

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.213 is amended by revising S5.5.2(k)(5) to read as follows:

§ 571.213 Standard No. 213, child restraint systems.

* * * * *

S5.5.2 * * *

(k) * * *

(5) If a child restraint system is equipped with a device that deactivates the passenger-side air bag in a vehicle when and only when the child restraint is installed in the vehicle and provides a signal, for at least 60 seconds after deactivation, that the air bag is deactivated, the label specified in Figure 10 may include the phrase "unless air bag is off" after "on front seat with air bag."

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3. In § 571.213, paragraph S5.5.2(l) is revised to read as follows:

§ 571.213 Standard No. 213; child restraint systems.

* * * * *

(l) An installation diagram showing the child restraint system installed in:

(1) A seating position equipped with a continuous-loop lap/shoulder belt; and

(2) A seating position equipped with only a lap belt, as specified in the manufacturer's instructions.

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Issued on September 22, 1998.

Ricardo Martinez,

Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[NHTSA-98-4438]

RIN 2127-AG83

Odometer Disclosure Requirements; Exemptions

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This document amends an exemption from the odometer disclosure

requirements for vehicles "ten years old or older" to clarify that the term "years" refers to "model years." 49 CFR

580.17(a)(3). The rule also amends the exemption by including a formula for calculating the most recent model year to which the exemption applies.

The agency is taking this action following its consideration of comments received from the public on the interim final rule that was published in the **Federal Register** on September 11, 1997. 62 FR 47763, Sept. 11, 1997.

This document is published as a final rule to be effective on its publication in the **Federal Register**.

DATES: This rule is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT:

Eileen Leahy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5219, Washington, DC 20590 (Telephone: 202-366-5263).

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1997, the National Highway Traffic Safety Administration (NHTSA) published in the **Federal Register** an interim final rule, 62 FR 47763, that repromulgated the exemptions to the odometer disclosure requirements of 49 CFR Part 580 under the new authority provided by Section 332 of the Transportation and Related Agencies Appropriations Act for Fiscal Year 1997. That notice also solicited public comment on the exemptions themselves. In response to that notice, the agency received comments from the following entities: the State of South Dakota Department of Revenue; the National Auto Auction Association ("NAAA"); ADT Automotive, Inc. ("ADT") (an auto auction owner/operator); the Colorado Independent Automobile Dealers Association ("CIADA"); the State of Tennessee Department of Safety, Titling & Registration Division; the State of Idaho Transportation Department; the State of Texas Department of Public Safety; the State of Washington Department of Licensing; the Secretary of State of the State of Illinois; the Colorado Department of Public Safety; the Oklahoma Tax Commission of the State of Oklahoma; the Oregon Independent Auto Dealers Association ("OIADA"); the State of Georgia Department of Revenue, Motor Vehicle Division; and the State of California Department of Motor Vehicles. For convenience, the commenters that are state motor vehicle administrators or titling agencies will be referred to simply by the name of the state; and state agency commenters

collectively will be referred to as "the States" or "the State commenters."

Discussion

The comments focused on a single area of concern: the confusion that exists about how to apply the exemption for vehicles "ten years old or older." 49 CFR 580.17(a)(3). Of the fourteen commenters, seven (NAAA, ADT, ID, CIADA, OIADA, Oklahoma and Georgia) expressed the view that there was a need to make a change to clear up existing confusion; while one (California) stated that changing the wording to "ten model years or older" instead of ten years old or older would have only a minimal impact, and two (Colorado and Washington State) stated that changing the language of the regulation would have no impact on their operations. Texas opposed changing the number of years from ten. Illinois, South Dakota and Tennessee opposed making any change to the status quo.

None of those advocating an amendment suggested a change in the age that would qualify a vehicle for the exemption. However, all of them expressed a need to clear up confusion about when a vehicle becomes "10 years old" and thus eligible for the exemption from the odometer disclosure requirements, either by adding language to the rule, or by changing the agency's interpretation setting forth the formula to be applied to decide which vehicles are exempt. Three commenters, NAAA, ADT and Idaho, supported a change of the wording of the exemption, to "10 model years old or older." CIADA and OIADA advocated that NHTSA revise its interpretation of the exemption, from "current calendar year minus 10 equals the first model year for [which] a vehicle is exempt" to "current calendar year minus 11 equals the first model year for [which] a vehicle is exempt."

Two states, Oklahoma and Georgia, suggested that the best means of eliminating the confusion that currently exists concerning the coverage of the exemption would be to include the method of calculating the newest model year to which the exemption would apply in the language of the exemption itself, without changing the words now used to describe qualifying vehicles: ten years old or older.

Upon evaluating the comments, NHTSA concludes that the best way to ensure that the exemption is understood correctly and applied uniformly is to include the method of calculation as part of the exemption, as Oklahoma and Georgia suggested. In this way, the means of calculating the model year to which the exemption applies will be

readily available to anyone by reading the regulation, without having to go to any outside source, such as the agency's interpretation letters, for further information. Accordingly, the agency has decided to include in section 580.17(a)(3) a statement that the current calendar year minus 10 equals the most recent model year that is exempt from disclosure requirements.

