

confidential location information on a separate sheet from the other Tier II information (which will be disclosed to the public), and attach the Confidential Location Information Sheet to the other Tier II information. Indicate any attachments you are including.

4. Section 370.43 is revised as follows:

§ 370.43 What codes are used to report Tier I and Tier II inventory information?

(a) Except as provided in paragraph (d) of this section, you must use the following codes to report the maximum amount and average daily amount when reporting Tier I or Tier II inventory information:

Range codes	Weight range in pounds	
	From	To
01	0	99.
02	100	499.
03	500	999.
04	1,000	4,999.
05	5,000	9,999.
06	10,000	24,999.
07	25,000	49,999.
08	50,000	74,999.
09	75,000	99,999.
10	100,000	499,999.
11	500,000	999,999.
12	1,000,000	9,999,999.
13	10,000,000	Greater than 10 million.

Note to paragraph (a): To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

(b) Your SERC or LEPC may provide other range codes for reporting maximum amount and average daily amount, or may require reporting of specific amounts. You may use your SERC's or LEPC's range codes (or specific amounts) provided the ranges are not broader than the ranges in paragraph (a) of this section.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 1, 10, 11, 12, 13, 14

[Docket No. USCG-2004-17914]

RIN 1625-AA16

Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to Domestic Endorsements

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meetings; request for comments; Correction.

SUMMARY: On August 2, 2011 (76 FR 46217), the Coast Guard published a notice of public meetings and request for comments on a supplemental notice of proposed rulemaking (SNPRM) entitled "Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to Domestic Endorsements." The incorrect publication date of the SNPRM was cited. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: Mr. Rogers Henderson, Maritime Personnel Qualification Division, U.S. Coast Guard, telephone 202-372-1408, e-mail Rogers.W.Henderson@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: On August 2, 2011 (76 FR 46217), the Coast Guard published a notice of public meetings and request for comments on a supplemental notice of proposed rulemaking (SNPRM) entitled "Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to Domestic Endorsements." Subsequent to the publication of that notice, the Coast Guard discovered that the publication date of the SNPRM on page 46217 was incorrect.

Correction

In the notice (FR Doc. 2011-19459) published on August 2, 2011 (76 FR 46217) make the following correction. On page 46217, in the first sentence of the second paragraph in the third column, the date should read "August 1, 2011" instead of "August 1, 2001."

Dated: August 2, 2011.

Erin Ledford,

LCDR, Deputy, Office of Regulations and Administrative Law.

[FR Doc. 2011-19985 Filed 8-5-11; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA-2011-0109; Notice 1]

Petition for Approval of Alternate; Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of initial determination.

SUMMARY: The State of Florida has petitioned for approval of alternate odometer requirements to certain requirements under Federal odometer law. NHTSA preliminarily grants Florida's petition regarding proposed alternate disclosure requirements for vehicle transfers involving casual or private sales. NHTSA preliminarily denies Florida's petition regarding proposed alternate disclosure requirements for sales involving licensed dealers. NHTSA preliminarily denies Florida's petition regarding proposed alternate disclosure requirements for sales of leased vehicles.

DATES: Comments are due no later than September 7, 2011.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number NHTSA-2010-####] by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- **Fax:** 202-493-2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted

without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://DocketInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Otto Matheke, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building W41–227, Washington, DC 20590 (Telephone: 202–366–5263) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Introduction

Federal odometer law, which is largely based on the Motor Vehicle Information and Cost Savings Act (Cost Savings Act)¹ and Truth in Mileage Act of 1986, as amended (TIMA),² contains a number of provisions to limit odometer fraud and assure that the buyer of a motor vehicle knows the true mileage of the vehicle. The Cost Savings Act requires the Secretary of Transportation to promulgate regulations requiring the transferor (seller) of a motor vehicle to provide a written statement of the vehicle's mileage registered on the odometer to the transferee (buyer) in connection with the transfer of ownership. This written statement is generally referred to as the odometer disclosure statement. Further, under TIMA, vehicle titles themselves must have a space for the odometer disclosure statement and States are prohibited from licensing vehicles unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Titles must also be printed by a secure process. With respect to leased vehicles, TIMA provides that the regulations promulgated by the Secretary require written mileage disclosures be made by lessees to lessors upon the lessor's transfer of the ownership of the leased vehicle. Lessors must also provide

written notice to lessees about odometer disclosure requirements and the penalties for not complying with them. Federal law also contains document retention requirements for odometer disclosure statements.

TIMA's motor vehicle mileage disclosure requirements apply in a State unless the State has alternate requirements approved by the Secretary. The Secretary has delegated administration of the odometer program to NHTSA. Therefore, a State may petition NHTSA for approval of such alternate odometer disclosure requirements.

Seeking to implement an electronic vehicle title transfer system, the State of Florida has petitioned for approval of alternate odometer disclosure requirements. In 2009, NHTSA reviewed certain requirements for alternative state programs and approved the Commonwealth of Virginia's alternate odometer disclosure program. 74 FR 643, 650 (January 7, 2009). Florida's program is similar to Virginia's program in some respects and appears broader in scope than Virginia's in others. Like Virginia's program, the scope of Florida's proposed program does not include transactions involving an out-of-state party. Unlike Virginia's program, Florida's proposed program encompasses transactions involving leased vehicles and odometer disclosures by power of attorney. In addition, Florida's proposed program would use different mechanisms to document mileage than Virginia's.

As discussed below, NHTSA's initial assessment is that the portions of Florida's proposed program involving private sales satisfy the requirements for approval under Federal odometer law, while other portions involving transfers between individual owners and dealers, transfers of leased vehicles and transfers in which a power of attorney is used for purposes of mileage disclosure, do not.

II. Statutory Background

NHTSA recently reviewed the statutory background of Federal odometer law in its consideration and approval of Virginia's petition for alternate odometer disclosure requirements. *See* 73 FR 35617 (June 24, 2008) and 74 FR 643 (January 7, 2009). The statutory background of the Cost Savings Act and TIMA and the purposes behind TIMA, as they relate to odometer disclosure, other than in the transfer of leased vehicles and vehicles subject to liens where a power of attorney is used in the disclosure, are discussed at length in NHTSA's Final Determination granting Virginia's petition. 74 FR 643, 647–48. A brief summary of the

statutory background of Federal odometer law and the purposes of TIMA, including odometer disclosure requirements for leased vehicles, follows.

In 1972, Congress enacted the Cost Savings Act, among other things, to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of buyers with respect to the sale of motor vehicles having altered or reset odometers. *See* Public Law 92–513, § 401, 86 Stat. 947, 961–63 (1972). The Cost Savings Act required that, under regulations to be published by the Secretary, the transferor of a motor vehicle provide a written vehicle mileage disclosure to the transferee, prohibited odometer tampering and provided for enforcement. *See id.*, § 408.³ In general, the purpose for the disclosure was to assist buyers to know the true mileage of a motor vehicle.

A major shortcoming of the odometer provisions of the Cost Savings Act was their failure to require that the odometer disclosure statement be on the vehicle's title. In a number of States, the disclosures were on separate documents that could be easily altered or discarded and did not travel with the title. *See* 74 FR 644. Consequently, the disclosure statements did not necessarily deter odometer fraud employing altered documents, discarded titles, and title washing. *Id.*

Another significant shortcoming involved leased vehicles. The lessor is considered the transferor of the vehicle in leased vehicle sales. Titles to leased vehicles are often transferred without the lessor obtaining possession of the vehicle. Lessors without direct access to their vehicles had to rely solely on their lessees to provide actual mileage information. However, lessees had no obligation to provide actual mileage information to lessors upon vehicle transfer. This environment facilitated roll backs of odometers.

³ Section 408 stated:

(a) Not later than 90 days after the date of enactment of this Act, the Secretary shall prescribe rules requiring any transferor to give the following written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle:

(1) Disclosure of the cumulative mileage registered on the odometer.

(2) Disclosure that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled.

Such rules shall prescribe the manner in which information shall be disclosed under this section and in which such information shall be retained.

(b) It shall be a violation of this section for any transferor to violate any rules under this section or to knowingly give a false statement to a transferee in making any disclosure required by such rules.

¹ Public Law 92–513, 86 Stat. 947, 961 (1972).

² Public Law 99–579, 100 Stat. 3309 (1986).

Congress enacted TIMA in 1986 to address the Cost Savings Act's shortcomings. It amended the Cost Savings Act by adding section 408(d) to prohibit States from licensing vehicles unless the new owner (transferee) submitted a title from the seller (transferor) containing the seller's signed and dated vehicle mileage statement. *See* Public Law 99–579, 100 Stat. 3309 (1986); 74 FR 644 (Jan. 7, 2009). TIMA also prohibits the licensing of vehicles, for use in any State, unless the title issued to the transferee is printed using a secure printing process or other secure process, indicates the vehicle mileage at the time of transfer and contains additional space for a subsequent mileage disclosure by the transferee when it is sold again. *Id.*

TIMA also added section 408(e) to the Cost Savings Act to require the Secretary to issue regulations regarding odometer disclosures for leased vehicles.⁴ The regulations promulgated by the Secretary were to require written mileage disclosures by lessees to lessors upon the lessor's transfer of the ownership of the leased vehicle. Lessors must also provide written notice to lessees about the odometer disclosure requirements and the penalties for not complying with them. Federal law also contains document retention requirements for odometer disclosure statements. TIMA required lessors to retain disclosures made by lessees for at least four years following the date that the lessor transfers that vehicle.⁵ *Id.*

TIMA added a provision to the Cost Savings Act allowing States to have alternate odometer disclosure requirements with the approval of the

Secretary of Transportation. Section 408(f) of the Cost Savings Act states that the odometer disclosure requirements of subsections (d) and (e)(1) shall apply in a State unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. Section 408(f)(2) further states that the Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

In 1988, Congress amended section 408(d)(1) of the Cost Savings Act to permit the use of a secure power of attorney for purposes of odometer mileage disclosure in circumstances where the title was held by a lienholder, if allowed by state law. Public Law 100–561 § 40, 102 Stat. 2805, 2817 (1988). Congress required NHTSA to issue a rule ensuring that disclosures be made on the power of attorney document of the actual mileage at the time of transfer and that the mileage be restated exactly by the person exercising power of attorney on the title in the space therefor. *Id.* The rule, consistent with the purposes of the Act and the need to facilitate enforcement thereof, was to prescribe that the power of attorney form be issued by the State to the transferee using a secure process, as provided for titles, and provide for retention of a copy with the original submitted back to the State. *Id.* In 1989, NHTSA implemented the 1988 statutory amendments by promulgating amendments to the odometer disclosure regulations, providing that a transferor may give a secure power of attorney to a transferee for the purpose of mileage disclosure in two circumstances—when the transferor's title is physically held by a lienholder or when the title is lost. In either instance, use of a power of attorney document for mileage disclosure is permissible only if otherwise permitted by State law.⁶

In 1990, Congress again amended section 408(d) of the Cost Savings Act.⁷ The amendment provided that the rule

adopted under the 1988 amendment not require that a vehicle be titled in the State in which the power of attorney was issued and addressed retention of powers of attorneys by States. *See* Public Law 101–641 § 7(a), 104 Stat. 4654, 4657 (1990).⁸

In 1994, in the course of the recodification of various laws pertaining to the Department of Transportation, the Cost Savings Act, as amended, was repealed, reenacted and recodified without substantive change. *See* Public Law 103–272, 108 Stat. 745, 1048–1056, 1379, 1387 (1994). The odometer statute is now codified at 49 U.S.C. 32701 *et seq.* In particular, Section 408(a) of the Cost Savings Act was recodified at 49 U.S.C. 32705(a). Sections 408(d) and (e), which were added by TIMA (and later amended), were recodified at 49 U.S.C. 32705(b) and (c). The provisions pertaining to approval of State alternate motor vehicle mileage disclosure requirements were recodified at 49 U.S.C. 32705(d).

