

*Implementation Plans and Transportation Conformity: Technical Guidance for MOVES2010, 2010a and 2010b*, April 2012; and *Example Documentation Report for 1990 Base Year for Ozone and CO SIP Emissions Inventories*, March 1992. See Table 1 for a summary of 2007 CO peak winter season daily emission estimates by source sector and by county for the NYNNJLI CO area.

#### V. Why is New Jersey shutting down 5 CO Maintenance Monitors?

In order to conserve resources, the State is seeking to discontinue monitoring in Burlington, Freehold, Morristown, Perth Amboy, and East Orange since current air quality levels do not warrant the additional expense of running CO monitors in those areas. The State has committed to continue CO monitoring in Camden and Elizabeth, and will reestablish CO monitoring in Burlington, Freehold, Morristown, Perth Amboy, and East Orange if air quality in Camden and Elizabeth degrades significantly. The Camden and Elizabeth sites have been judged to be representative of these 5 CO maintenance monitor sites and are thus acting as their surrogate sites. Starting in the early 1970's, EPA has set national standards that have considerably reduced emissions of CO and other pollutants from motor vehicles, including tailpipe emissions, new vehicle technologies, and clean fuels programs. Because of this, the EPA believes that it is unlikely that the maintenance area will exceed the CO NAAQS again. Thus, we believe that the revisions that New Jersey has made to its maintenance plan will continue to protect the citizens of New Jersey from high CO concentrations, and also conserve resources. Additional detail can be seen in the accompanying TSD to this notice.

#### VI. What action is the EPA proposing to take?

The EPA has evaluated New Jersey's submittals for consistency with the Act and Agency regulations and policy. The EPA is proposing to approve New Jersey's CO limited maintenance plan because it meets the requirements set forth in section 175A of the Act and continues to demonstrate that the NAAQS for CO will continue to be met for the next ten years. The EPA is also proposing to approve the 2007 Attainment/Base Year CO emissions inventory. Finally, the EPA also proposes to approve the shutdown of 5 CO maintenance monitors in New Jersey, since CO monitoring will

continue at other representative locations across the State.

The EPA views the SIP revisions proposed in today's proposal as separable actions. This means that if the EPA receives adverse comments on particular portions of this notice and not on other portions, the EPA may choose not to take final action at the same time in a single notice on all of these SIP revisions. Instead, the EPA may choose to take final action on these SIP revisions in separate notices.

Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Region 2 Office by the method discussed in the **ADDRESSES** section of this action.

#### VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 14, 2016.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 580

[Docket No. NHTSA-2016-0037]

**RIN 2127-AL39**

#### Odometer Disclosure Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice is being issued pursuant to the Moving Ahead for Progress in the 21st Century Act of 2012 requiring NHTSA to prescribe regulations permitting States to adopt schemes for electronic odometer disclosure statements. To permit States to allow electronic odometer disclosures, NHTSA is proposing to amend the existing requirements to clarify that most of those requirements apply regardless of the technology used for the disclosure. NHTSA is further

proposing to add a new section containing specific additional requirements that would apply only to electronic disclosures to ensure the secure creation and maintenance of the electronic records. Through this proposal NHTSA seeks to allow odometer disclosures in an electronic medium while maintaining and protecting the existing system(s) that ensure accurate odometer disclosures and aid law enforcement in prosecuting odometer fraud. NHTSA is also proposing to extend an existing exemption for vehicles more than 10 years old to 25 years.

**DATES:** You should submit comments early enough to ensure that Docket Management receives them not later than May 24, 2016.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document 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, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493-2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at (202) 366-9324.

**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 discussion 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).

**Confidential Information:** If you wish to submit any information under a claim

of confidentiality, you should submit two copies of your complete submission, including the information you claim to be confidential business information, and one copy with the claimed confidential business information deleted from the document, to the Chief Counsel, NHTSA, at the address given below 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 follow the procedures set forth in 49 CFR part 512 and include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

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

**FOR FURTHER INFORMATION CONTACT:**

*For policy and technical issues:* Mr. David Sparks, Director, Office of Odometer Fraud, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366-5953. Email: [David.Sparks@dot.gov](mailto:David.Sparks@dot.gov).

*For legal issues:* Ms. Arija Flowers, Trial Attorney, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366-5263.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Executive Summary*

This document is being issued pursuant to the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21, or Pub. L. 112-141), which amended Section 32705 of Title 49, United States Code, by adding the following subsection:

(g) **ELECTRONIC DISCLOSURES.**—Not later than 18 months after the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012, in carrying out this section, the Secretary shall prescribe regulations permitting any written disclosures or notices and related matters to be provided electronically.

