

NADA Fact Sheet Regarding Clunkers Scrappage Value

Press reports regarding a recently filed lawsuit have generated several inquiries on a “Cash for Clunkers” (CARS) issue – specifically, disposition of the sales proceeds (“scrappage value”) for clunkers “traded-in” under the CARS program.

There are four official sources containing guidance on this matter: the CARS statute, the CARS regulations, NHTSA’s CARS-related interpretive statements on its website, and a recorded statement from a high-ranking NHTSA official.

The CARS statute¹

The CARS statute provides that NHTSA’s rules must “require dealers to disclose to the person trading in an eligible trade-in vehicle the best estimate of the scrappage value of such vehicle” and “permit the dealer to retain \$50 of any amounts paid to the dealer for scrappage of the automobile as payment for any administrative costs to the dealer associated with participation in the Program.”

The CARS regulations²

Implementing the first statutory mandate, NHTSA’s regulations require dealers to provide customers with a “best estimate of the scrappage value of the (clunker)” on the “Summary of Sale or Lease” worksheet for each transaction. Dealers typically obtained such estimates by contacting recyclers, processors, or salvage auctions.

Regarding the second statutory mandate, NHTSA’s regulations state that, “...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.”

NHTSA’s CARS-related interpretive statements

On its CARS website, NHTSA provided the following Q & A’s:

Does the CARS Act or regulation require the dealer refund to the consumer the difference between the actual amount the dealer receives in scrap value of the trade-in vehicle or the best estimate amount previously given to the consumer if the actual value ends up being higher than the best estimate?

NO. The CARS Act and regulation require the dealer to disclose to a purchaser trading in an eligible vehicle the dealer’s **best estimate** of the scrap value of the trade-in vehicle. The rule allows the dealer to retain \$50 of the estimated scrap value to reimburse the dealer for administrative costs. If the dealer makes its best estimate of the value of the trade-in vehicle and discloses that best estimate to the purchases prior to the sale, the CARS Act and regulation do not require the dealer to later refund the difference in price if it turns out the dealer subsequently is able to get a higher scrap value. However, the dealer’s estimate to the consumer must be made in **good faith**.³

¹ To read the CARS law, see <http://www.cars.gov/files/official-information/law.pdf>

² To read the CARS regulation, see <http://www.cars.gov/files/official-information/rule.pdf>

³ <http://www.cars.gov/dealersupport/faq>

Do I [the consumer] get any money for my trade in vehicle in addition to the CARS credit?

YES. The law requires your trade-in vehicle be destroyed. The dealer must disclose to you the scrap value of your vehicle. The dealer is entitled to keep up to \$50 of the scrap value for administrative fees. You are entitled to negotiate about who keeps the remaining scrap value. For example, you may use that money toward the price of your new car separate from the CARS credit.⁴

Statement by a NHTSA Associate Administrator during a NADA Webinar

Dan Smith, NHTSA's Associate Administrator for Enforcement, stated on July 27, 2009 during a NADA CARS webinar that:

"[t]he statute is clear here again that the dealer may retain \$50 of that amount [scrap value] for administrative costs. We've had consumers writing in saying, 'OK, but I get to keep the rest, correct?' And we've had dealers writing in saying 'I get to keep the rest.' The reality is, what we're saying is what the statute says, that the dealer clearly gets to keep \$50 of that scrap value for administrative costs. It does not say the dealer cannot retain the rest. It does not say that the dealer must retain the rest. It simply leaves that open for discussion with the consumer."

Conclusion

Based upon the foregoing, NADA believes that a proper reading of both the CARS statute and NHTSA's interpretations of that statute is that the disposition of any scrap value over \$50 was subject to negotiation by the parties.

NADA's position is based upon the following analysis and arguments:

- A plain reading of the statute shows that the authority for dealers to retain \$50 of the scrap value amount was specifically meant to cover the dealer's "administrative costs" associated with applying for the \$3500/\$4500 CARS program reimbursements. However, dealers participating in the program clearly had to incur other costs that were not administrative (such as killing the engine and storing the vehicle). Indeed, the CARS regulation required dealers to take these steps.
- The statute is silent on the disposition of the scrap value beyond the \$50 to the dealer for administrative costs.
- NHTSA, the agency charged with implementing the CARS statute, issued guidance for dealers, both verbally and on their "Dealer Support" website, stating that disposition of the scrap value above \$50 was negotiable between the customer and the dealer. NHTSA's guidance was consistent with every other trade-in deal.
- One reason the CARS statute included a requirement that dealers provide a good faith estimate of the scrap value was to ensure that consumers had the information they needed if they wished to engage in a negotiation over those amounts.

⁴ <http://www.cars.gov/faq>