III. Statutory Purposes

As discussed above, the Cost Savings Act, as amended by TIMA in 1986, states that NHTSA “shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the [NHTSA] determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be.” (Subsections 408(d), (e) of the Cost Savings Act were recodified to 49 U.S.C. 32705(b) and (c)). In light of this provision, we now turn to our interpretation of the purposes of these subsections, as germane to Florida's petition.⁹

Our Final Determination granting Virginia's petition for alternate odometer disclosure requirements identified the purposes of TIMA germane to petitions for approval of odometer disclosure requirements that did not include disclosures involving reassignment documents, leased vehicles, or disclosures by power of attorney.¹⁰ 74 FR 643, 647–48 (January

⁴ TIMA amended the Cost Savings Act to add section 408(e):

(e)(1) In the case of any leased motor vehicle, the rules under subsection (a) shall require written disclosure regarding mileage to be made by the lessee to the lessor upon the lessor's transfer of ownership of the leased motor vehicle.

(2) Under such rules, the lessor of a leased motor vehicle shall provide written notice to the lessee regarding

(A) Such mileage disclosure requirements, and

(B) The penalties for failure to comply with them.

(3) The lessor shall retain the disclosure made by any lessee with respect to any motor vehicle under paragraph (1) For a period of at least 4 years following the date the lessor transfers that vehicle.

(4) For purposes of this section, if the lessor transfers ownership of any leased motor vehicle without obtaining possession of such vehicle, the lessor may, in making the disclosure required by subsection (a), indicate on the title the mileage disclosed by the lessee under paragraph (1) Unless the lessor has reason to believe that such disclosure by the lessee does not reflect the actual mileage of the vehicle.

⁵ Regulations implementing TIMA were published on August 5, 1988. 53 FR 29864. Federal regulations require lessors to retain odometer disclosure statements received from lessees for a period of five years. 49 CFR 580.8(b).

⁶ Regulations implementing the amendment were published on August 30, 1989. 54 FR 35879. The regulations addressed numerous aspects of disclosure by power of attorney, including the form, certification by the person exercising the power of attorney, and access of the transferee to prior title and power of attorney documents.

⁷ Section 7(a) of Public Law 101–641 directed that the third sentence of subsection (d)(2)(C) be amended. However, there was no subsection (d)(2)(C) in section 408. The amendment was restated as amending the third sentence of subsection (d)(1)(C) as the probable intent of Congress. This amendment is currently codified at 49 U.S.C. 32705(b)(2)(A).

⁸ Regulations implementing this amendment were published on September 20, 1991. 56 FR 47681.

⁹ Florida petitioned NHTSA requesting approval of alternate odometer disclosure requirements. Florida's initial petition, dated December 21, 2009, set forth Florida's initial request. Florida submitted a second, supplemental petition to NHTSA on October 5, 2010, that restated Florida's request in greater detail and provided more specific information on Florida's current e-Title and odometer disclosure program and its proposed program. Together, the petitions are identified herein as “petition” or “the petition.”

¹⁰ Since Virginia's program did not cover disclosures involving leased vehicles or disclosures by power of attorney, the purposes of Sections

7, 2009). In addition, because the Florida proposal encompasses reassignment documents, transfers of leased vehicles, and disclosures by power of attorney, we identify the purposes of TIMA relevant to odometer disclosures for leased vehicles (see Initial Determination on Wisconsin's petition for alternate odometer disclosure requirements, 75 FR 20965, 20972–73 (Apr. 22, 2010)) and purposes of allowing for disclosures by power of attorney in limited circumstances.

A. TIMA's Purposes Relevant to Vehicle Transfers in the Absence of a Lease Agreement

One purpose of TIMA is to assure that the form of the odometer disclosure precludes odometer fraud. 74 FR 647. To prevent odometer fraud facilitated by disclosure statements that were separate from titles, TIMA required mileage disclosures to be on a secure vehicle title instead of a separate document. These titles also had to contain space for the seller's attested mileage disclosure and a new disclosure by the buyer when the vehicle was sold again. This discouraged mileage alterations on titles and limited opportunities for obtaining new titles with lower mileage than the actual mileage. *Id.* This concern applies to reassignment documents.¹¹

A second purpose of TIMA is to prevent odometer fraud by processes and mechanisms making odometer mileage disclosures on the title a condition of any application for a title, and a requirement for any title issued by a State. 74 FR 647. This provision was intended to eliminate or significantly reduce abuses associated with lack of control of the titling process. *Id.*

Third, TIMA sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. 74 FR 648. In furtherance of these purposes, paper titles (incorporating the disclosure statement) must be produced using a secure printing process or protected by "other secure process."¹² *Id.*

408(d)(2)(C) and 408(e) of the Cost Savings Act, as amended, were not germane and were not addressed in the notice approving the Virginia program. See 74 FR 647 n. 12.

¹¹ NHTSA amended 49 CFR 580.5(c) to preclude use of a separate reassignment form at the time of the first transfer, by a titled owner. See 56 FR 47684–85 (Sep. 20, 1991).

¹² Congress intended to encourage new technologies by including the language "other secure process." The House Report accompanying TIMA noted that "'other secure process' is intended to describe means other than printing which could securely provide for the storage and transmittal of title and mileage information." H.R. Rep. No. 99–833, at 33 (1986). "In adopting this language, the Committee intends to encourage new technologies which will provide increased levels of security for

A fourth purpose is to create a record of vehicle mileage and a paper trail. 74 FR 648. The underlying purposes of this record and paper trail were to better inform consumers and provide mechanisms for tracing odometer tampering and prosecuting violators. TIMA's requirement that new applications for titles include signed mileage disclosure statements on the titles from the prior owners creates a permanent record that is easily checked by subsequent owners or law enforcement officials. This record provides critical snapshots of vehicle mileage at every transfer, which are the fundamental links of this paper trail.

Finally, the general purpose of TIMA is to protect consumers by assuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. 74 FR 648.

B. TIMA's Purposes Relevant to Leased Vehicles

TIMA recognized that additional mechanisms were needed to assure accurate odometer disclosures for leased vehicles. In vehicle leases, the lessor typically retains ownership of the vehicle, but does not possess it. The lessor, as a transferor, must comply with Federal odometer disclosure requirements when it subsequently transfers title to a leased vehicle. However, prior to TIMA, lessees were not obligated by Federal odometer law to provide lessors with accurate odometer disclosure statements. TIMA addressed this issue, as discussed above. A number of purposes can be derived from TIMA's provisions, discussed above, relating to the transfer of ownership of leased vehicles.

One purpose of TIMA's leased vehicle provisions is to assure that lessors have the vehicle's actual odometer mileage at the time of transfer.

A second purpose of TIMA's leased vehicle provisions is to assure that lessees provide lessors with an odometer disclosure statement.

A related purpose is to assure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information.

A fourth purpose is to set the ground rules for the lessors, providing for lessors to indicate the mileage provided by the lessee on the title, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

titles." *Id.* See also Cost Savings Act, as amended by TIMA, § 408(d), recodified at 49 U.S.C. 32705(b).

A fifth purpose of TIMA's leased vehicle provisions is to create records and a paper trail. This is an expansion of the fourth general purpose of TIMA stated above. The paper trail includes the written, dated and signed odometer disclosure statement by the lessee. Unlike odometer disclosure statements on vehicle titles that are filed with the State, a lessee's odometer disclosure statement is separate from the title and not filed with the State. Instead, the disclosure statement is sent to the lessor, who must retain a copy for at least five years. The retention of lessee odometer disclosure statements by lessors permits law enforcement officials to trace fraudulent disclosure statements back to lessees, if necessary.

Last, the overall purpose of TIMA's leased vehicle provisions, consistent with the general purposes of TIMA, is to ensure that there are valid representations of the vehicle's actual mileage at the time of transfer. See H.R. Rep. No. 99–833, at 33 (1986).

C. Mileage Disclosures by Power of Attorney

NHTSA's rule implementing TIMA provided that "[n]o person shall sign an odometer disclosure statement as both the transferor and the transferee in the same transaction."¹³ In general, this provision, which was intended to limit fraud, was not questioned. However, in instances when a lienholder holds title to a vehicle being sold this, as a practical matter, presented a considerable regulatory burden, because when a dealer bought a used vehicle, it would be required to go to the lienholder and obtain the title, and then go back to the seller so that the seller could record the mileage on the title. The last step often was difficult and could be avoided if the seller executes a power of attorney to the buyer authorizing the buyer to record the mileage upon receipt of the title.¹⁴

In 1988, Congress amended TIMA to provide for the limited use of powers of attorney for recording mileage, when the title is physically held by a lienholder at the time of the transfer and is authorized by State law. See Pipeline Safety Reauthorization Act of 1988 (PSRA) § 401, 15 U.S.C. 1988(d)(1) (1988). (Section 401 of the PSRA, as amended in 1990 (see below), was recodified at 49 U.S.C. 32705(b)(2)(A).) The amendment required NHTSA to issue a rule. The rule, which was to address the form and reasonable

¹³ 49 CFR 580.5(h); 53 FR 29464, 29477 (Aug. 5, 1988).