§ 31205, 126 Stat. 761 (2012).

To permit States to allow electronic odometer disclosures, NHTSA is proposing to amend the existing requirements to clarify that most of

those requirements apply regardless of the technology used for the disclosure. NHTSA is further proposing to add a new section containing specific additional requirements that would apply only to electronic disclosures to ensure the secure creation and maintenance of the electronic records. Through this proposal NHTSA seeks to allow odometer disclosures in an electronic medium while maintaining and protecting the existing system(s) that ensure accurate odometer disclosures and aid law enforcement in prosecuting odometer fraud. The new issues addressed by the new requirements are electronic signatures, security of the hardware in an electronic odometer disclosure system, determination of official document, power of attorney and record retention. NHTSA is also proposing to modify an existing exemption for vehicles more than 10 years old to 25 years.

*B. The Cost Savings Act, the Truth in Mileage Act and Subsequent Amendments*

**1. The Cost Savings Act**

In 1972, Congress enacted the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) to, among other things, protect purchasers of motor vehicles from odometer fraud. See Public Law 92-513, 86 Stat. 947, 961-63 (1972).

To assist purchasers in knowing the true mileage of a motor vehicle, Section 408 of the Cost Savings Act required the transferor of a motor vehicle to provide written disclosure to the transferee in connection with the transfer of ownership of the vehicle. See Public Law 92-513, 408, 86 Stat. 947 (1972). Section 408 required the Secretary to issue rules requiring the transferor to give a written disclosure to the transferee in connection with the transfer of the vehicle. 86 Stat. 962-63. The written disclosure was to include the cumulative mileage registered on the odometer, or disclose 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. The rules were to prescribe the manner in which information is disclosed under this section and in which such information is retained. *Id.* Section 408 further stated that it shall be a violation 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. *Id.* The Cost Savings Act also prohibited disconnecting, resetting, or altering motor vehicle odometers. *Id.* The statute

subjected violators to civil and criminal penalties and provided for Federal injunctive relief, State enforcement, and a private right of action.

Despite these protections, there were shortcomings in the odometer provisions of the Cost Savings Act. Among others, in some States, the odometer disclosure statement was not on the title; instead, it was a separate document that could easily be altered or discarded and did not travel with the title. Consequently, the separate disclosure statement did not effectively provide information to purchasers about the vehicle's mileage. In some States, the title was not on tamper-proof paper. The problems were compounded by title washing through States with ineffective controls. In addition, there were considerable misstatements of mileage on vehicles that had formerly been leased vehicles, as well as on used vehicles sold at wholesale auctions.

## 2. The Truth in Mileage Act

In 1986, Congress enacted the Truth in Mileage Act (TIMA), which added provisions to the odometer provisions of the Cost Savings Act. See Public Law 99-579, 100 Stat. 3309 (1986). The TIMA amendments expanded and strengthened Section 408 of the Cost Savings Act.

Among other requirements, TIMA precluded the licensing of vehicles, the ownership of which was transferred, in any State unless several requirements were met by the transferee and transferor. The transferee, in submitting an application for a title, is required to provide the transferor's (seller's) title, and if that title contains a space for the transferor to disclose the vehicle's mileage, that information must be included and the statement must be signed and dated by the transferor.

TIMA also precluded the licensing of vehicles, the ownership of which was transferred, in any State unless several titling requirements were met. Titles must be printed by a secure printing process or other secure process. They must indicate the mileage and contain space for the transferee to disclose the mileage in a subsequent transfer. As to lease vehicles, the Secretary was required to publish rules requiring the lessor of vehicles to advise its lessee(s) that the lessee is required by law to disclose the vehicle's mileage to the lessor upon the lessor's transfer of ownership of the vehicle. In addition, TIMA required that auction companies establish and maintain records on vehicles sold at the auction, including the name of the most recent owner of the vehicle, the name of the buyer, the vehicle identification number and the

odometer reading on the date the auction took possession of the vehicle.

As amended by TIMA, Section 408(f)(1) of the Cost Savings Act provided that its provisions on mileage statements for licensing of vehicles (and rules involving leased vehicles) apply in a State, unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. Section 408(f)(2) stated that "[t]he 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."

