

shall permit the insertion of new, foreign-organized companies at any level in the vertical ownership chain above the U.S. parent *provided that* any new foreign-organized company(ies), either alone or together, are under 100 percent common ownership and control with the controlling foreign parent for which the U.S. parent has received prior Commission approval.

Example. U.S. parent company ("U.S. Parent A") receives a section 310(b)(4) ruling that approves its 100% foreign ownership by a foreign-organized company ("Foreign Company"). Foreign Company is minority owned (20%) by U.S.-organized Corporation B, with the remaining 80% controlling interest held by Foreign Citizen C. After issuance of the section 310(b)(4) ruling to U.S. Parent A, Foreign Company forms a wholly-owned, foreign-organized subsidiary ("Foreign Subsidiary") to hold all of Foreign Company's shares in U.S. Parent A. There are no other changes in the direct or indirect foreign ownership of U.S. Parent A. The insertion of Foreign Subsidiary into the vertical ownership chain of U.S. Parent A would not require prior Commission approval.

(e) The section 310(b)(4) ruling issued to the U.S. parent named in the ruling shall permit the insertion of new, foreign-organized companies into the vertical ownership chains of non-controlling foreign investors for which the U.S. parent has received specific approval under § 1.991(i) *provided that* any new foreign company is under 100 percent common ownership and control with the approved foreign investor.

Example. U.S. parent company ("U.S. Parent A") receives a section 310(b)(4) ruling that specifically approves Foreign Citizen B's planned acquisition of a non-controlling, 30% common stock interest in U.S. Parent A. Two years after issuance of the section 310(b)(4) ruling to U.S. Parent A, Foreign Citizen B organizes a wholly-owned foreign corporation to hold Foreign Citizen B's common stock interest in U.S. Parent A. U.S. Parent A would not be required to seek Commission approval for this change.

(f) The U.S.-organized parent company named in the section 310(b)(4) ruling (or a U.S.-organized successor-in-interest formed as part of a *pro forma* reorganization) shall file a new petition for declaratory under § 1.990 to obtain Commission approval *before* its direct or indirect foreign ownership exceeds the routine terms and conditions of this section and any specific terms or conditions of its ruling.

(g)(1) A U.S.-organized parent company that has received a section 310(b)(4) ruling from the Commission shall file with the Commission a certification of compliance with the section 310(b)(4) ruling every four (4) years after the anniversary of the

effective date of the ruling. The U.S. parent shall base its certification of compliance on information that is current at least as of 8 months prior to the date the certification must be filed with the Commission. Its certification of compliance with respect to the calculation of ownership interests disclosed in its petition shall be based upon its review of the Commission's rules, such that it is able to certify that the interests disclosed satisfy each of the pertinent standards and criteria required by the rules.

(2) If at any time the U.S. parent knows, or has reason to know, that it is no longer in compliance with its ruling, the U.S. parent shall file a statement with the Commission explaining the circumstances within 30 days of the date the U.S. parent knew, or had reason to know, that it was no longer in compliance with its ruling. Subsequent actions taken by or on behalf of the U.S. parent to remedy its non-compliance shall not relieve the U.S. parent of the obligation to notify the Commission of the circumstances (including duration) of non-compliance. The U.S. parent, any affiliated licensees or spectrum lessees covered by the section 310(b)(4) ruling, and any controlling companies, whether U.S.- or foreign-organized, shall be subject to enforcement action by the Commission for non-compliance with the section 310(b)(4) ruling.

PART 25—SATELLITE COMMUNICATIONS

4. The authority citation for part 25 is revised to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303, 307, 309, 310 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, 310 and 332, unless otherwise noted.

5. Subpart A is amended by adding § 25.105 to read as follows:

§ 25.105 Citizenship.