¹⁴ See 134 Cong. Rec. H10079 (daily ed. Oct. 12, 1988).

conditions of the limited power of attorney, was to ensure disclosure on the power of attorney document of the actual mileage at the time of transfer and ensure that such mileage will be restated exactly by the person exercising the power of attorney in the space referred to in TIMA. Further, consistent with the purposes of the Cost Savings Act as amended and the need to facilitate enforcement thereof, the rule was to prescribe the form of the power of attorney to be issued by the State to the transferee and for retention of a copy of such power of attorney. As amended in 1990, this statutory provision provided that the rule promulgated by NHTSA must require the person granted the power of attorney to retain a copy of the power of attorney form and submit the original form to the State along with a copy of the title showing the restatement of the mileage. The statute also permitted the agency to prescribe that the State retain the power of attorney and copy of the title for an appropriate period or that the State adopt alternative measures consistent with the purposes of the statute. The statute mandated that the rule not require that a vehicle be titled in the State in which the power of attorney was issued. Public Law 101-641, 104 Stat. 4654, 57 (Nov. 28, 1990).

In 1989, NHTSA implemented the PSRA by promulgating amendments to the odometer disclosure regulations.¹⁵ The rule provides that a transferor may give a secure power of attorney to a transferee for the purpose of mileage disclosure in two circumstances—when the transferor's title is physically held by a lienholder or when the title is lost.¹⁶ In either instance, use of a power of attorney document for mileage disclosure is permissible only if otherwise permitted by State law. In this rule, NHTSA narrowly amended its earlier rule prohibiting any party from signing an odometer disclosure statement as both the transferor and transferee in the same transaction to add an exception. The amendment allowed the same person to so sign the odometer disclosure statement if he or she satisfied the detailed, specific provisions on powers of attorney added to the regulations in 49 CFR 580.13 or 14. These provisions state the form and conditions of the power of attorney. Also, the power of attorney document must be issued by the State and be set forth by a secure process.¹⁷ While

providing for powers of attorney, NHTSA expressed concern that powers of attorney that allow a person to sign a disclosure as both the transferor and transferee result in only one party to the transaction being aware of the previous mileage disclosures, which could jeopardize the integrity of the paper trail—the evidence of rollbacks that Congress intended to enhance by enacting TIMA.¹⁸

A number of purposes can be derived from the statute directing NHTSA to issue a rule and the implementing rule.

One purpose was to provide limited exception(s) to a rule prohibiting a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, which had the effect of prohibiting the use of powers of attorney for purposes of recording mileage on titles of motor vehicles.¹⁹ More particularly, a purpose was to permit a power of attorney for disclosure of the odometer reading at the time of sale of a vehicle to be given by the seller to the buyer, in the limited situation when the owner's title is physically held by a lienholder at the time of the transaction and the power of attorney is allowed by State law.²⁰ Another limited situation in which a power of attorney may be used, as recognized in the implementing regulation, is where the title is not present because it has been lost by the person to whom it was issued by the State, if permitted by State law.²¹ In order for a power of attorney to be used in the lost title situation, the transferee (e.g., the dealer) must apply for the duplicate title on behalf of the transferor. Under these circumstances, a power of attorney is available to facilitate consumer vehicle sales transactions, but is not available in other than consumer sales transactions,

where the risk of fraud is considerably greater.²²

A second purpose was to assure that the form of the power of attorney document issued by a State precluded odometer fraud. While under the limited circumstances discussed above and if allowed under State law, with use of a power of attorney one person may sign the odometer disclosure on the title as both the transferor and transferee, to limit fraud, the power of attorney form must meet certain minimum requirements.²³ Congress specified that NHTSA would prescribe a form by rule. Under the rule, the form must be separated into part A, and if permitted by State law, B and C.²⁴

The transferor's power of attorney to the transferee for mileage disclosure must be on part A of a secure form issued by the State to the transferee.²⁵ Using this form, the transferor appoints the transferee his/her attorney-in-fact for the purpose of mileage disclosure. The form provides for written disclosure by the transferor to the transferee of the information that is stated on a vehicle title under 49 CFR 580.5 when ownership of the vehicle is transferred.²⁶ Among other things, there must be a space in part A for the transferor and transferee to sign the power of attorney form and print their names and a space for the transferor to disclose the mileage. Part A must also contain a reference to the Federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. The disclosure on part A of the power of attorney form is commonly made by the

²² The 1988 amendments did not modify the TIMA provisions relating to leased vehicles.

²³ Among these are the requirements of NHTSA's rule, 49 CFR 580.13 and 580.14.

²⁴ 49 CFR 580.13; see 54 FR 9812.

²⁵ 49 CFR 580.13; see 54 FR 9812.

²⁶ 49 CFR 580.13 requires the form to contain, in part A, a space for: (1) The odometer reading at the time of transfer; (2) the date of transfer; (3) the transferor's name and current address; (4) the transferee's name and current address; and (5) the vehicle make, model, year, body type, and vehicle identification number (VIN). Part A shall also contain a space for the transferor to certify that to the best of his knowledge either: (1) The odometer reading reflects the actual mileage; or (2) if the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or (3) if the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon with a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

¹⁸ 54 FR 9809, 9810 (March 8, 1989). As is self evident, ordinarily such a practice provides opportunities for fraud. See 54 FR 9812; 54 FR 35882.

¹⁹ As Congressman Whittaker noted, "we have drafted the amendment in a very narrow fashion." 134 Cong. Rec. H10079 (daily ed. Oct. 12, 1988).

²⁰ This does not include the practice of floor planning. Floor planning is a practice by which a financial institution will physically hold a title as security for financing, without formally filing or recording a security interest, on a vehicle offered for sale by a dealer. 54 FR 35885–35886. This also does not include a situation in which the lending institution that financed the vehicle's purchase is located in a state that requires the lienholder to hold the title as security, but the vehicle is registered in a different state, which allows the owner, rather than the lienholder to hold the title. Under the 1991 amendment to the Cost Savings Act, NHTSA considers the creation of another category of exempted transfers inappropriate.

²¹ 49 CFR 580.13, 54 FR 35883.

¹⁵ NHTSA issued an interim final rule on March 8, 1989 (54 FR 9809) and a final rule on August 30, 1989 (54 FR 35879).

¹⁶ 54 FR 35879 (Aug. 30, 1989).

¹⁷ See 49 CFR 580.4.

seller when he or she trades-in a vehicle at a dealer.

After part A of the power of attorney form has been used, part B may be executed when a vehicle addressed on part A is resold.²⁷ Part B of the secure power of attorney form, if permitted by State law, allows a subsequent transferee to give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the title, while maintaining the integrity of the first seller's disclosure. The disclosure required to be made by the transferor to the transferee for this transaction on part B of the power of attorney form tracks information required to be made by the transferor to the transferee on the title when ownership of a vehicle is transferred on a title under 49 CFR 580.5.²⁸ Among other things, the power of attorney must contain a space for the transferor to disclose the mileage to the transferee and sign and date the form, and a space for the transferee to sign and date the form.

Commonly, part B is used in the sale of a trade-in vehicle by a dealer. If for example, a dealer does not have possession of the title, because the vehicle was a trade-in and the lienholder has not yet released the title, or because the title was lost and the dealer has not yet obtained a duplicate title on behalf of the transferor who sold the vehicle to the dealer, the subsequent buyer of the used vehicle (the transferee) is permitted to give a power of attorney to the transferor/selling dealer to acknowledge the mileage disclosure on their behalf. This power of

attorney from the transferee to the transferor allows the transferor (who is the original seller's attorney in fact under Part A) to sign the title as both the transferor and transferee in the same transaction.²⁹ In addition, because the same person signs the title as the transferor and transferee, the appointment of the transferor as the transferee's attorney-in-fact must be made on part B of the same secure power of attorney form, issued by a State, upon which the transferor was appointed the attorney-in-fact by the original transferor on part A.³⁰ This form enables purchasers to examine the previously issued power of attorney for alterations, erasures, and other marks, and to learn the name of the prior owner without the additional cost of a title search. This is the same information that purchasers would receive if the title was not held by a lienholder since, under TIMA, the transferor is required to disclose mileage on the vehicle's title.

The secure power of attorney form with a part B must contain a certification in part C.³¹ To ensure that a person exercising a power of attorney under both sections 580.13 and 580.14 (parts A and B) is fully aware of his/her obligation and their liability for any action that is inconsistent with the power of attorney, the rule (§ 580.15) requires the completion, on part C, of a certification attesting that the signer has disclosed the mileage on the title document consistent with the mileage disclosed on the power of attorney form. The signer of part C also attests that he or she has examined the title, and that the mileage disclosure made on the title executed under the power of attorney is greater than the mileage previously stated on the title and any reassignment form.³²

The part C certification requirement need only apply to the subsequent sale situation (typically a trade-in) where the second purchaser's only link to the title will be the transferor (dealer). Thus, section 580.15 provides that the certification requirement applies only when the transferor is exercising a power of attorney for both the first sale and second sale customers, as provided

for in sections 580.13 and 580.14. If the title is present at the time of the second sale, the purchaser will be able to review the title himself/herself to assure that the mileage is entered in accordance with the initial transferor's power of attorney and is higher than the mileage appearing on the title and reassignment documents.

Finally, the State itself must issue the power of attorney form.³³

A third purpose was to set ground rules for transferors and transferees, providing that both parties provide all of the information and signatures required in parts A, and as applicable B, and C of the secure power of attorney form. This ensures that upon receipt of the first transferor's title, the transferee (typically a dealer) must complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the first transferor on the power of attorney form.

A fourth purpose was to prevent odometer fraud by establishing processes, mechanisms and conditions calculated to result in the disclosure of the actual mileage on the title.³⁴ As provided in the PSRA of 1988, NHTSA's rule is to ensure that transferors disclose the actual mileage at the time of the transfer on the power of attorney document and that persons exercising the power of attorney restate that mileage exactly on the title in the space provided. Toward these ends, one condition, required by the implementing rule, is inclusion of the printed names and signatures of the first transferor and the first transferee (typically a dealer) accompanying the mileage disclosure, as well as a statement of liability for fines for false statements. The transferor shall also certify on the power of attorney form that to the best of the transferor's knowledge, either: (1) The odometer reading reflects the actual mileage; or (2) if the transferor knows that the odometer reading reflects mileage in excess of the designed odometer limit, he shall include a statement to that effect; or (3) if the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon, and a warning notice to alert the transferee that a discrepancy exists

²⁷ 49 CFR 580.14.