## 3. Amendments Following the Truth in Mileage Act and the 1994 Recodification of the Cost Savings Act

In 1988, Congress amended section 408(d) of the Cost Savings Act to permit the use of a secure power of attorney in circumstances where the title was held by a lienholder. The Secretary was required to publish a rule to implement the provision. See Public Law 100-561 § 40, 102 Stat. 2805, 2817 (1988), which added Section 408(d)(2)(C). In 1990, Congress amended section 408(d)(2)(C) of the Cost Savings Act. The amendment addressed retention of powers of attorneys by States and provided that the rule adopted by the Secretary not require that a vehicle be titled in the State in which the power of attorney was issued. See Public Law 101-641 § 7(a), 104 Stat. 4654, 4657 (1990).

In 1994, in the course of the 1994 recodification of various laws pertaining to the Department of Transportation, the Cost Savings Act, as amended by TIMA, was repealed. It was reenacted and recodified without substantive change. See Public Law 103-272, 108 Stat. 745, 1048-1056, 1379, 1387 (1994). The statute is now codified at 49 U.S.C. 32705 *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).

## 4. FAST Act Amendments

Section 24111 of the Fixing America's Surface Transportation Act of 2015 (FAST Act, or Public Law 114-94), signed into law on December 4, 2015, allows States to adopt electronic odometer disclosure systems without prior approval of the Secretary ("the

Secretary") of the Department of Transportation. Any such system must comply with applicable State and Federal laws regarding electronic signatures under 15 U.S.C. 7001 *et seq.*, meet the requirements of 49 U.S.C. 32705 and provide for "appropriate authentication and security measures," Public Law 114-94 § 24111. States may only adopt electronic odometer systems without prior approval of the Secretary until the effective date of the rules proposed in this notice. *Id.*

In providing States with the opportunity to implement electronic odometer disclosure systems until the effective date of the regulations now being proposed, the FAST Act amendments do not alter existing statutory odometer disclosure requirements or modify the intent of those requirements. Effective odometer disclosure systems are essential to protecting consumers from odometer fraud and must reduce or eliminate opportunities for such fraud to the greatest practicable extent. Federal and State governments have an interest in preventing such fraud.

The agency's proposed regulations, as contained in this notice, as well as our prior responses to State petitions for approval of alternative disclosure schemes (discussed below) contain guidance on the potential strengths and weaknesses of electronic odometer disclosure schemes and may serve as a resource for States implementing electronic odometer disclosure systems under the FAST Act. NHTSA respectfully requests that States adopting electronic odometer disclosure schemes under the authority granted by the FAST Act be mindful of the persistence and ingenuity of those who would commit odometer fraud as well as their propensity to find and exploit weaknesses in the disclosure requirements of particular jurisdictions. The agency therefore suggests that the issues considered in this notice and the accompanying regulatory proposals be carefully considered in the formulation of any electronic odometer disclosure system.

## C. Overview of NHTSA's Odometer Disclosure Regulations

The implementing regulations for the odometer provisions of the Cost Savings Act, as amended, are found in Part 580 of Title 49 of the Code of Federal Regulations (CFR). These regulations establish the minimum requirements for odometer disclosure, the form of certain documents employed in disclosures, and the security of title documents and power of attorney forms. The regulations also set the rules for

transactions involving leased vehicles, set recordkeeping requirements including those for auctions, and authorize the use of powers of attorney in limited circumstances. In addition, Part 580 also contains provisions exempting certain classes of vehicles from the disclosure regulations and provides a petition process by which a State may obtain approval of alternate disclosure requirements. The following paragraphs summarize some of the important aspects of the regulations.

Regulations governing disclosures are codified in 49 CFR 580.5, 580.7 and 580.13. Section 580.5(c) requires, in connection with the transfer of ownership of a motor vehicle, the odometer disclosure by the transferor to the transferee on the title. Following the initial execution

on a title, reassignment documents may be used. As provided by the regulations, 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. Section 580.5(c) requires a transferor to sign, and to print his/her name on an odometer disclosure statement with the following information: (1) The odometer reading at the time of transfer (not to include tenths of miles); (2) the date of transfer; (3) the transferor's name and current address; (4) the transferee's name and current address; and (5) the identity of the vehicle, including its make, model, year, body type, and VIN. The transferor must also, under § 580.5(e), certify whether the odometer reading reflects the vehicle's actual mileage, disclose whether the odometer reading reflects mileage in excess of the odometer's mechanical limit or, if the odometer does not reflect the actual mileage, must state that the odometer reading should not be relied on. The transferee must sign the statement. Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor.