The Commission will not grant an authorization governed by this part to any individual or entity that is precluded from holding such authorization by section 310(a)–(b) of the Communications Act of 1934, as amended (47 U.S.C. 310(a)–(b)). The rules that establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier licensees that would exceed the 25 percent benchmark in section 310(b)(4) are set forth in §§ 1.990 through 1.994 of this chapter.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA–2011–0152; 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 New York has petitioned for approval of alternate odometer requirements to certain requirements under Federal odometer law. New York's proposed program would apply to vehicles that have been transferred to New York motor vehicle dealers. Ultimately, the proposed program would generate the issuance of a non-secure paper odometer disclosure receipt when a vehicle is transferred from a licensed New York dealer to a person other than a licensed New York dealer, such as an out-of-state person. In view of the nature of this receipt as an odometer disclosure for vehicle titling, NHTSA preliminarily denies New York's petition. This notice is not a final agency action.

DATES: Comments are due no later than November 21, 2011.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number NHTSA–2011–0152] 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. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202–493–2251

Instructions: For instructions on submitting comments and additional information on the rulemaking process, see the heading of How Do I Prepare and Submit Comments in 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 G. Matheke, III, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building W41–227, Washington, DC 20590 (Telephone: 202–366–5253) (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 the 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 a vehicle unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Titles must also be printed by a secure printing process or other secure process. 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 replace an existing system of paper records for dealer inventories, transfers, and sales—including the transfer of titles and odometer disclosures—with an electronic system, the State of New York has petitioned for approval of alternate odometer disclosure requirements. The New York State Department of Motor Vehicles ("NYSDMV") proposes a paperless odometer disclosure program for transfers to, between and from licensed New York motor vehicle dealers. The initial transfer of the vehicle to a New York dealer would include an odometer disclosure on a secure paper title, following the present practice. The final transfer of the vehicle from a New York dealer to a non-New York dealer would include an odometer disclosure on a two part paper receipt. The odometer disclosures would be recorded electronically.

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). New York's program bears some similarities to Virginia's program in scope. Like Virginia's program, the scope of New York's proposed program does not include transactions involving leased vehicles, or odometer disclosures by power of attorney. However, while Virginia's program was limited to in-state transfers (Virginia's program required Virginia owners to obtain a paper title for out-of-state transfers), New York's program is not so limited. Moreover, aspects of New York's proposed system, including reassignments between dealers and ultimately from a dealer to a non-dealer, were not examined in NHTSA's analysis of Virginia's program.

II. Statutory Background

As noted above, 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, 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 follows.

In 1972, Congress enacted the Cost Savings Act to, among other things, 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, section 401, 86 Stat. 947, 961–63 (1972). Section 408 of 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.³ In general, the purpose for the disclosure was to assist buyers to know the true mileage of a motor vehicle. The Act also prohibited odometer tampering and provided for enforcement.

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.*

Congress enacted TIMA in 1986 to address the Cost Savings Act's shortcomings. It amended Section 408 of the Cost Savings Act to add a new subsection (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). Section 408(d) 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 subsection 408(e)(1), which provided for the use of odometer

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).

disclosure statements when leased vehicles are sold or transferred.

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 alternate motor vehicle mileage disclosure requirements approved by the Secretary in effect. Section 408(f) 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 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) as 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 New York’s petition.

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 on in-state transfers that did not include disclosures involving dealer reassignments, leased vehicles or

disclosures by power of attorney.⁴ 74 FR 643, 647–48 (January 7, 2009). New York’s petition encompasses vehicle transfers/reassignments to and among licensed New York dealers and from licensed dealers to a retail or out-of-state purchaser, but does not address transfers involving leased vehicles and disclosures by power of attorney. A brief summary of the purposes identified in the Virginia Final Determination follows. In addition, we address reassignments, which were not addressed in the Virginia petition.

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.* In addition, an aspect of the purpose of assuring that the form of the odometer disclosure precludes fraud is that the transfer by a titled owner must be on the title and not a reassignment document, but a reassignment document subsequently may be used by a transferor in whose name the vehicle has not been titled.⁵ To preclude fraud, the reassignment document(s) must have an odometer disclosure executed by the transferor and transferee, and the reassignment document(s) must be accompanied by the title transferring ownership of the vehicle to the dealer, with a proper odometer disclosure. The reassignment document is not a standalone document.