²⁸ 49 CFR 580.14 requires part B of the form to contain a space for the mileage disclosure from the transferor to the transferee, and contain space for the following information: (1) The odometer reading at the time of the transfer; (2) the date of the transfer; (3) the transferor's name and current address; (4) the transferee's name and current address; and (5) the vehicle make, model year, body type, and VIN. Part B shall also contain a reference to the Federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Part B shall also contain a space for the transferor to certify that to the best of his knowledge either: (1) The odometer reading reflects the actual mileage; or (2) if the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or (3) if the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon, with a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

²⁹ 49 CFR 580.14.

³⁰ This is done pursuant to 49 CFR 580.13.

³¹ The part C certification shall include space for: (1) The signature and printed name of the person exercising the power of attorney; (2) the address of the person exercising the power of attorney; and (3) the date of the certification.

³² As a practical matter, the mileage entered by the dealer could never be lower than the mileage already on the title, since if the power of attorney set forth a lower mileage, it would void the power of attorney as discussed above, and the dealer would not be authorized to sign the disclosure on behalf of the transferor.

³³ 54 FR 9812.

³⁴ Of course, other purposes of TIMA apply, including processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the state.

between the odometer reading and the actual mileage.

There are additional mechanisms employed in the power of attorney regulations to ensure accurate disclosures of the odometer reading and to limit fraud. As provided in the rule, upon receipt of the first transferor's title, the transferee has a duty to complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the first transferor on the power of attorney form.³⁵ Further, the certification provision discussed above provides a mechanism applicable to the second sale. As provided by section 580.15, the person completing part C of the secure power of attorney form issued by the State certifies that he or she has disclosed the mileage on the title document consistent with the mileage disclosed to him or her on the power of attorney form, that he or she examined the title and the mileage disclosure on that title and the mileage disclosure he or she is making on the power of attorney is greater than the mileage previously stated on the title.

In addition, the PSRA, as amended in 1990, provided another process to ensure accurate disclosure of the odometer reading. It required that the rule ensure that the person granted a power of attorney must submit the completed original power of attorney to the state along with a copy of the title (showing the restatement of mileage) and must also retain a copy. As directed, NHTSA issued implementing regulations providing that the transferee must submit the completed original power of attorney form to the State that issued it along with either a copy or the actual transferor's title when submitting a new title application. This allowed for review of the mileage on the power of attorney form and corresponding title.

NHTSA's regulations provide an additional mechanism facilitating verification of previous mileage statements by affording subsequent purchasers access to previous title and power of attorney documents. Under section 580.16(a), if the second-sale transferee applies for title in his own name (in other words, if the second-sale transferee does not give power of attorney to his transferor to review the title and reassignment documents), then that transferor must show him, upon his request, a copy of the power of attorney form completed by the previous owner. In any event, under section 580.16(b) of the rule, a transferor who was given power of attorney by his transferor and who holds title to the vehicle in his name, must, upon request of the

purchaser (second-sale transferee), show his/her purchaser a copy of the previous owner's title and a copy of the power of attorney form completed by the previous owner.

A further mechanism in the rule was its voiding mechanism. As provided by the rule, 49 CFR 580.15(b), any mileage discrepancies void the power of attorney. NHTSA has characterized this provision as vital;³⁶ if the mileage reflected by the transferor on the power of attorney is less than that previously stated on the title and any reassignment documents, the power of attorney shall be void. The power of attorney is voided by the existence of a discrepancy, not by an action causing a discrepancy.

A fifth purpose is to prevent alterations on odometer disclosures by powers of attorney and to preclude counterfeit powers of attorney through secure processes. In furtherance of these purposes, the power of attorney (incorporating the disclosure statement) must be on a form issued by the State that is set forth by means of a secure printing process or other secure process. It has to be no less secure than the title document itself.

A sixth purpose is to create a record of the mileage on vehicles and a paper trail. The PSRA referred to the need to facilitate enforcement. In addition, and more specifically, the amended statute provided "the person granted such power of attorney * * * shall submit the original back to the State with a copy of the title showing a restatement of the mileage."³⁷ This paper trail includes the written, signed (by both the transferor and transferee), and dated odometer disclosure statement on the secure power of attorney form, and the corresponding entry on the vehicle title, which, as discussed above, must read exactly as it was disclosed by the transferor on the power of attorney document. The transferee is required to file the original power of attorney form with the State that issued it, with a copy of the transferor's title or with the actual title when the transferee submits a new title application at the same time. The transferee is required to return a copy of the power of attorney form to the transferor. The State shall retain the original power of attorney form for the shorter of (a) Three years or (b) a period equal to the State titling record retention period. As stated in the rulemaking, the State may retain the copy in any medium by which such information

may be stored, provided there is no loss of information. States are not limited to retaining the records in paper form.

The retention of the power of attorney form by the State permits law enforcement officials to trace fraudulent disclosure statements back to transferors, if necessary.

Moreover, Section 401 of the PSRA, as amended in 1991, requires NHTSA's rules to provide for the retention of the power of attorney form. The rule added section 580.8(c), which concerns odometer disclosure statement retention. Under this paragraph, motor vehicle dealers and distributors who are assigned a power of attorney by their transferors are required to retain, for five years, a copy of each power of attorney they receive. These documents must be retained at the primary place of business of the dealer or distributor in an order that is appropriate with business requirements and that permits systematic retrieval.

Seventh, the overall purpose is to protect consumers by assuring that they receive valid representations of a vehicle's actual mileage at a time of transfer. This includes the ground rules for transferors and transferees, providing that both parties provide all of the information and signatures required in parts A, B, and C of the secure power of attorney form. This ensures that upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form.

IV. The Florida Petition

Florida, which is in the process of implementing an electronic title transfer system (e-title), petitions for approval of alternate odometer disclosure requirements.³⁸ Florida requests alternate disclosure requirements for transfers of motor vehicles in transactions between private parties (casual sales) and transfers of motor vehicles, whether subject to a lien³⁹ or

³⁸ We note that Florida's petition differs markedly from other petitions for alternate odometer disclosure requirements NHTSA has received from other states. Florida's proposal relies on tag agents, rather than an online system, to verify the identity of the transferor and transferee in casual sales. These tag agents also verify chain of ownership and odometer disclosure in all transfers before title can be issued. Identity verification in transactions other than casual sales (for which identity of the parties is verified by a tag agent) is left to the parties to the transaction(s). Florida's proposal encompasses a wide variety of transactions and relies on paper forms for a number of these transactions.

³⁹ Under Florida law, a lienholder physically possesses the title to the vehicle. Thus, Florida permits odometer disclosure by power of attorney

Continued

³⁵ 49 CFR 580.13(f).

³⁶ 54 FR 35885 (Aug. 30, 1989).

³⁷ The definition of "original power of attorney" permits a secure copy of the power of attorney to be considered an "original." This is implemented in part in 40 CFR 580.13(f).

not subject to a lien, between private parties and motor vehicle dealers. Florida also requests alternate disclosure requirements for transactions involving leased vehicles.

Florida law authorizes the Florida Department of Highway Safety and Motor Vehicles (the Department) to accept any application for vehicle title by electronic means. *See Fla. Stat. Ann.* § 319.40 (1997). The Department is proposing amendments to the Florida statutes to allow the continuation of an electronic certificate of title in lieu of a paper certificate of title for transfers of motor vehicles. With electronic titling there would not be a paper certificate of title on which to disclose the vehicle's mileage at the time of transfer of ownership.

A. Overview of Florida's Electronic Titling System

Currently Florida stores its titling and registration information (including images of all supporting title documentation) in a secure database referred to as the Florida Real-time Vehicle Information System, or FRVIS. According to Florida's petition, either a Department employee or an authorized tag agent at a state-authorized tag office enters information into this database. Only a Department employee or tag agent can change FRVIS title information, including owner information and the odometer disclosure. For title images (scanned, electronic copies of vehicle title documents), FRVIS stores all applicable data and stores images of documents that remain in the title history for the vehicle. Florida law also requires that the Department retain all documents regarding applications for, and issuance of, certificates of title—including titles, manufacturers' statements of origin, applications, and supporting documents submitted with the application such as odometer statements, VIN verifications, bills of sale, indicia of ownership, dealer reassignments, photographs, and any personal identification, affidavits, or documents required by or submitted to the Department—for a period of at least 10 years. *Fla. Stat. Ann.* § 319.23(11). The title resides as an electronic record in FRVIS; however, secure paper copies of the title can be generated from FRVIS if needed.

Florida intends to use a secure reassignment form in lieu of a paper title to capture odometer disclosure and transfer of e-titles. Florida law currently allows licensed dealers to use a secure

reassignment form when making dealer reassignments and odometer disclosures after all reassignment and odometer disclosure spaces on the reverse side of the Certificate of Title have been used. The form links the vehicle to the title record by the VIN and includes the required odometer disclosure statements. The Department scans the form and stores it in the title history for the vehicle. Florida proposes to use a similar form for odometer disclosure in its e-title program.

In Florida, lienholders hold the title to the vehicles securing the loan. Florida began its electronic title and lien (ELT) program in 2001. Under the current process, the Department contracts with vendors who provide secure electronic interface with Florida's titling system to participating lienholders. The vendors then contract with financial institutions who wish to participate in Florida's electronic title and lien program. The participating lienholders allow their titles to remain electronic. Electronic liens are satisfied through the secure electronic interface and the title is retained electronically until a paper copy is requested.⁴⁰

B. Florida's Proposed e-Odometer Program

Florida's proposed e-Odometer program can be divided into three transaction types: (1) Casual or private sales; (2) sales involving licensed motor vehicle dealers (including sales from private owners to licensed dealers, sales between licensed dealers, and sales from licensed dealers to private buyers); and (3) sales involving leased vehicles. The Agency understands that the program, as proposed, applies only when the transferred vehicle is electronically titled at the time of transfer of the vehicle.

1. Casual or Private Sales

Currently, a Florida resident wishing to sell his/her vehicle in a casual or private sale needs to have a paper title. The seller signs the paper title and discloses the odometer reading to the buyer on the title. The buyer then signs the paper title verifying the odometer reading. (The odometer disclosure is made on the title and signed by the buyer and seller at the time of transfer, in accordance with 49 U.S.C. 32705 and 49 CFR 580.5.) The buyer takes the paper title to a tag office, which processes the transfer of ownership and prints a new paper title in the buyer's

name, or, if the buyer so elects, creates an e-title to be held by the Department.⁴¹ Whether the buyer elects to maintain the title electronically or in paper form, the tag office sends the old paper title and any other supporting documentation to the Department for scanning into FRVIS.