To ensure that vehicles subject to leases of 4 months or more have accurate odometer readings executed on titles at the time of transfer, § 580.7(a) requires lessors to provide written notice to the lessee of the lessee's obligation to disclose the mileage of the leased vehicle and the penalties for failure to disclose the information. In connection with the transfer of ownership of a leased vehicle, lessees are required by § 580.7(b) to provide disclosures comparable to those required by §§ 580.5(c) and (e), noted above, to the lessor along with the date the lessor notified the lessee of disclosure requirements. Additionally, the lessor must state the date the lessor

received the lessee's completed disclosure statement and must also sign it. Under § 580.7(d) a lessor transferring ownership of a vehicle (without obtaining possession) may indicate the mileage disclosed by the lessee on the vehicle's title unless lessor has reason to believe the lessee's disclosure is inaccurate.

If allowed by State law, the transferor may give the transferee a power of attorney to execute the mileage disclosure on the title, as provided by § 580.13(a) when the title is physically held by a lienholder or has been lost and the transferee obtains a duplicate title on behalf of a transferor. Sections 580.13(b) and (d) provide that the transferor must disclose information identical to that required by §§ 580.5(c) and (e) on part A of the secure power of attorney form. The transferee is required to sign the power of attorney form part A and print his/her name. See § 580.13(e). In turn, § 580.13(f) requires the transferee, upon receipt of the transferor's title, to make on the title exactly the mileage disclosure as disclosed by the transferor on the power of attorney.

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. 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. 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.

To ensure that disclosures made through a power of attorney are accurate, § 580.15 requires the person exercising the power of attorney to certify, on part C of the form, that the disclosures made on a title or reassignment document on behalf of the original seller are identical to those found on part A of the power of attorney. This section also requires a certification, when part B is used, that the mileage disclosed and

acknowledged under part B is greater than the mileage disclosed in part A.

Odometer disclosures may only be made on certain documents. These specified documents are a vehicle title (§ 580.5(a)), a reassignment document when used by transferors other than those in whose name the vehicle is titled (§§ 580.5(b) and (c)), a disclosure statement made by a lessee (§ 580.7(b)), and a power of attorney when the title is held by a lienholder or is lost (§ 580.13(a)). When the power of attorney authorized by § 580.13(a) is used, a further power of attorney authorized by § 580.14(a) may be employed to allow a subsequent transferee to approve the seller's disclosure, per § 580.16. Both of the aforementioned powers of attorney must be on the same form.

Section 580.4 requires titles, reassignment documents, and the power of attorney form described §§ 580.13 and 580.14 to be protected against counterfeiting and tampering by a secure printing process or other secure process. These titles, reassignment documents, and powers of attorney must contain a statement referring to Federal odometer law and a warning that failure to complete the form or providing false information may result in fines or imprisonment pursuant to §§ 580.5(d), 580.13(c), and 580.14(c). For a leased vehicle, the lessor is obligated to provide the lessee with written notice of the obligation to make a mileage disclosure and that notice must contain the same warnings (§ 580.7(a)). Except in the limited context of the proper use of the power of attorney forms, no person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction (§ 580.5(h)).

Part 580 establishes minimum requirements for record retention, which ensures that adequate records exist to create a "paper trail" sufficient to support detection and prosecution of odometer fraud. Section 580.8(a) requires motor vehicle dealers and distributors who are required to issue an odometer disclosure to retain copies of each odometer statement they issue and receive for five years. Lessors of leased vehicles must retain the odometer statement they receive from their lessee for five years from the date they transfer ownership of the leased vehicle (§ 580.8(b)). If a power of attorney authorized by §§ 580.13 and/or 580.14 has been used, dealers must retain copies of the document for five years (§ 580.8(c)). Section 580.9 requires auction companies to retain the name of the most recent owner on the date the auction took possession of the motor

vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction company took possession of the motor vehicle for five years from the date of sale. States are required, under § 580.13(f) to retain the original copy of the power of attorney authorized by § 580.13(a) or (b) and the title for a period of three years or a time period equal to the State's titling record retention period, whichever is shorter.

In addition to the recordkeeping requirements, Part 580 also requires that subsequent buyers of a vehicle that was transferred to their seller through a disclosure made with a Part A power of attorney under § 580.13(a) have access to that power of attorney if they elect not to use Part B and return to the seller to acknowledge disclosure on the title itself (§ 580.16).