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. The same applies to reassignment documents; they must

contain odometer disclosures and be presented for titling. This 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 and reassignment documents (incorporating the disclosure statement) must be produced using a secure printing process or protected by “other secure process.”⁶ *Id.*

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. Proper reassignment documents, when accompanied by the title from the initial transferor, similarly create a permanent record. 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.

IV. The New York Petition

New York, which is in the process of implementing an Electronic Vehicle Inventory and Transfer System (System), petitions for approval of alternate odometer disclosure requirements. New York requests alternate disclosure requirements for transfers of motor vehicles in transactions to, from, and among licensed New York dealers.

⁴ Since Virginia’s program did not cover disclosures involving leased vehicles or disclosures by power of attorney, the purposes of Sections 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.

⁵ 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). Section 580.5 provides that 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.

⁶ 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 titles.” *Id.* *See also* Cost Savings Act, as amended by TIMA, § 408(d), recodified at 49 U.S.C. 32705(b); 49 CFR 580.4 which requires that titles and documents used to reassign titles shall be issued by the State and printed using a secure process.

A. Overview of Current New York Transfer/Odometer Disclosure System

As New York stated in its petition, odometer disclosures are made on securely printed documents produced by NYSDMV. Each document—the Certificate of Title (MV-999), the Retail Certificate of Sale (MV-50) (Dealers Reassignment Form), and the Wholesale Certificate of Sale (MV-50W)—may be used depending on the circumstances of the transfer. In order to comply with Federal odometer disclosure requirements, all three documents include built-in security features along with an area to disclose the odometer reading. They have been designed with unique numbers. The MV-999 has space for one odometer disclosure statement and is used where title is held by the transferor. If this space has been filled by an odometer disclosure statement in a prior transaction, New York dealers must use either the MV-50 or MV-50W reassignment document, as appropriate, to make the required odometer disclosure statement and transfer vehicle title. See 15 NYCRR section 78.10.

Currently, in New York, dealers are required by NYSDMV to keep a paper inventory (Book of Registry) in which dealers record identifying information about vehicles they purchase and sell. NYS Vehicle and Traffic Law section 415(15); 15 NYCRR section 78.25. When a New York dealer sells a vehicle to another New York dealer, the purchasing dealer is required to enter the vehicle identifying information including the odometer disclosure statement in its Book of Registry. A dealer's Book of Registry is subject to review during on-site audits by NYSDMV.

When a New York dealer sells a vehicle to a purchaser, an MV-50/MV-50W is filled out with the vehicle identifying information, the name and address of the dealer, and the name and address of the purchaser. The dealer fills in the odometer disclosure statement found on the MV-50/MV-50W and then both the dealer and purchaser sign the statement. Odometer readings are recorded in the selling dealer's Book of Registry, a purchasing dealer's Book of Registry (if the purchaser is a New York dealer), and the MV-50, all of which are subject to audit by NYSDMV. In cases where the purchaser is not another New York dealer, the purchaser would take a copy of the MV-50, along with other ownership documentation provided by the dealer (e.g. original title, prior MV-50/MV-50Ws), and a completed Vehicle Registration/Title Application (MV-82)

to a NYSDMV office to apply for a new title.

B. New York's Proposed Electronic Vehicle Inventory and Transfer System

1. Accessing the Proposed System

According to New York's petition, the System will control access to MV-50 processing. New York dealerships would access the System to enter inventory and record vehicle sales transactions, including making the odometer disclosure statements required under TIMA. Dealers will be required to join the System when they are due for business license renewal. Each licensed New York dealer is required to renew its business license every two years.

To join the System, a dealer first would request access to the system from NYSDMV. NYSDMV would register the dealership as a group and would designate a System administrator for that dealership (a dealership employee chosen by the dealer) to be responsible for assigning System accounts to employees (users) within the dealership.⁷ The number of users and the level of access for each user would be determined and controlled at the administrator's discretion. User accounts created by the dealership's administrator would be subject to review during onsite audits by NYSDMV and Enforcement staff.