Under Florida's proposed e-title program,⁴² if a seller of a vehicle has an electronic title and wants to transfer that title, the seller and buyer would visit an authorized tag office together. After providing adequate identification to the tag agent, the buyer and seller would sign, in the presence of the tag agent, a secure reassignment form transferring ownership and disclosing the odometer reading. A title is then issued in the buyer's name and is stored electronically, or the buyer may choose to have a paper title issued. The secure reassignment form and copies of the identification are scanned into the title record in FRVIS.⁴³ Florida maintains that these would travel with the title.

2. Sales Involving Licensed Motor Vehicle Dealers

a. Retail Sales of Vehicles With an e-Title But Not Subject to a Lien

Currently, when a licensed motor vehicle dealer is involved, the process for transferring a title to a vehicle with an e-title and not subject to a lien is as follows. The seller with e-title brings the vehicle to a dealership. The seller and dealer complete a secure power of attorney with odometer disclosure. The dealer obtains the paper title from a tag agency or online from the Department. The dealer transfers the odometer disclosure information from the secure power of attorney to the title and signs the title as buyer and seller. When the dealer sells the vehicle to another buyer, the dealer and buyer complete the reassignment on the paper title with an

⁴¹ The buyer can request a paper title from the tag agent and pay a \$10 fee, or request a paper title online and pay a \$2.50 fee. The fee is intended to encourage buyers to maintain vehicle title electronically. This fee applies to any paper title request under Florida's current system and under the State's proposed program.

⁴² Florida's proposed program does not apply in a casual vehicle sale by a seller holding a paper title, only those with e-title. A seller holding a paper title must follow the current procedures to transfer the vehicle—the buyer and seller sign and make the required odometer disclosure on the back of the paper title. The buyer then can bring the signed title containing the required odometer disclosure statement to an authorized tag agent and elect at that time to have the title maintained by the State electronically. If the buyer elects e-Title and later sells the vehicle in a casual sale, he can do so by following the procedures for transferring e-title.

⁴³ The Agency understands that the electronic documents are linked to the vehicle title history by title number and VIN.

when title is held by a lienholder and now petitions for alternate requirements regarding odometer disclosure by power of attorney.

⁴⁰ Approximately 24 percent of the more than ten million vehicle lien records Florida has are electronic. Additionally, almost 50 percent of all new transactions with liens are maintained electronically under ELT.

odometer disclosure. The dealer takes both the secure power of attorney and the paper title to a tag agency. The title is then transferred to the buyer and a receipt is provided. The buyer has the option to obtain a new paper title or have the Department hold the title electronically. The secure power of attorney and old paper title are scanned and stored with title history in FRVIS.

Under Florida's proposed program, a seller with e-title would bring the vehicle to a dealership. The seller and dealer complete a secure reassignment form with odometer disclosure. When the dealer sells the vehicle to another buyer, the dealer and buyer complete another secure reassignment form with odometer disclosure. The dealer takes both of the secure reassignment forms to a tag agency. The vehicle title is then transferred to the buyer and a receipt is provided. The buyer has the option to obtain a paper title or have the Department hold the title electronically. The secure reassignment forms are scanned and stored with the vehicle title history in FRVIS.

b. Sales of Vehicles With e-Title Subject to a Lien (e-lien in Florida)

Currently, when a licensed motor vehicle dealer is involved, the process for transferring a vehicle subject to an e-lien with e-title is as follows. A seller with e-title/e-lien brings the vehicle to a dealership. The seller and dealer complete a secure power of attorney with odometer disclosure. The dealer pays off the lien and the lienholder electronically releases the lien via a secure electronic interface with the Department (ELT). The dealer then obtains the paper title from a tag agency or online from the Department. The dealer transfers the odometer information from the secure power of attorney to the title and signs the title as buyer and seller. When the dealer sells the vehicle to another buyer, the dealer and buyer complete the reassignment on the title with odometer disclosure. The dealer takes both the secure power of attorney and the paper title to the tag agency. The vehicle title is transferred to the buyer and a receipt is provided. The buyer has the option to obtain a new paper title or have the Department hold the title electronically. The secure power of attorney and old paper title are scanned and stored with title history in FRVIS.

Under Florida's proposed program, a seller with e-title would bring the vehicle to a dealership. The seller and dealer complete a secure reassignment form with an odometer disclosure. The dealer pays off the lien and the lienholder electronically releases the

lien via secure electronic interface with the Department (ELT). When the dealer sells the vehicle to another buyer, the dealer and buyer complete another secure reassignment form with an odometer disclosure. The dealer then takes both secure reassignment forms to a tag agency, where the title is transferred to the buyer and a receipt is provided. The buyer has the option to obtain a paper title or have the Department hold the title electronically. The secure reassignment forms are scanned and stored with the vehicle title history in FRVIS.

c. Dealer Reassignments

Florida currently does not allow for an e-title in the dealer reassignment process. A dealer must obtain a paper title prior to being able to resell the vehicle. Once there is a paper title, the dealer uses the current paper process. The dealer uses the back of the title to include reassignments, including odometer disclosure. Once this form is full (Florida allows for three reassignments on the title), the dealer will use a secure title reassignment supplement (HSMV 82994). This form also includes the required odometer disclosures. When a vehicle is ultimately sold to a customer, the paper title and all secure title reassignment supplements are provided to the tag agency and forwarded to the Department for scanning and storing in the title record.

For an e-title, the Department is proposing that the dealer use a secure reassignment supplement instead of having to obtain a paper title. Any subsequent reassignments would also use the secure reassignment supplement. When the vehicle is ultimately sold to a retail customer, all secure reassignment supplements would be provided to the tag agency for verification of the chain of ownership and verification of the odometer disclosure. All documents would be forwarded to the Department for scanning and storing in FRVIS.

3. Sales Involving Leased Vehicles

In the case of leased vehicles, the lessor typically retains ownership of the vehicle, but does not possess it. The lessor, as a transferor, must comply with the federal odometer disclosure requirements when it subsequently transfers title of a leased vehicle. As noted by Florida, Federal laws require written mileage disclosures be made by lessees to lessors upon the lessor's transfer of the ownership of the leased vehicle.

Currently, Florida's process for transferring leased vehicles is as

follows. The lessor holds the vehicle's paper title. When the lease ends (for example, in a trade-in or buyout situation), the lessee brings the vehicle to a dealership. The lessee signs an odometer disclosure Statement. The lessor then transfers the odometer reading to the title. The lessor signs title over to the dealer (or other party) along with the odometer disclosure statement. When the dealer sells the vehicle to a buyer, the dealer and buyer complete the reassignment on the paper title with the odometer disclosure. The documents are then sent to an authorized tag agency, where the title is transferred to the buyer and a receipt is provided. The buyer has the option to obtain a new paper title or have the Department hold the title electronically. The old paper title and supporting documentation are scanned and stored with the vehicle title history in FRVIS.

Under Florida's proposal, the lessor holds an e-title. When the lease ends, the lessee would bring the vehicle to a dealership. The lessee signs an odometer disclosure statement. The lessor then signs a secure power of attorney to the dealer which includes the odometer disclosure. The dealer signs a secure reassignment form agreeing with the odometer disclosure. When the dealer sells the vehicle to another buyer, the dealer takes the documents (bill of sale, reassignment document, and power of attorney) to the tag agency, where the title is transferred to the buyer and a receipt is provided. The buyer has the option to obtain a new paper title or have the Department hold the vehicle title electronically. All documents are sent to Department and scanned into the vehicle title history in FRVIS.

C. Florida e-Odometer Implementation Schedule

Florida is implementing its electronic title or "e-title" system in three phases. Under the first phase, which Florida states is complete, participating lienholders are allowed, but not required, to have their titles and liens held electronically by the Department. This option allows lienholders to avoid maintaining paper lien portfolios. The Department and the lienholders encourage owners who satisfy their liens to continue to maintain the title electronically.

Under the second phase of the e-title project, dealers would be allowed to buy and sell e-title vehicles and take e-title vehicles in on trade without acquiring a paper title. It is the Agency's understanding that the program will extend to leased vehicles, including end-of-lease vehicles coming back to the

dealer and vehicles being traded in prior to the end of the lease. Lessors will give the dealer power of attorney to disclose the vehicle mileage, as indicated by the lessee on an odometer disclosure statement, on a secure reassignment form, which will then be used to transfer title from the Lessor to a subsequent purchaser. This process will obviate the need for the dealer to obtain a paper title.

The third phase of the project would extend e-title capability to private or casual sales. Under the proposal, the seller (transferor) and buyer (transferee) will have two options for completing a motor vehicle sale. Currently, the vehicle's title is either held physically by the vehicle owner or the vehicle is titled electronically. If the vehicle is titled electronically, the owner now must acquire a secure paper copy of the title prior to transferring the vehicle. The transferor makes the required odometer disclosure on the title and both parties sign the title, effectuating transfer of the vehicle. Under Florida's proposed program, if the vehicle has an e-title, the transferor would not be required to obtain a paper title to transfer it. The transferor and transferee will have the option to go to a tag agent or tax collector's office and, after providing adequate identification to the agent, execute a secure reassignment form to transfer title from the transferor to the transferee without the need to first acquire a paper title.⁴⁴

D. Florida's Position on Meeting the Purposes of TIMA

Florida submits that its e-Odometer program meets the purposes of TIMA as described by NHTSA summarized above and described more fully in the Agency's Final Determination on the Commonwealth of Virginia's petition for alternate odometer disclosure requirements. See 74 FR 643, 647–48 (January 7, 2009). The petition identified the purposes of TIMA and the State's assessment on how its proposed program would comply with each purpose.

⁴⁴ The secure reassignment form contains an odometer disclosure statement that is required to transfer the vehicle title. Sellers would accurately disclose vehicle mileage in the presence of both the buyer as well as a tag agent. The tag agent will verify that the buyer agrees to the mileage being disclosed and will require proper identification from both the buyer and the seller. (Currently, a vehicle owner with an e-title who wants to transfer or sell the vehicle must acquire a paper title from the State to process the transaction.)

1. Vehicle Transfers in the Absence of a Lease Agreement

a. Casual or Private Sales

One purpose is to assure that the form of the odometer disclosure precludes odometer fraud. Florida asserts that the secure reassignment form will have the same security features currently included on title paper and will travel with the title record in FRVIS; both parties will be present together in a tag agency with identification in order to process the title transfer, which includes execution of the odometer disclosure statement on the secure reassignment form.