Other sections of Part 580 establish a petition process by which States may seek assistance in revising their odometer laws (§ 580.10), may seek approval of alternative odometer disclosure schemes (§ 580.11), and establish exemptions from the disclosure requirements of § 580.5 and § 580.7 (§ 580.17). The exemptions in 580.17 apply to transfers or leases for: (1) Vehicles with a Gross Vehicle Weight Rating (GVWR) over 16,000 pounds; (2) vehicles that are not self-propelled; (3) vehicles manufactured in a model year beginning ten years before January 1 of the calendar year in which the transfer occurs; (4) certain vehicles sold by the manufacturer to any agency of the United States; and (5) a new vehicle prior to its first transfer for purposes other than resale.

#### *D. Previous State Petitions for Approval of Electronic Odometer Disclosure Schemes*

The Cost Savings Act, as amended by TIMA in 1986, contains a specific provision on approval of State alternative odometer disclosure programs. Subsection 408(f)(2) of the Cost Savings Act (now recodified at 49 U.S.C. 32705(d)) provides that 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. (Subsections 408(d), (e) of the Costs Savings Act were recodified to 49 U.S.C. 32705(b) and (c).)

Six States—Virginia, Wisconsin, Florida, New York, Texas, and Arizona—have filed petitions with NHTSA seeking approval of electronic alternative odometer programs under 49

U.S.C. 32705(d)). NHTSA has approved, in whole or in part, five of these six petitions and has not yet taken final action on the sixth and most recent petition. A review of these petitions and the agency's responses is instructive regarding the various concerns raised by the implementation of electronic odometer disclosure systems.

#### 1. Virginia

In December 2006, the Commonwealth of Virginia petitioned NHTSA to approve the Commonwealth's proposed electronic odometer disclosure requirements for intrastate transactions involving vehicles not subject to a lien. Virginia's proposal contemplated a paperless system where users would enter data directly into a State electronic system. To authenticate the identity of the participants, Virginia's petition stated that a unique personal identification number (PIN) and a unique customer number that would both be physically mailed to the individual would be used in conjunction with the customer's date of birth (DOB) to allow creation of an electronic odometer disclosure statement and signature. For dealers, the Virginia proposal stated that each dealer would provide the State with a list of employees authorized to make disclosures for the dealership. These individuals would be provided customer number PINS by mail and would use these identifiers in the same fashion as a private individual to verify their identity so they could complete transactions. In addition, transactions involving dealerships would require that the dealership enter a dealer number to complete the transaction.

Virginia's proposed electronic odometer disclosure would be made in the same way a paper disclosure would be made. The transferor would fill out the electronic form that contained the same entries and warnings as those found on a paper title and then sign it electronically. The transferee would then examine the odometer disclosure executed by the transferor and either accept it or reject it. The disclosure statement would be linked to the electronic title and the transferor would be instructed to mail any existing paper title to the State for destruction. The proposal also stated that the transferee could obtain a paper copy of the title upon request.

After finding that the Virginia proposal would properly verify the identity of users, would provide an equivalent level of security to the paper system, and would create an adequate system of records, NHTSA granted

Virginia's request on January 7, 2009 (74 FR 643).

#### 2. Texas

Texas filed a petition seeking approval of alternative odometer disclosure requirements in June 2008. The State proposal would transfer vehicles' titles electronically for in-state transactions between residents where there are no security interests in the vehicle. The proposal did not encompass leased vehicles, the use of a power of attorney, or interstate transactions. Texas's system would eliminate paper titles (except as requested) by creating an electronic title and require transfers of vehicle title for in-state transactions to be made using the internet. The identities of the parties, who would have to be Texas residents holding a valid State identification credential, would be verified by matching four personal data elements and two forms of identification against a State database. Odometer mileage disclosures would be made by requiring the seller and buyer to separately log into a secure Web site and each enter the odometer mileage. Upon successful completion of the transaction, the seller would mail the paper title to the State for destruction. The title would remain as an electronic record and the transferee could receive a paper title on request.

NHTSA's initial determination, published on November 18, 2009, 74 FR 59503, preliminarily granted the Texas petition on the condition that Texas amend its program to enable transferees to obtain a paper copy of the title that met the requirements of TIMA, require dealers to retain a copy of all odometer disclosures that they issue and receive, and require disclosure of the brand (the brand states whether the odometer reflects the actual mileage, reflects the mileage in excess of the designated odometer limit or differs from the actual mileage and is not reliable.) Id. at 59506. Following submission of comments by Texas clarifying features of its proposal, NHTSA granted the Texas petition in a final determination issued on April 22, 2010. 75 FR 20925. The final determination noted that the Texas petition and comments indicated that the proposed system contained sufficient safeguards and record keeping requirements to meet the purposes of TIMA. Further, the agency noted that since Texas would require persons with an electronic title to submit any paper titles to the State for destruction, the proposal would prevent potential mischief caused by duplicate titles. Id. at 20929.