Each year, the administrator would be prompted by the System to re-certify the facility on the System with the NYSDMV. If the administrator does not comply with the System recertification prompt, dealership access to the System would be turned off, preventing the dealership from completing any sales transaction. An entire dealership or an individual working at a dealership could be denied access to the System any time NYSDMV deemed it necessary. The System would be limited to New York dealer transactions, as others except for NYSDMV would not have access to it.

2. Using the Proposed System

Under New York's proposal, when a vehicle is transferred to a dealership, the vehicle's identifying information would be entered into the System using a standardized template through a user's account. The vehicle identification number would be automatically verified by the System using the appropriate Vehicle Identification Number Analysis

⁷ Each user would be prompted at first sign-on to the System to change his or her password. Every 90 days, the user would need to change his or her password. The new password must be different than the last three passwords. Passwords will be stored in the System and encrypted.

(VINA) file. (VINA is a system used to verify and decode information contained in vehicle identification numbers.) If the vehicle is sold to another New York dealer, the purchasing dealer's System template for that vehicle would pre-fill with the vehicle's identification information from the System. During sales/transfer transactions, the seller would electronically disclose vehicle information including the current mileage and would be issued a unique transaction number.

Because it relies primarily on dealers making entries into the system, New York's proposed Electronic Vehicle Inventory and Transfer System encompasses only transactions involving dealers: Sales of vehicles by non-dealer vehicle owners to dealers, sales of vehicles between licensed New York dealers and vehicle sales from licensed New York dealers to non-dealers, including retail consumers, out of state dealers, vehicle dismantlers, and junk and salvage dealers.

More specifically, NYSDMV's proposed process for handling vehicle transfers to licensed New York dealers would be as follows. When the dealer receives a vehicle (whether from a manufacturer, a customer, or another dealer), including the vehicle ownership documentation, an authorized dealership user would sign on to the System and enter the vehicle's identifying information. The vehicle's odometer reading, disclosed on the title in the case of a consumer trading in or selling a vehicle to the dealer, would be recorded in the system by the dealer.

If a dealer sells a vehicle to another licensed New York dealer, the selling dealer would sign on to the System using its unique sign on and password and would access the vehicle's identifying information on the System. The selling dealer would enter current vehicle information including the current odometer reading and would enter seller and purchaser information on the System. The System would then generate a transaction number. The purchasing dealer would sign on to the System using its unique sign on and password and would access the vehicle's identifying information on the System using the transaction number. The purchasing dealer would then review the vehicle's identifying information, including the odometer disclosure statement made by the selling dealer,⁸ and would accept or reject the

⁸ The System automatically checks the odometer disclosure statement entered by the seller against the odometer disclosure statement previously recorded on the System for that vehicle. If the

transaction. If the purchasing dealer accepts the transaction it would be considered complete. The original pre-dealer ownership document (still in the prior owner's name) would be surrendered to the purchasing dealer at the time of sale.

If, during the purchasing dealer user's review of the vehicle's identifying information on the System, the user did not agree with all of the information, the user could reject the transaction. Subsequent transfers between licensed New York dealers would be recorded in the same manner. It is the Agency's understanding that the entire history of the vehicle's identifying information entered into the System at each transfer would be maintained indefinitely on the System.

Under the New York proposal, when a vehicle owned by a New York dealer is sold to a retail purchaser, salvage dealer, auction house, out-of-state buyer or other non-New York dealer purchaser, an authorized user at the selling dealer would sign on to the System and access the vehicle information on the System. The selling dealer would enter current vehicle information including the current odometer reading, and would enter seller and purchaser information on the System. A two-part sales receipt/odometer statement would be created on the System. The purchaser would then review the information, including the odometer statement, on a draft receipt displayed on the computer screen. If the purchaser agrees with the odometer statement and other information, the authorized dealer representative would save the data in the system and then print a two-part sales receipt. Both parties would then sign the odometer disclosure statement printed on each of the two parts of the receipt. The dealer would retain the dealer part of the receipt for its files. The purchaser would be given the purchaser's copy of the receipt along with the original title acquired by the dealer when it purchased the vehicle.

If the purchaser does not agree with any of the information displayed on the dealer's computer screen,⁹ the

purchaser could reject the transaction. In that case, the dealer would have to cancel the transaction in the System and resubmit using the correct information.