After considering all of the comments, the agency has also decided to amend section 580.17(a)(3) by changing the words "vehicles 10 years old or older" to "vehicles 10 model years old or older." Changing "year" to "model year" does not effect a change from the applicable NHTSA interpretations, which conclude that eligibility for the exemption is to be based on a vehicle's model year rather than on its actual chronological age based on the time that has elapsed since its date of production.

In the rule as amended today, the formula announced in that interpretation remains the same. The formula arrives at the most recent model year (i.e., the newest vehicles) to which the exemption applies by subtracting ten model years from the current calendar year. For example, during calendar year 1998 (i.e., from January 1 through December 31, 1998), vehicles with a model year designation of 1988 or earlier are exempt from the odometer disclosure requirements: $1998(\text{current calendar year}) - 10 = 1988$ (most recent model year exempt).

Some commenters expressed concern that a formula that mixes model year and calendar year might be confusing. However, the agency has decided, after considering the alternatives, that this method is actually easier to apply, because it avoids the need to determine the date on which the model year begins (which, as some commenters pointed out, can change from year to year, or from manufacturer to manufacturer) or to ascertain the date on which an individual vehicle was produced. Assigning the current calendar year as the base year means that the states do not have to ascertain the beginning dates of every manufacturer's model year before calculating whether a particular vehicle is ten years old within the meaning of the exemption; using the calendar year as the base also makes it easier to administer the exemption because it eliminates potential confusion arising from variations among the states in which month they use as the beginning date of the vehicle registration year. Likewise, making the exemption available by whole model year rather than according to the vehicle's actual chronological age based on date of production means that states

and others involved in processing vehicle transfers will not need to take the time to ascertain the date a vehicle was produced in order to decide whether the exemption applies.

By making no change in the substance of the exemption, this rule also addresses the concerns of several state commenters who opposed making any change in the language of the regulation because they believe that this would result in a change in the scope of the exemption, which would impose burdens in terms of costly changes in computer systems, retraining of employees, and re-educating the public. To the contrary, by including the formula in the rule, the amendment should clear up the apparent confusion about which vehicles are in fact entitled to the exemption. Under both the old wording (as elaborated in NHTSA's interpretations) and the wording adopted in this rule, model year 1988 is the most recent model year that is exempt from odometer disclosure during calendar year 1998.

The only circumstance in which a state would have to make changes such as altering the computer system or retraining employees would be if the state had not previously been performing the calculation correctly. NHTSA believes that there are only three or four states in which improper calculation of the exemption is a problem; and that even in those states, the erroneous application of the exemption is often localized in some Department of Motor Vehicles branch offices rather than being statewide. In the latter case, the only action that the state would need to take is retraining its employees; no changes to its titling system would be necessary. The agency believes that the positive impact that the new rule will have—improving the efficiency of the process of titling vehicles by eliminating state-to-state variation in the applicability of the ten-year-old vehicle exemption—more than outweighs the small burden that may be incurred by a handful of states.

The agency decided not to adopt the suggestion of CIADA to change the calculation from "current calendar year minus 10" to "current calendar year minus 11." CIADA correctly points out that this change would ensure that only vehicles whose chronological age (based on date of manufacture) is at least 10 years old are exempt from the disclosure requirements. However, the drawback of the CIADA proposal is that it is a change from the previous NHTSA interpretation and, as such, would require all the states to change their current systems for determining which vehicles are exempt. Such a change would, as

pointed out above, require expenditure of resources for retraining employees, changing computer systems and educating the public. It would also be likely to continue the confusion that apparently exists about the proper method of calculating the exemption. NHTSA concludes that the benefit to be realized from requiring disclosure for a relatively small population of additional vehicles is small and is far outweighed by the costs that would be incurred by the states in implementing this proposal.

Finally, the agency acknowledges the concerns of a number of the state commenters who opposed adding the words "model year" to the exemption. The major concerns expressed about this change were that it would create, rather than reduce, confusion about how to apply the exemption; and that it would require states, even those who are properly applying the current exemption according to NHTSA's interpretation, to make costly expenditures to re-educate their staff and the public and to change their computer systems. As one commenter said, this appears to penalize those states that were applying the exemption properly.

In response to these expressions of concern, NHTSA wishes to reiterate that the changes it is making today will not require those states that are already applying the exemption properly to alter their current approach. The purpose of this rule is to make clear the law that was already in effect for those who have not understood it correctly. The addition of the words "model year" to the exemption simply makes explicit in the wording of the exemption itself that which was already implied (as evidenced by NHTSA's interpretation): that the determination of whether a vehicle is exempt is to be based on the model year of the vehicle rather than its chronological age. Contrary to the fears expressed by some commenters, this approach does not require a state titling office, or anyone else involved in the transfer of a motor vehicle, to ascertain the vehicle's actual date of manufacture to determine whether it is exempt.