### 3. Wisconsin

In September 2009, Wisconsin filed a petition seeking approval of an electronic odometer disclosure system limited to intrastate transactions involving motor vehicle dealers. Identity verification would be based on customers entering a minimum of three personal identifiers—name, address, date of birth, product number, Driver License/ID number, and a Federal Employer Identification Number or partial Social Security Number—in the State system. Once the user is verified under this scheme, the user could begin the title transaction. As with the earlier petitions, Wisconsin proposed that electronic odometer disclosures be linked to, and become part of, the title record in the State's database and a title transfer could not be completed unless an electronic odometer disclosure had been completed. Also, if a paper title is needed, the Wisconsin DMV would print the title on secure paper with the odometer disclosure statement in the proper location and format under existing rules.

In April 2010, NHTSA published an Initial Determination proposing to approve Wisconsin's program, subject to the resolution of certain concerns. 75 FR 20965 (Apr. 22, 2010). In particular, NHTSA raised questions about how the Wisconsin program would manage odometer disclosures for leased vehicles. In response to NHTSA's concerns, Wisconsin submitted comments stating that lessee odometer disclosures would be addressed in the future.

NHTSA published a Final determination approving a revised Wisconsin electronic odometer disclosure plan on January 10, 2011. 76 FR 1367. The Agency found the Wisconsin proposal to be consistent with the odometer disclosure requirements. The verification scheme and form of the electronic disclosure provided adequate assurances that the persons executing the disclosure were the actual transferor and transferee. Thereafter the odometer disclosure statement would reside as an electronic record in the Wisconsin database and would be linked to the vehicle's title. NHTSA also noted that the electronic title would, under Wisconsin law, be the official title and that paper titles would be issued only if needed for an interstate transaction or a transfer that could not be completed electronically.

### 4. Florida

In December 2009, Florida proposed a hybrid electronic disclosure system in which the electronic transactions would

be performed through authorized tag agents. Because the electronic data entries would only be made through terminals located at tag agent locations, Florida proposed that the required odometer disclosures for certain transactions would be made on physical documents that would then be delivered to tag agents who would then enter disclosure information into the State system. Under Florida's proposal a seller with a vehicle having an electronic title wishing to sell the car would visit a tag office with the buyer. 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 would then be issued in the buyer's name and stored electronically, or the buyer could choose to have the title printed as a physical document.

For transactions involving dealers, Florida proposed that a seller with e-title would bring the vehicle to a dealership. The seller and dealer would complete a secure reassignment form with odometer disclosure. When the dealer sold the vehicle to another buyer, the dealer and buyer would complete another secure reassignment form with odometer disclosure. The dealer would take both of the secure reassignment forms to a tag agency. The vehicle title would then be transferred to the buyer and the buyer would have the option to obtain a paper title or have Florida's Department of Transportation hold the title electronically.

Under Florida's proposal, the lessor of a leased vehicle would hold an e-title. When the lease ends, the lessee would bring the vehicle to a dealership. The lessee would sign an odometer disclosure statement on a secure physical document. The lessor would then sign a secure physical power of attorney to the dealer authorizing the dealer to execute the odometer disclosure. The dealer would then sign a physical secure reassignment form agreeing with the odometer disclosure. When the dealer sold the vehicle to another buyer, the dealer would take the various physical documents (bill of sale, reassignment document, and power of attorney) to the tag agency, where the title would be transferred to the buyer. The buyer would then have the option of obtaining a new paper title or having the Florida Department of Transportation hold the vehicle title electronically.

NHTSA's final determination granted the Florida petition in part and denied it in part. 77 FR 36935 (June 20, 2012). Florida's request was granted for

electronic transactions involving transfers between private parties but was denied for transactions involving dealers and leased vehicles. Among other things, NHTSA's final determination observed that transactions involving dealers relied on a number of odometer disclosures being made on documents other than the title itself. This, in the Agency's view, was inconsistent with TIMA's command that disclosures be made on the title and not on a separate document. Further, the Florida scheme for dealer transactions would result in new registrations being issued after submission of a disclosure statement made on a physical reassignment document rather than on the title itself, thereby violating the requirement that a vehicle may only be registered if the new owner submits a title containing the odometer disclosure statement. NHTSA denied Florida's proposed requirements for leased vehicles on similar grounds. Because of the proposed system's reliance on tag agents as the only point of data entry, completion of a transaction and execution of the required disclosure statements required that the disclosures be made on a number of documents, none of which were the actual title. These documents also did not meet other content and security requirements. Moreover, the use of a power of attorney in an instance where the lessor would have access to the title, was viewed by the Agency as inconsistent with the narrow set of circumstances under which such a power of attorney could be used under TIMA.