New York's petition further states that during vehicle registration by a New York purchaser, NYSDMV office staff would review the vehicle's data and odometer disclosure on New York's system and compare it to the paper ownership documents and the purchaser's copy of the aforementioned two-part receipt. This would verify the mileage reported on the paper documents. If a vehicle had gone in and out of New York State multiple times, New York's petition states that the proposed system would show the New York State history for the vehicle, which would help to identify gaps in mileage and ownership.

C. New York's Position on Meeting the Purposes of TIMA

New York contends that its proposed program meets the purposes of TIMA as described by NHTSA in its Final Determination on the Commonwealth of Virginia's Petition for alternate odometer disclosure requirements. The Petition identified the purposes of TIMA and the State's position that its proposed program satisfied each purpose.

One purpose is to assure that the form of the odometer disclosure precludes odometer fraud. As noted by New York based on NHTSA's Virginia program approval notice, the disclosure must be contained on the title provided to the transferee and not on a separate document. New York states that its proposal satisfies this purpose because the odometer disclosure will remain on the back of the New York Certificate of Title (MV-999) and will be added to the Electronic Vehicle Inventory and Transfer System. Other transactions, currently recorded on paper reassignment documents (MV-50 or MV50W), will be recorded in the proposed electronic system. For dealer to dealer transactions that presently use a paper reassignment document, dealers would make disclosures directly into the Electronic Vehicle Inventory and Transfer System after both buyer and seller agree electronically that the information, including the odometer disclosure, is correct. For transactions where a dealer transfers a vehicle to a consumer or other buyers who are not New York dealers, the odometer disclosure would, with the buyer's assent, be entered into the System. The

electronic disclosure would also be recorded on a two-part receipt generated by the System and printed by the dealer. Both buyer and seller would sign this paper disclosure and each would retain one part of the two part form. This paper receipt would then be presented when the buyer wishes to register the vehicle and checked against the electronic record by New York DMV personnel.

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. New York contends that its proposal satisfies this purpose by requiring odometer disclosures to remain on the back of the New York DMV Certificate of Title, requiring electronic odometer disclosures for subsequent reassignments at the time of transfer and requiring that non-dealer purchasers be issued a receipt documenting the electronic disclosure made at the time of purchase. Because these documents will be required when a purchaser applies for a title and NYSDMV will verify the odometer reading through a review of both the Electronic Vehicle Inventory and Transfer System and the documents before issuing a title, New York contends that its proposal meets this TIMA purpose.

A third purpose is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. New York states that its proposal satisfies the purpose because the paper title (MV-999) will continue to be produced through a secure printing process. Further, the paper reassignment documents (MV-50 or MV50W) used in transfers between licensed New York dealers will be replaced with the secure Electronic Vehicle Inventory and Transfer System that will prevent odometer tampering and allow individuals and NYSDMV to trace a more definitive mileage history. According to New York, the proposed electronic odometer disclosure scheme would also meet this purpose in sales from dealers to consumers and other non-dealer buyers. In that case, the odometer disclosure would be made electronically on the secure System and on a two-part receipt generated by that system. New York contends that the security of the Electronic Vehicle Inventory and Transfer System that will prevent odometer tampering and allow individuals and NYSDMV to trace a more definitive mileage history.

A fourth purpose is to create a record of the mileage on vehicles and a paper

odometer reading entered by the seller is lower than what was previously recorded, the transaction would not be processed without a proper notation explaining the odometer discrepancy. According to the NYSDMV, this notation can be either "true mileage unknown" or "exceeds mechanical limits", as indicated in a check-box in the System. This notation would remain in the vehicle's history through all subsequent transactions.

