicle; or, (b) this transaction occurred prior to July 24, 2009, and I have submitted to NHTSA the necessary proof as attachments under Miscellaneous Documents that the engine block has been crushed or shredded.
- I have transferred or will transfer the trade-in vehicle, including the engine block, to either: (a) a CARS program participating disposal facility that will crush or shred the trade-in vehicle; or, (b) to a participating salvage auction that will transfer the vehicle to such a disposal facility.
- I have provided the disposal facility and/or salvage auction information and written notice that it is responsible for the removal and appropriate disposition of refrigerants, antifreeze, lead products, mercury switches, and such other toxic or hazardous vehicle components prior to the crushing or shredding of an eligible trade-in vehicle, in accordance with all applicable Federal and State requirements.

PURCHASER CERTIFICATIONS

All persons signing this document as "Purchaser" certifies under penalty of law that:

Summary of Sale or Lease

- The summary of sale or lease set forth above is true and correct.

Purchaser and Trade-In Vehicle Eligibility for the CARS Program

- The information I have provided to the dealer verifying my identity is true and correct.
- I have not previously participated in the CARS program.
- The trade-in vehicle is in drivable condition, and an employee of the dealer has operated the trade-in vehicle to confirm that the trade-in vehicle is in drivable condition.
- The trade-in vehicle has been continuously insured for a period of not less than one (1) year prior to the date of this transaction.
- I have been the registered owner of the trade-in vehicle continuously for a period of not less than one (1) year prior to the date of this transaction.
- The trade-in vehicle was manufactured less than 25 years before the date of this transaction.
- The trade-in vehicle's fuel economy is eligible for the CARS program.

- The trade-in vehicle has not been a part of any previous CARS program transaction.

I certify under penalty of law that:

- ***I have authority to execute this document,***
- ***I have read each of the foregoing certifications,***
- ***I understand that payment of the CARS program credit amount is conditioned on compliance with these certifications,***
- ***This document, and all attachments, were either prepared by me or prepared under my direction or supervision,***
- ***The information set forth in this document, and all attachments, is, to the best of my knowledge and belief, true, accurate, and complete,***
- ***I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties under the CARS program, suspension or revocation of continued participation in the CARS program, as well as fines and/or imprisonment.***

DATE: _____, 2009 DEALER

_____
(signature)

_____
(print name)

DATE: _____, 2009 PURCHASER

_____
(signature)

_____
(print name)

DATE: _____, 2009 PURCHASER
(ADDITIONAL) (if any)

_____
(signature)

_____
(print name)

Privacy Act Statement

This notice is provided pursuant to the Privacy Act of 1974, 5 USC § 552a: This information is solicited under the authority of Public Law 111-32, 123 Stat. 1859. Furnishing the information is voluntary, but failure to provide all or part of the information may result in disapproval of your request for a credit on this purchase or lease transaction under the Cars Program. The principal purposes for collecting the information are to determine if purchase or lease transactions are eligible for credits under the CARS Program, to ensure proper disposal of trade-in vehicles, to

prevent, identify and penalize fraud in connection with the Program, and to update an existing government database of Vehicle Identification Numbers. If you complete the optional survey, the survey information will be used to report to Congress on the Program. Other routine uses are published in the Federal Register at 65 F.R. 19476 (April 11, 2000), available at: www.dot.gov/privacy.

Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2127-0660. Public reporting for this collection of information is estimated to be approximately XX minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, National Highway Traffic Safety Administration, 1200 New Jersey Ave, S.E., Washington, DC, 20590.

Appendix B to Part 599 - Engine Disablement Procedures for the CARS Program

Engine Disablement Procedures for the CARS Program

THIS PROCEDURE IS NOT TO BE USED BY THE VEHICLE OWNER

Perform the following procedure to disable the vehicle engine.

Since the vehicle will not be drivable after this procedure is performed, consider where the procedure will be performed and how the vehicle will be moved after the procedure is complete.

1. Obtain solution of 40% sodium silicate/60% water. (The Sodium Silicate (SiO_2/Na_2O) used in the solution must have a weight ratio of 3.0 or greater.)
2. Drain engine oil for environmentally appropriate disposal.
3. Install the oil drain plug.
4. Pour enough solution in the engine through the oil fill for the oil pump to circulate the solution throughout the engine. Start by adding 2 quarts of the solution, which should be sufficient in most cases.
   CAUTION: Wear goggles and gloves. Appropriate protective clothing should be worn to prevent silicate solution from coming into contact with the skin.
5. Replace the oil fill cap.
6. Start the engine.
7. Run engine at approximately 2000 rpm (for safety reasons do not operate at high rpm) until the engine stops. (Typically the engine will operate for 3 to 7 minutes. As the solution starts to affect engine operation, the operator will have to apply more throttle to keep the engine at 2000 rpm.)
8. Allow the engine to cool for at least 1 hour.
9. With the battery at full charge or with auxiliary power to provide the power of a fully charged battery, attempt to start the engine.
10. If the engine will not operate at idle, the procedure is complete.
11. If the engine will operate at idle, repeat steps 6 through 10 until the engine will no longer idle.
12. Attach a label to the engine that legibly states the following:

    This engine is from a vehicle that is part of the Car Allowance Rebate System (CARS). It has significant internal damage caused by operating the engine with a sodium silicate solution (liquid glass) instead of oil.