### 5. New York

The State of New York filed a petition with NHTSA in November 2010, seeking approval of alternative odometer disclosure requirements. The New York petition sought to convert the State's existing paper process for dealer transactions to an electronic process in which an authorized dealership user would sign on to the State's planned 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. Access to the system itself would occur only at dealerships by specific dealer employees whose identity would be verified by State issued credentials.

If that dealer sold a vehicle to another licensed New York dealer, the selling dealer would sign on to the proposed electronic system and enter current vehicle information, including the current odometer reading, as well as seller and purchaser information. The

purchasing dealer would subsequently sign on to the system and review the vehicle's identifying information, including the odometer disclosure statement made by the selling dealer, and either accept or reject the transaction. If the purchasing dealer accepted the transaction it would be considered complete. The original pre-dealer title (still in the prior owner's name) would be surrendered to the purchasing dealer at the time of sale. Subsequent transfers between licensed New York dealers would be recorded in the same manner. The history of the vehicle's identifying information entered into the system at each transfer would be maintained 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, out-of-state buyer or other non-New York dealer purchaser, the selling dealer would 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. 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 the 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, while 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.

NHTSA's initial determination denied the New York petition because it used a non-secure receipt for odometer disclosure in transfers between New York dealers and out-of-state buyers and was therefore inconsistent with Federal odometer law. 76 FR 65487, 65491 (Oct. 21, 2011). New York subsequently amended its proposal by replacing the non-secure document with a secure State issued paper, New York State MV-50 (Retail Certificate of Sale) form. The result of this change was that a consumer purchasing a vehicle from a dealer would then receive the original title and odometer statement executed by the owner who sold the vehicle to the dealer and the secure MV-50 form with an odometer disclosure. In addition, the mileage disclosed at the

time of the sale to the dealer and the mileage disclosed at the time the dealer sold the vehicle to the subsequent retail purchaser would be recorded in New York's system and available for viewing through a web portal.

The Agency's final determination, 77 FR 50381 (Aug. 12, 2012), granted the New York petition as amended. NHTSA found that the employment of the secure State issued and numbered MV-50 form, in conjunction with the odometer disclosure on the original seller's title and the recording of these disclosures in New York's electronic system, met the purposes of TIMA.

#### 6. Arizona

In December 2011, Arizona filed a petition with NHTSA seeking approval of alternative odometer disclosure requirements. The Arizona proposal was limited to transactions involving licensed Arizona dealers and did not encompass interstate transactions. Under this proposal, dealers would electronically scan and upload documents to the State. Dealers would scan documents using a specified format and resolution, encrypt the scanned images and transmit the images to a secure system using account codes, user/group profiles, and passwords. The State would retain electronic files in a document management system, and dealers would be required to retain hard copies of the documents. The disclosures would not be made on a title but on a form described as a Secure Odometer Disclosure. This form would be completed and signed by hand and submitted to Arizona along with other documents after being scanned. The petition appears to propose that the title would not be among the documents submitted to Arizona, and it may be that this procedure would be followed if the seller's title is an electronic title. If the dealer sells the vehicle, that dealer would again scan and electronically submit a Secure Odometer Disclosure, but not the title, to Arizona after selling the vehicle. The dealer would retain the original Secure Odometer Disclosure forms for the retention periods specified by Federal and Arizona law.

In instances where a dealer sought to sell a vehicle that had been purchased from an owner with a paper title, Arizona also proposed that the vehicle would be resold by a dealer using the paper title from the transferor. It appears, based on this description and the requirements of Arizona law that a dealer's name shall be recorded on a title certificate as transferee or purchaser and that a title include space for dealer reassignment information, that the dealer would make an odometer

disclosure on the paper title at the time it resells the vehicle. However, the petition also specifies that if the dealer applies for a new title in the name of the vehicle purchaser, the dealer and purchaser would complete a Secure Odometer Disclosure form. The dealer would then scan and electronically submit a title application, the paper title, the Secure Odometer Disclosure form, and supporting documents to Arizona. The dealer would retain the original documents (including the original paper title) for the retention periods specified by Federal and Arizona law. According to the petition, a new title would be sent to the buyer if there is no lien on the vehicle. If there is a lien, both the lien and the title would be maintained as electronic records by the Arizona Department of Transportation.