⁹ As with transfers between licensed New York dealers described above, the System automatically checks the odometer disclosure statement entered by the seller against the odometer disclosure statement previously recorded on the System for

that vehicle. If the odometer reading entered by the seller is lower than what was previously recorded, the transaction would be cancelled.

trail. New York contends its proposal satisfies this purpose because the odometer disclosure statement from the consumer to the New York dealer will remain on the back of the MV-999 and will be added to the Electronic Vehicle Inventory and Transfer System by the purchasing dealer. Disclosures made at the time of dealer to dealer transfers and when dealers sell to consumers and other non-New York dealer buyers will also be entered into the New York System. As a result, dealers will be able to check, and NYSDMV will be able to monitor, odometer history through the System and fraud will be reduced. Subsequent purchasers, both dealers and consumers alike, will be able to check, and NYSDMV will be able to monitor, odometer history through the System.

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. New York states that its proposal satisfies this purpose because dealers will be able to use the Electronic Vehicle Inventory and Transfer System to verify the odometer history of the vehicle, and NYSDMV will be able to monitor odometer history.¹⁰ Similarly, New York states that consumers will be able to check odometer history through a Web-based application and thereby evaluate the accuracy of the odometer readings for vehicles they wish to buy.

IV. Analysis

Under TIMA, NHTSA "shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless [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 the New York alternative. We now provide our initial assessment whether New York's proposal satisfies TIMA's purposes as relevant to its Petition.¹¹

A. New York's Proposal and the Specific Purposes of TIMA

One purpose is to assure that the form of the odometer disclosure precludes odometer fraud. When title is held by the transferor, the disclosure must be

contained on the title provided to the transferee and not on a separate document. In the case of a transferor of a vehicle in whose name the vehicle is not titled (e.g., the transferor of the vehicle is the transferee on the title) the odometer disclosure statement may be made on a secure reassignment document if the title does not have sufficient space for recording the additional disclosure.

NHTSA has initially determined that New York's proposed alternate disclosure requirements satisfy this purpose. Under New York's proposal, when an owner transfers ownership of a vehicle to a dealer, the odometer disclosure statement would be on the paper title. The dealer would input the vehicle's identifying information and odometer disclosure into the Electronic Vehicle Inventory and Transfer System. The odometer disclosure, including the names of the transferor and transferee, would be required. Thereafter the odometer disclosure statement will reside as an electronic record within the System that will be linked to the vehicle by the vehicle's VIN.

If a dealer transfers a vehicle to another licensed New York dealer, the selling dealer would sign on to the System using its unique sign on and password and would access the vehicle's identifying information on the System. The selling dealer would enter current vehicle information including the current odometer reading and would enter seller and purchaser information on the System. The System would then generate a transaction number. The purchasing dealer would use the transaction number to access the vehicle's information on the System, review the information, including the selling dealer's odometer disclosure statement, and accept or reject the transaction. If the transaction is accepted, the sale is completed and the odometer disclosure is recorded in the System. In essence, this is an electronic reassignment from one licensed dealer to another licensed dealer, using a transaction based approach in a secure computer system in which both the selling dealer and purchasing dealer sign off on the odometer disclosure.

When the vehicle is sold from a licensed New York dealer to a person or entity other than a licensed New York dealer, the dealer/seller enters the purchaser's identifying information and the odometer disclosure statement into the System. If the buyer agrees that the odometer disclosure in the System is accurate, the System creates a two part receipt that is signed by the selling dealer and purchaser. The paper title and one part of the receipt must be

presented to a State motor vehicle titling and registration agency when the purchaser applies to title and register the vehicle.

NHTSA's initial determination is that the New York proposal meets the TIMA purpose of assuring that the form of the odometer disclosure precludes odometer fraud. We note that New York's proposal involves a proper odometer disclosure on the title itself when the seller is the person in whose name the vehicle is titled. Following transfer of a vehicle to a New York dealer, when the vehicle is not re-titled in the name of the dealer, the proposed New York system would provide for odometer disclosures to be made electronically in a secure electronic system with sign offs by the seller and buyer instead of on the paper reassignment documents currently being used. In addition, the paper title with an odometer disclosure would be transferred to the transferee/purchasing dealer. This is comparable to paper reassignments employing a paper State title and paper State reassignment form. Ultimately, for sales from New York dealers to consumers and other non-dealer buyers, the odometer disclosure would be recorded in the State's electronic system and on a two-part receipt signed by both buyer and seller. The receipt—a form of paper reassignment document—memorializes the electronic disclosure. This would accompany the initial title with an odometer disclosure.