A second purpose of TIMA is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title both a condition of the application for a title and a requirement for title issuance by a state. Florida states that under its proposal, odometer disclosure would remain a required data input for application of a title and a required output on the title. By having both parties present with required identification, Florida states the process would be more secure than the current process, which allows the owner to sign the title over to the buyer who then produces the document when obtaining title without the seller present.

A third purpose is to prevent alterations of disclosures on title and to preclude counterfeit titles through secure processes. Florida states in its petition that, with both parties present at a tag agency with identification, this process will prevent alterations and preclude counterfeit titles. If changes are necessary, a new secure document will be signed by both parties present in front of an authorized tag agent.

A fourth purpose is to create a record of the mileage on vehicles and a paper trail. Florida states that under its proposal, the secure document, whether a secure reassignment form or secure paper title, signed by both the buyer and seller will be scanned and stored as evidence of the agreement by both the buyer and seller of the odometer reading. This creates a permanent record that is easily checked by subsequent owners or law enforcement officials.

A fifth purpose is to protect consumers by assuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. Under its proposal, Florida states this purpose is served because consumers (buyers) will be present with sellers at the time the title is transferred (currently this is not usually the case).

b. Sales Involving Licensed Dealers (With and Without a Lien)

One purpose is to assure that the form of the odometer disclosure precludes odometer fraud. Florida states its proposal would meet this purpose because the secure reassignment form will have the same security features currently included on title paper. The dealer will use secure reassignment forms, which will travel with the title, which the dealer would sign with the previous owner and with the new buyer.

A second purpose is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. Florida states that the e-title process requires disclosure of an odometer's mileage on a secure document. The secure reassignment forms would have the same security features currently included on title paper and would travel with the title record.

A third purpose is to prevent alterations of disclosures on a title and to preclude counterfeit titles through secure processes. Florida states that a title would not be issued to a buyer if the chain of ownership cannot be established. The submission of all secure reassignment forms would establish the chain of ownership. Odometer disclosures would be part of those forms.

A fourth purpose is to create a record of the mileage on vehicles and a paper trail. Florida notes that the secure document signed by the previous owner, the dealer, and the buyer would be scanned and stored as evidence of the agreement by both the buyer and seller of the odometer reading.

A fifth purpose is to protect consumers by assuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. According to Florida, the secure reassignment forms would allow for valid representation of the odometer during both transactions (the original owner to dealer transaction and the subsequent dealer to buyer transaction).

2. Transfers Involving Leased Vehicles

One purpose is to assure that lessors have the vehicle's actual odometer mileage at the time of transfer. Florida states that the only change proposed by its e-title proposal from the current process is that, instead of signing an actual paper title, the lessor would sign a power of attorney and disclose the odometer reading as provided to it by

the lessee. This power of attorney would then transfer this odometer information to the dealer to sell the vehicle.

A second purpose is to assure that lessees provide lessors with an odometer disclosure statement. Florida states that its proposed e-title process would not affect this requirement.

A third purpose is to assure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information. Florida states that its proposed e-title process would not affect this requirement.

A fourth purpose is to set rules for accurate disclosure by lessors, directing them to indicate on the title the mileage provided by the lessee, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle. Florida states that its proposal would satisfy this purpose by allowing the lessor to indicate the mileage on a secure reassignment form that would travel with the title.

A fifth purpose is to create records and a paper trail, including the written, dated and signed odometer disclosure statement by the lessee. Florida states that its proposal would not change this requirement. The title would remain in electronic form; however, the secure reassignment form with the lessor's odometer disclosure, the power of attorney form and bill of sale would all be scanned into the title history. The Department's database would store these documents with the title.

3. Mileage Disclosures by Power of Attorney

Florida's proposed program incorporates mileage disclosure by power of attorney in one circumstance—when a lessee brings a leased vehicle to a dealer, the lessor would give a power of attorney to the dealer for the purpose of mileage disclosure on the secure reassignment form to effect transfer of the vehicle from the lessor to a third party. NHTSA has not previously had occasion to identify and discuss these purposes when addressing prior petitions for alternate odometer disclosure requirements from other states because other states' proposals did not encompass the use of powers of attorney for mileage disclosure.

V. Analysis

Under TIMA, NHTSA “shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the [NHTSA] determines that such requirements are not consistent with the purpose of the

disclosure required by subsection (d) or (e) as the case may be.” The purposes are discussed above, as is Florida's proposed program. We now provide our initial assessment whether Florida's proposal satisfies TIMA's purposes as relevant to its petition.⁴⁵ We first address casual or private sales, followed by sales involving a licensed dealer of vehicles with and without a lien, sales of leased vehicles, and finally sales using a power of attorney for purposes of odometer disclosure.

A. Florida's Proposal in Light of TIMA's Purposes Regarding Vehicle Transfers in the Absence of a Lease Agreement

1. Casual or Private Sales

One purpose of TIMA is to assure that the form of the odometer disclosure precludes odometer fraud. In this regard, NHTSA has initially determined that Florida's proposed alternate disclosure requirements satisfy this purpose as the proposal relates to casual or private sales. Under Florida's proposal, there would be an e-title. A required part of the data to be entered in the transfer of title would be the vehicle's odometer reading. In casual/private sales, the seller and buyer would visit a tag office together, provide identification to the tag agent, and sign a secure reassignment form transferring ownership and disclosing the odometer reading. This is one document and it would be signed before a tag agent. The secure reassignment form including the required odometer disclosure statement would be scanned and reside as an electronic record within the Department's database that would be linked to the vehicle's title through title number and VIN. If a hard copy of the title is needed or desired, Florida can generate a paper title with the odometer disclosure statement on the title using a secure printing process. As to the form of the title containing a space for the transferor to disclose the vehicle's mileage, the proposed Florida program would provide an electronic equivalent to these requirements for use in a subsequent sale of the vehicle, as transfers would be effected electronically on secure reassignment forms or paper titles that provide space for the required odometer disclosure in keeping with TIMA and current practice.⁴⁶

⁴⁵ Florida would continue to be subject to all Federal requirements that are not based on Section 408(d) and (e) of the Cost Savings Act as amended, recodified at 49 U.S.C. 32705(b) and (c).

⁴⁶ Florida notes that paper titles will still be necessary for title transactions involving at least one out of state party. For instance, if a vehicle enters Florida with an out of state title, Florida cannot recognize another state's e-title. The buyer

Another purpose of TIMA is to prevent odometer fraud by processes and mechanisms making the disclosure of odometer mileage on the title a condition of the application for a title and a requirement for the title issued by the State. NHTSA has initially determined that Florida's proposed electronic process satisfies this purpose as it relates to casual or private sales. Florida's proposed electronic title transfer process would require proper identification of the seller and buyer and disclosure and acceptance of odometer information on a secure reassignment form in front of a tag agent before the transaction can be completed. While the form is referred to as a reassignment form, viewed from a e-title transactional standpoint, it appears to be an information entry form used in the context where the buyer and seller both appear before the tag agent and simply use the document to convey odometer information, with their signatures, for the tag agent to record in the e-title system. We note that Florida's use of the term “secure reassignment form” in this situation appears to be a misnomer. The transfer of title in casual or private sales is not a reassignment as there is no prior assignment. The document is more accurately described as a secure State title transfer form for use when a vehicle has e-title and the title cannot be physically signed.

Another purpose of TIMA is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. The Agency has initially determined that Florida's proposed program satisfies this purpose as it relates to casual or private sales. Florida's alternate disclosure requirements appear to be as secure as current paper titles in casual or private sales. As we understand Florida's proposal, the odometer statement would be disclosed initially on secure paper—either on the paper title itself or on a secure reassignment form at one of Florida's authorized tag agency offices. First, both buyer and seller would sign the reassignment form in front of a tag agent, which would ensure the security of that aspect of the proposed process. Second, Florida's reassignment form would be secure; it would be set forth by means of a secure printing process or other secure process in compliance with 49 CFR 580.4. On subsequent title transfers in casual or private sales, the transferor and transferee would have to

will need to obtain a signed paper title from the seller. Conversely, if an owner sells a Florida titled vehicle to someone who will title it in another state, the owner will need to obtain the paper title to allow the buyer to obtain a title in the other state.

complete the odometer disclosure and acceptance—either on a secure paper title issued in a conventional manner by the Department or on a secure reassignment form in front of a tag agent for the transaction to be completed.

Another purpose of TIMA is to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record and paper trail are to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. In NHTSA's preliminary view, Florida's proposed program relating to casual or private sales satisfies this purpose. It would create a scheme of records equivalent to the current "paper trail" that assists law enforcement in identifying and prosecuting odometer fraud. Under the Florida proposal, creation of a paper trail would start with the requirement that a title cannot be transferred until and unless both the transferor and transferee execute a secure paper title consistent with the Federal regulations or a secure reassignment form, including the required odometer disclosure statement in front of a tag agent. Scanned copies of the title and secure reassignment form(s) would be stored in the vehicle's title record in FRVIS. If a paper title is requested, the odometer disclosure statement would be provided on the secure paper title.

The Department would retain an electronic copy of the prior titles (including the prior odometer disclosure statements) and any supporting documentation, including secure reassignment forms. The Department would scan these documents and store them with the vehicle's electronic title history. For title images, the Department would store all applicable data and images of documents in the title history for the vehicle in FRVIS. Furthermore, Florida requires that all documents used to issue a title be retained for a period of at least ten (10) years. These electronic records would create the electronic equivalent to a paper trail in a paper-based system that would be readily available to law enforcement. Additionally, the vehicle mileage would be available for public view via an online motor vehicle check available to Florida customers.

Whether Florida's program as it relates to casual or private sales conforms to TIMA's overall purpose is discussed in subpart D below.

2. Sales Involving Licensed Dealers (Vehicles Without and With a Lien)

One purpose of TIMA is to assure that the form of the odometer disclosure

precludes odometer fraud. As discussed above, to prevent odometer fraud facilitated by disclosure statements that were separate from titles, TIMA required mileage disclosures to be on a secure vehicle title, containing space for the seller's attested mileage disclosure and a new disclosure by the buyer when the vehicle was sold again, instead of a separate document.⁴⁷ NHTSA has initially determined that the form of disclosure in Florida's proposal for retail vehicle sales to dealers of vehicles without or with a lien would not satisfy this purpose, for the reasons discussed below.⁴⁸

In instances when a private seller sells a vehicle to a dealer, Florida proposes that the seller and dealer complete a secure reassignment form to make the odometer disclosure. Florida's assessment of its proposal in light of the purposes of TIMA states that the reassignment forms will travel with the title. But from a TIMA perspective, when there is a transfer involving a transferor in whose name the vehicle is titled, the transferor must disclose the mileage on a title, and not on a separate reassignment document such as one that is supposed to travel with the title. Thus, Florida's proposed program is not consistent with a purpose of the disclosure required by TIMA pertaining to the form of the disclosure.