Statutory Authority

The agency published the interim final rule under the authority of Section 332 of the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1997, P.L. 104-205. Section 332 provided that funds provided by the Act could be used for the purpose of permitting exemptions from the odometer disclosure requirements of Part 580.

Subsequently, Congress addressed the issue of exemptions more completely in the Transportation Equity Act for the 21st Century, P.L. 105-178 (TEA 21). To resolve any lingering uncertainties about the validity of exemptions issued under Part 580, Section 7105(b) of TEA 21 amended Section 32705(a) of title 49, United States Code, by adding the following new paragraph:

(5) The Secretary may exempt such classes or categories of vehicles as the Secretary deems appropriate from these requirements. Until such time as the Secretary amends or modifies the regulations set forth in 49 CFR 580.6, such regulations shall have full force and effect.

In making final the transition from section 580.6 to section 580.17, which was initiated by the interim final rule, the agency's repromulgation of the exemptions implements the provisions of paragraph 32705(a)(5). The amendments relating to "model years," and to the method for calculating the most recent model year to which an exemption applies, are made under the authority provided by the paragraph to amend or modify exemptions.

Federalism Assessment

The agency has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The final rule merely clarifies the scope of the existing exemption from the odometer disclosure requirements, and does not alter the effect on the states of existing statutory or regulatory requirements.

Rulemaking Analyses

A. Executive Order 12886 and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rule and determined that it is neither "major" nor "significant" within the meaning of Executive Order 12866 or of Department of Transportation regulatory policies and procedures. Because the agency estimates that this rule would not have a significant impact, it has not prepared a regulatory evaluation.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action under the Regulatory Flexibility Act. I certify that this action will not have substantial economic impact on a substantial number of small entities. Because it merely clarifies an existing exemption from agency regulations, it does not affect the impact of those regulations on small businesses.

C. National Environmental Policy Act

The agency has analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment. Accordingly, it has not prepared an environmental impact statement.

D. Paperwork Reduction Act

The final rule is not a collection of information as that term is defined by OMB in 5 CFR part 1320. It clarifies one of the existing exemptions to the odometer disclosure requirements in 49 CFR part 580. That exemption does not require the collection of any information. The information collection requirements established by part 580 have been approved by OMB (OMB 2127-0047).

E. Civil Justice Reform Act

This rule will not have any retroactive effect. States may not adopt laws on disconnecting, altering or tampering with an odometer with intent to defraud that are inconsistent with 49 U.S.C. Chapter 327. 49 U.S.C. Chapter 327 does not exempt persons from complying with disconnecting, altering or tampering with an odometer with an intent to defraud. Agency regulations issued under 49 U.S.C. Chapter 327 are subject to judicial review pursuant to 5 U.S.C. 704. There is no requirement for a petition for reconsideration or other administrative proceeding before a party may file a suit in court challenging regulations promulgated under Chapter 327.

List of Subjects in 49 CFR Part 580

Consumer protection, Motor vehicles, Odometers.

In consideration of the foregoing, the interim rule amending 49 CFR part 580 that was published at 62 FR 47763 on September 11, 1998, is adopted as a final rule with the following change:

PART 580—ODOMETER DISCLOSURE REQUIREMENTS

1. Revise the authority citation for Part 580 to read as follows:

Authority: 49 U.S.C. 32705; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

2. Amend § 580.17 to revise paragraph (a)(3) to read as follows:

§ 580.17 Exemptions.

* * * * *

(a) * * *

(3) A vehicle that was manufactured in a model year beginning at least ten years before January 1 of the calendar year in which the transfer occurs; or

Example to paragraph (a)(3): For vehicle transfers occurring during calendar year 1998, model year 1988 or older vehicles are exempt.

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Issued on: September 24, 1998.

Ricardo Martinez,

Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 2, 10, 13, 14, 15, 16, 17, 21, 22, and 23

RIN 1080-AF07

An Update of Addresses and OMB Information Collection Numbers for Fish and Wildlife Service Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) amends the regulations for wildlife and plant permits to update the addresses for submission of permit applications. Recently revised Office of Management and Budget information collection numbers also are provided.

DATES: This rule is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Enright, Division of Endangered Species, (703) 358-2106.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to update the addresses to send wildlife and plant permit applications for processing by the Service. The Service has variously moved office locations, transferred program responsibility to other Service offices, or delegated authority from the Washington office to its regional offices. We have delegated some permits for native species listed under the Endangered Species Act to the Regional Directors. Regional offices handle migratory bird permits, bald and golden eagle permits, import/export licenses, and permits for exception to designated ports. Permits for international movement of all endangered and threatened species and all activities affecting nonnative endangered and threatened species, permits under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), injurious wildlife permits, and permits under the Wild Bird Conservation Act remain with the Office of Management Authority in Washington.