A second purpose of TIMA is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer mileage on the title both a condition for the application for a title and a requirement for the title issued by the State. NHTSA has initially determined that New York's proposed process satisfies this purpose. New York's proposed transfer process requires disclosure of odometer information on the paper title, at first sale from a titled owner to a New York licensed dealer, and electronically within the System in transfers between New York licensed dealers before the transaction can be completed. In addition, in sales from New York licensed dealers to non-dealer purchasers, the purchaser must present the prior paper title from the initial sale to the first dealer and the receipt of purchase with a mileage disclosure from the last dealer when applying for a vehicle title and registration. New York's proposal requires that the vehicle title from the initial owner in the process to the first dealer—with the odometer disclosure—be provided to the person purchasing the vehicle from

¹⁰ According to New York's petition, the proposed System has no effect on the current practice in transfers from consumers to dealers—the odometer disclosure statement from the consumer to the dealer will continue to be made on the back of the MV-999.

¹¹ New York 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).

the last dealer in the dealer chain. This original title—with an odometer disclosure—along with the buyer's part of the proposed two-part paper receipt and mileage disclosure must both be presented to state titling officials in order for the buyer to obtain a new title.

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 New York's alternate disclosure requirements do not satisfy this purpose. When a vehicle is first transferred to a dealer, the transfer and required odometer disclosure statement are made using the vehicle's secure paper title document (MV-999). Subsequent transfers between licensed New York dealers are processed electronically—the selling dealer submits the vehicle's identifying information into the System, including the odometer disclosure statement; the purchasing dealer then verifies the information on the System, including the odometer disclosure statement made by the selling dealer, and either accepts or rejects the transaction electronically.

Under New York's proposal, upon final retail sale of a vehicle to a consumer or other non-New York dealer entity, the odometer disclosure statement would be made electronically and on a two part paper receipt, one part of which is given to the new owner to use in obtaining a title. More particularly, the selling dealer would access the Electronic Vehicle Inventory and Transfer System and enter the odometer disclosure and the dealer's and buyer's information into the system. If the odometer reading entered is not lower than a prior entry, a two-part odometer statement and receipt would be then be created electronically. The purchaser would review the information on the receipt prior to the receipt being printed and verify the odometer disclosure statement on the receipt. If the purchaser accepts the information, then the two-part sales receipt would be printed and both parties would sign the odometer disclosure statement printed on each part of the receipt. The dealer would retain the dealer part of the receipt for its files and the purchaser would be given the purchaser part of the receipt along with the original ownership document.

New York's petition does not state that the receipt form would be generated by a secure process, and in any event does not describe any such processes. NHTSA cannot assume that the reassignment document would be produced using secure processes. The agency's preliminary conclusion is that New York's use of a non-secure paper

receipt and disclosure form does not satisfy the TIMA purpose of preventing alterations of disclosures on titles and precluding counterfeit titles through secure processes.

When, following New York dealer to New York dealer sale(s), a vehicle is purchased by an out-of-state buyer, the non-secure receipt form proposed by New York would be used as a reassignment document outside of New York. This non-secure document therefore would be used to satisfy part of the titling requirements for the vehicle in the State where it would be titled and registered. This non-secure document could be easily altered or counterfeited and used in those jurisdictions outside New York. The result is that the odometer disclosure statement printed by the last New York dealer as part of the sale to a non-New York dealer would not be made by secure processes, and thus would not be not in conformance with a TIMA purpose. We appreciate that the proposed New York system would allow other state motor vehicle agencies to check the electronic disclosure information maintained on New York's electronic system, or that the non-dealer purchaser may be able to obtain a New York title. In our view, as explained further below, this does not rectify the shortcoming in New York's proposed program.