Another purpose of TIMA is to prevent odometer fraud by processes and mechanisms making odometer mileage disclosure on the title a condition for the application for a title and a requirement for the title issued by the State. As explained above, a major shortcoming of the odometer provisions of the Cost Savings Act prior to TIMA, was the absence of a requirement that the odometer disclosure statement be on the vehicle's title that, following the sale of the vehicle, was presented to the State for retitling. NHTSA has initially determined that Florida's proposed alternate disclosure requirements for vehicles transferred from a private owner to a licensed dealer, do not satisfy this purpose. We have initially

⁴⁷ We note that Florida's proposal addresses vehicles subject to liens. In amendments to TIMA pertaining to titles in the possession of a lienholder when the transferor transfers ownership of the vehicle, Congress maintained the requirement that the disclosure be on the title itself. It did provide for the use of a secure power of attorney under restrictive conditions, as an exception to the prohibition that a person may not sign an odometer disclosure statement as both the transferor and transferee.

⁴⁸ If, however, the transfer from the titled seller to a dealer was on a title, NHTSA's initial decision would be that Florida's proposal insofar as it concerns subsequent transfers of the vehicle among licensed Florida dealers meets the purposes of TIMA.

determined that Florida's proposed alternate disclosure requirements for subsequent vehicle transfers between licensed dealers satisfy this purpose.

As discussed above, Florida's proposal for sales to dealers provides for disclosure and acceptance of odometer information on a secure reassignment form, not on a title. Following the ultimate re-sale of a vehicle to a consumer by a dealer (possibly not the same dealer that took the vehicle as a trade-in), that dealer would take secure reassignment forms to the tag agency for titling. In this respect, Florida does not propose making the disclosure of odometer mileage on the title in the initial transaction involving a transferor in whose name the vehicle is titled a condition for the application for a title and a requirement for the title issued by the State. Florida would provide for issuance of a new title based on secure reassignment forms. Such a form can be easily discarded and another secure reassignment form bearing an inaccurate odometer disclosure could be created by an unscrupulous dealer somewhere in the chain of transfers. We have tentatively concluded that, in order for the proposed program to be consistent with a purpose of TIMA, in the first transfer of title of a vehicle from a private seller to a dealer Florida may not provide for a mileage disclosure on a secure reassignment form.

A third purpose of TIMA is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. In view of the shortcomings of Florida's proposed program regarding the use of secure reassignment forms instead of titles in sales between private parties and dealers discussed above, NHTSA believes that it is inappropriate to reach a conclusion regarding the security aspects of those forms in that context. The Agency has initially determined that Florida's proposed alternate disclosure requirements for the subsequent transfer of vehicles between dealers satisfy this purpose. As we understand Florida's proposal, the secure reassignment form would be produced by the State and would be comparable to reassignment forms now in use in transfers between dealers.

A fourth purpose of TIMA is to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record and paper trail are to inform consumers and provide a mechanism to trace and prosecute odometer tampering. NHTSA's initial determination is that Florida's proposed alternative scheme would not, in one critical respect, create a scheme of records equivalent to the current "paper

trail” used for identifying and prosecuting odometer fraud. Florida proposes widespread use of secure reassignment forms in transfers from private parties to dealers. In particular, Florida proposes that, instead of a title, a reassignment form would be used to create the record of the mileage on the odometer in the case of a transferor in whose name the vehicle is titled. This recorded mileage figure establishes a critical benchmark for evaluating the remaining mileage declarations that will follow. NHTSA has initially determined that in these circumstances use of reassignment documents would not create the records and paper trail contemplated by TIMA. Our concerns about odometer disclosures on these forms in lieu of disclosure on the title itself are described above.

NHTSA tentatively concludes the remainder of Florida’s proposal would otherwise meet the record creation purposes of TIMA. Regardless of whether the buyer requests a paper title or surrenders the title to the Department to maintain electronically, the Department would retain an electronic copy of the prior titles (including the prior odometer disclosure statements) and any supporting documentation, including secure reassignment forms and powers of attorney. The Department would scan these documents and store them in FRVIS with the vehicle’s electronic title history. For title images, FRVIS would store all applicable data and stores images of documents that remain in the title history for the vehicle. Furthermore, Florida requires that all documents used to issue a title be retained for a period of at least ten (10) years. These electronic records would create the electronic equivalent of a paper based system that would be readily available to law enforcement. Additionally, the vehicle mileage would be available for public view via an online motor vehicle check available to Florida customers.

Whether Florida’s program as it relates to sales involving licensed dealers conforms to TIMA’s overall purpose is discussed in subpart D below.

B. Florida’s Proposal in Light of TIMA’s Purposes Relevant to Leased Vehicles

One purpose of TIMA’s leased vehicle provisions is to assure that the lessor has the vehicle’s actual odometer mileage at the time the lessor transfers ownership. The Agency has initially determined that Florida’s proposed program requirements satisfy this purpose. As we understand Florida’s proposal, the State proposes to require vehicle lessees to sign an odometer

disclosure statement that would be provided to the buyer by the lessor.

A second purpose of TIMA’s leased vehicle provisions is to assure that the lessee provides the lessor with an odometer disclosure statement regarding the mileage of the vehicle at the time of transfer. The Agency has initially determined that Florida’s proposed program requirements satisfy this purpose. As discussed above, the lessee would provide this to the lessor via an odometer disclosure statement when the lessee surrenders the leased vehicle to the dealer, and the lessor would provide this statement to the buyer.

A related purpose is to assure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information. We have initially determined that Florida’s proposal does not satisfy this purpose. As described in the petition, Florida’s alternate disclosure requirements do not address this purpose other than a statement in the petition that the e-title process does not change the current requirement. We recognize that Florida’s odometer disclosure law requires lessors to conform to Federal disclosure regulations under 49 CFR 580.7. *Fla. Stat. Ann.* § 319.225(4) (2010). Florida law also provides that State statutes regarding vehicle transfer and reassignment forms and odometer disclosure statements be construed to conform to 49 CFR part 580. *Fla. Stat. Ann.* § 319.225(9) (2010). Further, according to Florida, the requirement that the lessee provide the lessor with an odometer disclosure statement when the lessee surrenders the vehicle typically is part of the lease agreement, which provides notice of the requirement and the penalties for failing to comply. But this is not a formal requirement. Underlying the adoption of the leased vehicles provisions of TIMA, there was significant concern about considerable understatements of mileage on leased vehicles that were turned-in and resold. Our initial determination is that this reliance on what is typically in a lease is not sufficient to assure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information.

A fourth purpose is to set the ground rules for the lessors, providing for lessors to indicate the mileage provided by the lessee on the title, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle. We have initially determined that Florida’s

proposal does not satisfy this purpose. A lessee would make an odometer disclosure by executing an odometer disclosure statement upon relinquishing the leased vehicle. The lessor may transfer the odometer disclosure statement from the lessee’s statement to a secure power of attorney unless the lessor has reason to believe that the lessee’s statement does not reflect the vehicle’s actual mileage, in which case the lessor would be required to indicate on the title “true mileage unknown” or words to that effect.⁴⁹ As explained in the discussion on powers of attorney above, odometer disclosure can be made using a secure power of attorney document only in the limited circumstances when the transferor’s title is physically held by a lienholder at the time of the transfer or the transferor to whom the title was issued by the State has lost the title and the transferee obtains a duplicate title on behalf of the transferor. These limited circumstances do not include lessors giving power of attorney to dealers for purposes of odometer disclosure. Under Florida’s proposal, the vehicle title is not unavailable to the lessor—the lessor, as the titled owner of the vehicle in Florida, can simply request a paper copy of the title from the State and effect transfer of the vehicle on the secure paper title.

A fifth purpose of TIMA’s leased vehicle provisions is to create records and a paper trail. The paper trail includes the signed odometer disclosure statement by the lessee. The Agency has initially determined that Florida’s proposed alternate disclosure requirements do not satisfy this purpose. Under Florida’s proposal as we understand it, the lessee would be required to sign an odometer disclosure statement when the vehicle is surrendered. The lessor would not be required to sign this document. The lessor would execute a power of attorney to the dealer that would include the odometer disclosure statement as provided by the lessee. The dealer then would sign the secure reassignment form (apparently for the transferor/lessor and as transferee), providing an odometer disclosure provided by the lessor on the secure power of attorney. When the dealer sells the vehicle to another buyer, the dealer would take the documents (bill of sale, reassignment form, and power of

⁴⁹ Florida recognizes that the electronic process must incorporate the brand (actual mileage, exceeds mechanical limits, or true mileage unknown) requirement, and Florida would continue to show the odometer reading and brand on paper titles and maintain an electronic record of the odometer reading and the brand.

attorney) to the tag agency. The title would be transferred to the buyer. Whether the buyer elects a new paper title or e-title, the related documents—including the old title and any supporting documentation—would be scanned and stored with the vehicle title history by the Department. Florida does not state whether the lessee's odometer disclosure statement to the lessor would be scanned. The electronic documents would be associated with the vehicle title history by title number and VIN.

Florida's proposed program for leased vehicle transactions would not create a scheme of records equivalent to the current "paper trail" now assisting consumers and law enforcement. Under TIMA as implemented, dealers and lessors are required to retain all odometer disclosure statements that they issue and receive. However, Florida's proposed program does not specify that the dealer and lessor would be required to maintain a copy of the lessee's odometer disclosure statement, and does not provide an alternative mechanism such as a provision that the statement would be forwarded to either a tag agent for mileage verification or the Department for scanning and maintaining as part of the vehicle's title history. We have tentatively concluded that, in the transfer of title of vehicles subject to a lease agreement, Florida's proposed program does not satisfy the purposes of TIMA because it does not require dealers and lessors to retain odometer disclosure statements from lessees.