Appendix C to Part 599 – Electronic Transaction Screen

CARS iSupplier Portal

Home Logout Preferences

Home | Finance

Create Invoices | View Invoices

Details — Legal Information — Review and Submit

Create Invoice: Details

* Indicates required field

TIP % sign is the wildcard character to search on in any List of Values

Cancel Step 1 of 3 Next

Dealership Information

* Name
* Remit To Address
* Remit To Bank Account

Invoice

* Invoice Number

TIP Do not enter any special characters eg. $ & @

* Invoice Date 21-Jul-2009 (example: 21-Jul-2009)
* Currency USD
Invoice Description
* Sale Date
* Disposal Status
* Disposal Facility ID
* Disposal Facility Contact Info
* Purchaser Full Name
* Purchaser Full Address
* Purchaser State ID Number
Co-Owner Purchaser State ID Number
* Sales Type
Attachment None Add

***Amount**

TIP Do not enter any special characters. (eg. & % $) for VIN

* Trade-in VIN
* Trade-in Vehicle Category
* Trade-in Vehicle Description
* Trade-In Title State
* Trade-In Registration State
* Trade-In Registration Start Date
* Trade-In Registration Expiration Date
Trade-In Insurance Start Date
Trade-In Flagged Date
* Trade-In Odometer Reading
* New Vehicle VIN
* New Vehicle Category
* New Vehicle Description
* New Vehicle Base MSRP

Cancel Step 1 of 3 Next

Home Finance Home Logout Preferences

Privacy Statement

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CARS car allowance rebate system

Appendix D to Part 599 – CARS Purchaser Survey

Survey of Consumer Response to
(Commonly known as 'Cash for Clunkers')

NHTSA www.nhtsa.gov

OMB 2127-0659 Exp. 1/31/2009

Please answer the following 3 questions regarding your trade-in transaction. Your answers are for program evaluation purposes only and will not influence your eligibility in any way. Please put an X in the box by the appropriate answer.

Question #1: If you were not offered the CARS program trade-in incentive, would you still have traded in your current vehicle to purchase a new or used vehicle this month?

☐ a) Yes

☐ b) No

If no, when were you planning to trade-in, sell or dispose of your vehicle?

☐ Within the next year	☐ 4 years	☐ 8 years
☐ In about 1 year	☐ 5 years	☐ 9 years
☐ 2 years	☐ 6 years	☐ 10 years
☐ 3 years	☐ 7 years	☐ More than 10 years

Question # 2: If you were not offered the CARS program trade-in incentive, when you disposed of this vehicle, would you have purchased another vehicle?

☐ a) No

☐ b) Yes, a new vehicle (Please select one type below)

☐ c) Yes, a used vehicle (Please select one type below)

☐ a) **a subcompact car** (for example a Honda Fit, or a Toyota Yaris, etc.)
☐ b) **a compact car** (ex. Ford Focus, Nissan Sentra, Toyota Corolla, Honda Civic, etc.)
☐ c) **a mid-sized car** (ex. Chevrolet Malibu, Nissan Altima, Toyota Camry, etc.)
☐ d) **a large car** (ex. Chrysler 300, Ford Crown Victoria, etc.)
☐ e) **a small SUV** (ex. Honda CR-V, Ford Escape, etc.)
☐ f) **a mid-sized SUV** (ex. Ford Explorer, Honda Pilot, etc.)
☐ g) **a large SUV** (ex. Chevrolet Suburban, Ford Expedition, etc.)
☐ h) **a small pickup** (ex. Ford Ranger, etc.)
☐ i) **a mid-sized pickup** (ex. Dodge Dakota, Toyota Tacoma, etc.)
☐ j) **a large pickup** (ex. Chevrolet Silverado, Ford F-150, etc.)
☐ k) **a full sized passenger van** (ex. Ford E-Series, Chevrolet Express, etc.)
☐ l) **a full sized cargo van** (ex. Chevrolet Express, Dodge Sprinter, etc.)
☐ m) **a mini-van** (ex. Toyota Sienna, Dodge Caravan, etc.)
☐ n) **other type** (specify) _____

Question #3: What is your best estimate of the number of miles you drove the traded-in vehicle during the past 12 months?