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. Under New York's proposal, creation of a paper trail starts with the requirement that the initial transfer to a dealer is processed on the vehicle's secure paper title, including the odometer disclosure statement. Each subsequent dealer-to-dealer transfer is processed electronically, with the selling dealer inputting the vehicle's identifying information into the System, and the purchasing dealer verifying and certifying this information to complete the transfer. Under New York's proposed program, the most recent vehicle odometer disclosure will be available for public view via an online application. A dealer selling a vehicle to a non-dealer would record the odometer statement in the System at the time of sale. A selling dealer must also transfer the paper title obtained from the first seller to the purchasing dealer or retail and/or out of state buyer.

For ultimate sales to New Yorkers, the final retail purchaser would be required

to present paperwork (including the title containing an executed odometer disclosure statement used to transfer title of the vehicle from the initial owner to a New York dealer and, if appropriate, one copy of the receipt generated by the System when the dealer transferred the vehicle to the purchaser) to the NYSDMV when applying to register and title the vehicle in the purchaser's name. The NYSDMV would use this paperwork in conjunction with the vehicle's identifying information available on the System to verify the trail of ownership and odometer disclosure statements for the vehicle through the final retail sale. The paper title used to transfer the vehicle to the dealer would be retained by the NYSDMV in a file associated with the vehicle VIN for at least ten years, and it would be available to dealers and NYSDMV and Enforcement staff. The System will maintain the vehicle identifying information, including odometer disclosure, indefinitely. The NYSDMV could track the odometer disclosure statements through the System. The System would not allow a transfer to be completed in which the disclosed odometer reading is lower than a prior odometer disclosure statement. In addition, New York's petition states that it will not issue a title to the buyer unless the disclosures on the foregoing paper documents match those found in the System.

In those cases in which a New York dealer sells a vehicle to a person who would title and register it out-of-state, the buyer would be provided with the title used to transfer it initially to a dealer and one part of the two-part receipt. As noted above, the receipt, which is not specified to be on secure paper, is a vulnerability. A substitute document could readily be created.

In NHTSA's preliminary view, the New York's proposed program would create a scheme of records equivalent to the current "paper trail" that assists law enforcement in identifying and prosecuting odometer fraud, except where the vehicle ultimately is titled in a state other than New York. In those instances, it is less effective than the current system that employs a Paper MV 50 Retail Certificate of Sale (Dealers Reassignment form), which is on secure paper with a control number, and the dealer has a copy. The resolution of whether New York's proposed program satisfies the purpose of creating a paper trail factor turns on the security of the final reassignment document used to obtain a title. At this juncture, it does not satisfy this purpose.

B. New York'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. Here, except for the portions of the proposed program relating to the security of the odometer disclosure statement made on the two-part receipt in a vehicle sale from a licensed New York dealer to an out of state buyer, New York's proposed alternate disclosure requirements include characteristics that would assure that representations of a vehicle's actual mileage would be as valid as those found in current paper title transfers and reassignments.

Other than the portions related to the security of the odometer disclosure statement made at the sale of a vehicle from a licensed New York dealer to an out of state buyer, New York's proposal likely will provide more protection for consumers than the current procedures. Transfers of vehicles between licensed New York dealers, including the required odometer disclosure statements, would be processed and the records maintained electronically in the System. Transfer records would be maintained on the System. The paper title used for the initial transfer to a licensed New York dealer would follow the vehicle and would be required when applying for registration and titling of the vehicle in the final purchaser's (not a licensed New York dealer) name. Potential buyers can examine the most recent odometer disclosure statement online before purchasing the vehicle. In-state consumers are at least as protected under New York's proposed program as they are under the current system.

V. NHTSA Initial Determination

For the foregoing reasons, NHTSA preliminarily denies New York's Petition regarding proposed alternate disclosure requirements. During the comment period, New York may submit additional information demonstrating how its program satisfies the concerns identified above or may amend its program to satisfy these concerns.

This is not a final agency action. NHTSA invites public comments within

the scope of this notice. Should NHTSA decide to issue a final grant of New York's Petition, in whole or in part, it would likely reserve the right to rescind that grant in the event that future information indicates that, in operation, New York's alternate disclosure requirements do not satisfy applicable standards.

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 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: October 14, 2011.

O. Kevin Vincent,
Chief Counsel.

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