The overall purpose of TIMA's leased vehicle provisions is to ensure that vehicles subject to leases have adequate odometer disclosure statements executed on titles at the time of transfer. The Agency has initially determined that Florida's proposed program does not meet TIMA's overall requirement. Under Florida's proposal, upon the termination of the lease, a lessee would sign an odometer disclosure statement. This is an important document that the lessor must sign. But under Florida's proposal, the lessor signs a separate secure power of attorney to the dealer which only assumedly includes the odometer reading. In any event, the lessor's power of attorney to a dealer for purposes of odometer disclosure allows the same person to sign an odometer disclosure for both parties. That is fraught with potential problems of incorrect odometer statements. Congress did not extend the use of power of attorney to this circumstance.

Florida's proposal provides for odometer disclosure in transfer of leased vehicles to be made on a secure

reassignment form. Lessors (transferors) are titled owners in Florida. But as explained above, in the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the title, and not on a reassignment document. Florida's proposal runs counter to this requirement.

The dealer would take the documents (bill of sale, reassignment document, and power of attorney) to the tag agency; thereafter, the documents would be sent to the Department and scanned into the title history. However, Florida's proposal does not require the odometer disclosure statement made by the lessee to be co-signed by the lessor, submitted with title documents, or to be retained by any party. In the Agency's view, this is an important link in the chain of odometer disclosure for a leased vehicle. This link should be preserved as much as any other.

Because of the above-identified problems, the Agency tentatively concludes that Florida's proposed program on leased vehicles does not meet TIMA's overall purpose of ensuring that vehicles subject to leases have adequate odometer disclosure statements executed on titles at the time of transfer.

C. Florida's Proposal in Light of the Purposes of TIMA as Amended Relevant to Odometer Disclosure by Power of Attorney

One purpose of the power of attorney provision in TIMA as amended was to provide limited exception(s) to a rule prohibiting a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, which had the effect of prohibiting the use of powers of attorney for purposes of recording mileage on titles of motor vehicles. Florida's proposal does not fit within the narrow confines of this exception. Under Florida's proposed program, a lessor (not a lienholder) would execute a power of attorney. No lienholder would be involved nor is there a requirement that the title be lost. The overall purposes of TIMA as amended are not preserved by this proposed expansion of the Congressional amendment of TIMA. We have initially determined that Florida's proposed program is not consistent with a purpose of the disclosure required by TIMA, including amendments thereto.⁵⁰

⁵⁰ We again note that Florida's proposal for leased vehicles would not comply with Federal odometer disclosure statutes and regulations regarding use of a power of attorney to facilitate odometer disclosure. Under the proposal, a lessor would sign a secure power of attorney to the dealer that

A second purpose was to assure that the form of the power of attorney document issued by a State precluded odometer fraud. We have not made a determination as to whether Florida's proposal meets this purpose. Florida's proposal does not address the form of the secure power of attorney documents it would use. The requirements for form are discussed in section III.C above.

A third purpose is to set the ground rules for transferors and transferees, providing that both parties provide all of the information and signatures required in parts A, and as applicable B and C of the secure power of attorney form. We have not made a determination as to whether Florida's proposal meets this purpose. Florida's proposal does not address this purpose.

A fourth purpose was to prevent odometer fraud by processes, mechanisms, and conditions calculated to result in the disclosure of the actual mileage on the title. We have not made a determination as to whether Florida's proposal meets this purpose. Florida's proposal does not address the processes, mechanisms and conditions related to use of the secure power of attorney for the purposes of odometer disclosure.

A fifth purpose is to prevent alterations of odometer disclosures by powers of attorney and to preclude counterfeit powers of attorney through secure processes. NHTSA has initially concluded that Florida's proposed process does not satisfy this purpose. Under NHTSA regulations, power of attorney forms shall be issued by the State and shall be set forth by a secure process. 49 CFR 580.13(a). As we understand Florida's proposal, the power of attorney document used by the lessor would not be State-issued and would not be secure. As noted above, TIMA was written in part to prevent alterations of disclosures on titles and precludes counterfeit titles by requiring secure processes. In furtherance of these purposes, paper titles (incorporating the disclosure statement) must be produced using a secure printing process or protected by "other secure process." Allowing lessors to transfer title and make the required odometer disclosure

includes the odometer disclosure. The dealer would then sign the secure reassignment form agreeing with the odometer disclosure. In this scenario, the dealer would sign the secure reassignment form as both transferor/lessor and transferee/buyer. This practice is not consistent with TIMA as amended which precludes execution by one person except in specifically identified circumstances, which do not include transfers of leased vehicles and the associated odometer disclosure statement based on a lessee odometer disclosure statement that may or may not have been retained by the dealer and/or lessor and a non-secure power of attorney document from the lessor to the dealer.

through a non-secure power of attorney directly contradicts odometer disclosure requirements. While this process may add convenience to the process of transferring leased vehicles, it does so at the expense of the security requirements that are a foundation of TIMA. We have tentatively determined that Florida's proposed program does not meet this purpose. The power of attorney form—and any document used to reassign a vehicle title—must be issued by the State and produced by a secure process.

A sixth purpose is to create a record on the mileage on vehicles and a paper trail. We have not made a determination as to whether Florida's proposal meets this purpose. Florida's proposal does not address this purpose.

Seventh, the overall purpose is to protect consumers by assuring that they receive valid representations of a vehicle's actual mileage at a time of transfer. To the extent Florida's proposal addresses this purpose—providing for secure powers of attorney for purposes of mileage disclosure in the transfer of leased vehicles—NHTSA has initially concluded that Florida's proposed process does not satisfy it.

We note that Florida's proposed program would eliminate a current practice by Florida that does not comport with Federal odometer disclosure statutes and associated regulations. Florida's petition indicates that when an owner transfers a vehicle not subject to a lien to a dealer, the owner and dealer would execute a secure power of attorney, including an odometer disclosure statement, granting the dealer the power to make the odometer disclosure on the vehicle's paper title (which it needs to procure from the State before transfer of title can occur) and sign the title as transferor and transferee. Presumably, this practice would facilitate title transfer when the vehicle title is maintained electronically and neither the transferor nor dealer has immediate access to the paper title. Under TIMA and Agency regulations, a power of attorney may be used in making the odometer disclosure statement only if the title is lost or is in the possession of a lienholder when the transferor transfers ownership of the vehicle.⁵¹ A party may not sign an odometer disclosure statement as transferor and transferee except as set forth in 49 CFR 580.13 or 580.14.⁵²

⁵¹ 49 U.S.C. 32705(b)(2)(A); 49 CFR 580.13. Regulations require that this power of attorney be set forth by means of a secure printing process or other secure process. 49 CFR 580.4.

⁵² 49 CFR 580.5(h). Under § 580.13, a transferor may give a power of attorney to his transferee for the purpose of mileage disclosure if the transferor's title is physically held by a lienholder or the

These regulations do not allow transferring vehicles not subject to a lien by power of attorney as is the current Florida practice. The Agency encourages Florida to discontinue its current practice of using a secure power of attorney to transfer title and disclose mileage for vehicles not subject to a lien without lost titles and require title transfer in these situations in a manner complying with current Federal statutes and regulations.

D. Florida's Proposal in Light of TIMA's Overall Purpose

TIMA's overall purpose is to protect consumers by assuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. In Florida in casual or private sales, the transferor and transferee currently sign the title, disclosing the odometer and effecting transfer of title. The transferee then goes to a tag agent and presents the title for processing and printing of a new paper title in the transferee's name (or the transferee elects e-title and the new title, the old title, and any supporting documentation is scanned and maintained electronically by the Department). This comports with Federal law. Under Florida's proposal, both parties would meet at a tag office, provide identification information to the tag agent, and execute a secure reassignment form transferring ownership and disclosing the odometer reading, which is witnessed by the tag agent. The representation of a vehicle's mileage on the secure reassignment form in the presence of a tag agent would be at least as valid as that in the current paper title transfer—there would be an identification requirement and the disclosure would be made in the presence of a tag agent who has confirmed the identification of the transferor and transferee.⁵³ Further, copies of the identification documents, the prior title, supporting documents,

transferor has lost his title and the transferee obtains a duplicate title on behalf of the transferor (and if otherwise permitted by State law). Under § 580.14, if part A of a secure power of attorney form has been used pursuant to § 508.13, and if otherwise permitted by State law, a transferee may give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies and if none are found, to acknowledge disclosure on the title.

⁵³ NHTSA observes that the use of a reassignment document in the fashion proposed here eliminates the concerns normally associated with the use of these documents in lieu of the actual title. As we understand the Florida proposal, the reassignment document is employed only to provide information to the tag agent entering data into the e-title. As the parties must provide adequate identification to the tag agent and complete the transaction in the agent's presence, the opportunities for fraud are greatly reduced.

and (when elected by the transferee) the new title, would be maintained electronically by the Department. This process likely would provide more (and provides no less) assurance of the validity of the odometer disclosure than a paper process. In addition, Florida's proposal would offer the public the opportunity to view the most recent odometer reading and date of that reading through an Internet application. A prospective buyer would be able to access the public e-Odometer information using the vehicle's VIN to assess a vehicle's true value by comparing the vehicle's current odometer reading to the electronic record stored with the Department.⁵⁴ In sales involving licensed dealers (vehicles subject to a lien or not subject to a lien), as discussed above, Florida's proposed program relies on reassignment documents. Except in transactions following the first sale by the transferor in whose name the vehicle is titled, this is problematic, as discussed above. In view of this fundamental concern, which needs to be addressed by Florida, at this juncture, NHTSA is unable to further address the Florida program.

As discussed above, Florida's proposed program involving sales of leased vehicles, does not satisfy the overall purpose of TIMA protecting consumers by assuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer.

VI. NHTSA's Initial Determination

For the foregoing reasons, NHTSA preliminarily grants Florida's petition regarding proposed alternate disclosure requirements for vehicle transfers involving casual or private sales. NHTSA preliminarily denies Florida's petition regarding proposed alternate disclosure requirements for sales involving licensed dealers. NHTSA preliminarily denies Florida's petition regarding proposed alternate disclosure requirements for sales of leased vehicles.

This is not a final agency action. NHTSA invites comments within the scope of this notice from the public including Florida.

Request for Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the

⁵⁴ This would appear to provide the odometer reading upon which a CARFAX Vehicle History Report is based.

Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (*see* 49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at <http://dms.dot.gov>. Click on "Help & Information," or "Help/Info" to obtain instructions for filing the document electronically.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we also will consider comments that Docket

Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing the final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You also may see the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov>, and follow the instructions for accessing the Docket.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: August 2, 2011.

O. Kevin Vincent,
Chief Counsel.

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