☐ 0 – 2,499	☐ 7,500 – 9,999	☐ 15,000 – 17,499
☐ 2,500 – 4,999	☐ 10,000 – 12,499	☐ 17,500 – 19,999
☐ 5,000 – 7,499	☐ 12,500 – 14,999	☐ 20,000 or more

Thank you for participating in the CARS Initiative Consumer Response Survey!
Please contact the CARS Hotline at (866)-CAR-7891 or TTY at (800)-424-9153 if you wish to provide any comments.

Appendix E to Part 599 - Disposal Facility Certification Form

NHTSA www.nhtsa.gov

Disposal Facility Certification Form

CARS car allowance rebate system

OMB 2127-0658 Exp. 1/31/2009

Disposal Facility Information
CARS Invoice No. (if available)
End of Life Vehicle Solutions (ELVS) Identification No. (if assigned)
Legal Business Name
Doing Business As (DBA)/Common Name (if different from Legal Business Name)
Address (including Street, City, State, ZIP Code)

Trade-In Vehicle Information		
Make	Model	Model Year
Trade-In Vehicle VIN	Odometer Mileage	

Dealer or Salvage Auction Transferring Trade-In Vehicle Information		
Legal Business Name		
Doing Business As (DBA)/Common Name (if different from Legal Business Name)		
Address (including Street, City, State, ZIP Code)		
Check one: [ ] Dealer [ ] Salvage Auction	Contact Name and Title	Contact Phone and Email
Address (including Street, City, State, ZIP Code)	Date this Facility Received the Trade-In Vehicle from Dealer or Salvage Auction	

WARNING

This is a legal document that contains certifications under penalty of law. There are significant civil and criminal penalties for submitting false information. Please read each certification and ensure that the information that you are certifying by signing this document is, to the best of your knowledge and belief, true, accurate, and complete.

The person signing this document certifies under penalty of law that:

- This facility appears on the CARS program Disposal Facility List.
- This facility participates in the End of Life Vehicle Solutions (ELVS) program and the ELVS identification number listed above is true and correct. (Excluding facilities located in Maine or a U.S. territory).
- This facility is capable of crushing or shredding the trade-in vehicle, either with its own equipment or by use of a mobile crusher.
- This facility meets all applicable Federal and State laws.
- This facility has a currently active State license to operate as a disposal facility in the State where it is located.
- This facility received the trade-in vehicle bearing the above listed Vehicle Identification Number (VIN) on the date listed above from the dealer or salvage auction listed above.
- I, or an employee of this facility under my direction or supervision, will report to the National Motor Vehicle Title Information System (NMVTIS) the status of the trade-in vehicle as a scrap vehicle not more than seven (7) days after the above-listed date of receipt.
- The trade-in vehicle has not been, and will not be, sold, leased, exchanged or otherwise disposed of for use as an automobile in the United States or in any other country.
- This facility will not transfer the trade-in vehicle to another disposal facility prior to its crushing or shredding.
- This facility will not sell or transfer the trade-in vehicle's engine block and drive train (unless with respect to the drive train, the transmission, drive shaft, or rear end are sold as separate parts) at any time prior to its crushing or shredding.
- I, or an employee of this facility under my direction or supervision, will dispose of refrigerants, antifreeze, lead products, mercury switches, and such other toxic or hazardous vehicle components prior to the crushing or shredding of the trade-in vehicle, in accordance with all applicable Federal and State requirements.
- If this facility participates in ELVS, I, or an employee of this facility under my direction or supervision, will return all mercury switches in accordance with the procedures of the National Vehicle Mercury Switch Recovery Program (NVMSRP).
- I, or an employee of this facility under my direction or supervision, will crush or shred (or cause to be crushed or shredded on our premises), the trade-in vehicle within one-hundred eighty (180) days after the above-listed date of receipt.
- I, or an employee of this facility under my direction or supervision, will report to NMVTIS that this facility crushed or shredded the trade-in vehicle not more than seven (7) days after the date of crushing or shredding. (Note: The CARS program does not require that this facility, or any other entity which may subsequently receive the crushed trade-in vehicle, subsequently submit to NHTSA a CARS program Disposal Facility Certification Form, nor does it require that this facility, or any other entity which may subsequently receive the crushed trade-in vehicle, report to NMVTIS that the crushed trade-in vehicle has been shredded).

I certify under penalty of law that:

- ***I have authority to execute this document,***
- ***I have read each of the foregoing certifications,***
- ***This document, and any attachments, were either prepared by me or prepared under my direction or supervision,***
- ***The information set forth in this document, and any attachments, is, to the best of my knowledge and belief, true, accurate, and complete,***
- ***I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties under the CARS program, suspension or revocation of continued participation in the CARS program, as well as fines and/or imprisonment.***

DATE: _____, 2009

DISPOSAL FACILITY

_____

(signature)

_____

(print name)

_____

(title)

_____

(contact phone and e-mail)

Privacy Act Statement

This notice is provided pursuant to the Privacy Act of 1974, 5 USC § 552a: This information is solicited under the authority of Public Law 111-32, 123 Stat. 1859. Furnishing the information is voluntary, but failure to provide all or part of the information may result in disapproval of a request for a credit on this purchase or lease transaction under the Cars Program. The principal purposes for collecting the information are to ensure proper disposal of trade-in vehicles, to prevent, identify and penalize fraud in connection with the Program, and to update an existing government database of Vehicle Identification Numbers. Other routine uses are published in the Federal Register at 65 F.R. 19476 (April 11, 2000), available at: www.dot.gov/privacy.

Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2127-0658. Public reporting for this collection of information is estimated to be approximately XX minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, National Highway Traffic Safety Administration, 1200 New Jersey Ave, S.E., Washington, DC, 0590.

Appendix F to Part 599 – Salvage Auction Certification Form

NHTSA www.nhtsa.gov

Salvage Auction Certification Form

OMB 2127-0658 Exp. 1/31/2009

CARS car allowance rebate system

Salvage Auction Information		
CARS Invoice No. (if available)		
Legal Business Name		
Doing Business As (DBA)/Common Name (if different from Legal Business Name)		
Address (including Street, City, State, ZIP Code)		
Trade-In Vehicle Information		
Make	Model	Model Year
Trade-In Vehicle VIN	Odometer Mileage	
Dealer Transferring Trade-In Vehicle Information		
Legal Business Name		
Doing Business As (DBA)/Common Name (if different from Legal Business Name)		
Address (including Street, City, State, ZIP Code)		
Contact Name and Title	Contact Phone and Email	
Address (including Street, City, State, ZIP Code)	Date this Salvage Auction Received the Trade-In Vehicle from Dealer	

WARNING

This is a legal document that contains certifications under penalty of law. There are significant civil and criminal penalties for submitting false information. Please read each certification and ensure that the information that you are certifying by signing this document is, to the best of your knowledge and belief, true, accurate, and complete.

The person signing this document certifies under penalty of law that:

- This facility meets all applicable Federal and State laws.
- This facility has a currently active State license to conduct business as a salvage auction in the State where it is located.
- This facility received the trade-in vehicle bearing the above listed Vehicle Identification Number (VIN) on the date listed above from the dealer listed above.
- I, or an employee of this facility under my direction or supervision, will report to the National Motor Vehicle Title Information System (NMVTIS) the status of the trade-in vehicle within three (3) days after the date the dealer consigns the trade-in vehicle, or prior to auction (whichever is earlier).
- This facility will limit any auction sale of the trade-in vehicle solely to disposal facilities that appear on the CARS program Disposal Facility List.
- The trade-in vehicle has not been, and will not be, sold, leased, exchanged or otherwise disposed of for use as an automobile in the United States or in any other country.
- This facility will not remove any parts from the trade-in vehicle.
- This facility will not transfer the trade-in vehicle at any time prior to its sale at auction, and then only to a disposal facility that appears on the CARS program Disposal Facility List.

I certify under penalty of law that:

- ***I have authority to execute this document,***
- ***I have read each of the foregoing certifications,***
- ***This document, and any attachments, were either prepared by me or prepared under my direction or supervision,***
- ***The information set forth in this document, and any attachments, is, to the best of my knowledge and belief, true, accurate, and complete,***
- ***I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties under the CARS program, suspension or revocation of continued participation in the CARS program, as well as fines and/or imprisonment.***

DATE: _____, 2009

SALVAGE AUCTION

_____
(signature)

_____
(print name)

_____
(title)

_____
(contact phone and e-mail)

Privacy Act Statement

This notice is provided pursuant to the Privacy Act of 1974, 5 USC § 552a: This information is solicited under the authority of Public Law 111-32, 123 Stat. 1859. Furnishing the information is voluntary, but failure to provide all or part of the information may result in disapproval of a request for a credit on this purchase or lease transaction under the Cars Program. The principal purposes for collecting the information are to ensure proper disposal of trade-in vehicles, to prevent, identify and penalize fraud in connection with the Program, and to update an existing government database of Vehicle Identification Numbers. Other routine uses are published in the Federal Register at 65 F.R. 19476 (April 11, 2000), available at: www.dot.gov/privacy.

Paperwork Reduction Act Burden Statement

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Issued on: July 23, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

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