NHTSA issued an initial determination denying the Arizona petition on August 20, 2012. 77 FR 50071. In this initial determination, the Agency stated that the Arizona petition did not meet 49 CFR 580.11(b), which establishes the requirements for alternative disclosure requirement petitions. The petition did not, in NHTSA's view, set forth the motor vehicle disclosure requirements in effect in the State or adequately demonstrate that the proposal was consistent with the purposes of the Motor Vehicle Information and Cost Savings Act. In regard to the latter, the agency found that making disclosures on documents other than the title, the proposed use of non-secure forms, the failure to address record keeping requirements, and the potential for alterations posed by the use of scanned documents were all inconsistent with the purposes of TIMA.

#### 7. Ongoing Concerns Regarding Electronic Odometer Disclosures in Light of Previous State Petitions

NHTSA's experience in processing State petitions for alternative electronic odometer disclosure schemes illustrates a number of concerns that remain relevant for the purposes of this rulemaking. First and foremost, any electronic odometer disclosure system must be conceived with a full appreciation of the importance of following the command found in TIMA that odometer disclosures must be made on the title itself, or the electronic equivalent of that title, and not, except for a very limited number of exceptions, on any other document. In particular, an electronic odometer disclosure system should minimize or eliminate odometer disclosures made on physical documents instead of promoting the use of such documents as some proposals



examined by NHTSA have done. Similarly, an electronic odometer disclosure system may not rely on a method of transmitting secure paper documents if that method does not preserve the security features now present in physical titles, reassignments, and powers of attorney. A low resolution scan of such a document is not secure and such a scan may not reveal forgeries or alterations.

In addition, as addressed below, any electronic odometer disclosure system must provide adequate means for verifying the identity of transferors and transferees. In the absence of such verification, unauthorized and inaccurate disclosures could easily be entered into State systems by imposters, defeating the purposes of the Cost Savings Act and enhancements established in TIMA and the subsequent amendments. Electronic title and odometer disclosure systems must also foreclose the possibility that a seemingly valid physical paper title and an electronic title may co-exist. The presence of two such “valid” titles invites fraud and creates opportunities for confusion and deception. While States are under no obligation to implement electronic odometer disclosure systems that accommodate transactions involving leased vehicles, any system that proposes to do so must employ measures that meet the existing regulatory requirements without employing physical forms such as a power of attorney that are not authorized under agency regulations. Finally, all electronic odometer disclosure systems must be designed not to impede interstate vehicle sales while providing consumers with protection against odometer fraud. Unless and until electronic odometer disclosure is implemented in all States, Territories, and the District of Columbia, secure paper titles or their equivalent will be needed for the purposes of making odometer disclosures in interstate transactions.

## II. e-Manifest

In developing this proposal, NHTSA reviewed the experience of the Environmental Protection Agency (EPA) during the development of its requirements for electronic manifests for hazardous waste. See 79 FR 7517 (Feb. 7, 2014). While the authority EPA was operating under is different from NHTSA’s current authority, and the existing system differed from the current odometer disclosure system, NHTSA believes there are lessons to be learned from EPA’s experience transitioning from a paper to electronic environment.

The EPA proposal envisioned the agency setting minimum standards for an e-manifest system and various private entities stepping forward to develop and make available such systems. The “EPA proposed standards in 3 distinct areas: (1) Standard electronic data exchange formats for the manifest; (2) electronic signature methods that could be used to execute manifest signatures electronically; and (3) standard system security controls and work flow procedures to ensure the reliable and consistent processing of manifest data by electronic manifest systems, as well as to ensure the availability and integrity of manifest data submitted through the electronic systems.”<sup>1</sup> Commenters expressed concern that this proposal could lead to numerous inconsistent approaches to e-manifest, a particular problem for companies with large numbers of interstate transactions. Others criticized the rigor of the standards proposed which set a higher bar than existed for paper documents. Still others noted that such detailed requirements could frustrate technology in an area which was constantly changing.

The EPA’s ultimate solution was to develop a centralized system controlled by the EPA and funded by user fees. This option is not available to NHTSA for odometer disclosures. Nevertheless, we are mindful of the comments EPA received. Vehicle transactions cross State boundaries and the need for various State systems to interact must be considered. Further, both traditional paper-based and electronic systems are likely to exist in neighboring States for some time and must facilitate interstate transactions while providing protection against odometer fraud. The MAP–21 mandate to permit electronic odometer disclosures could be frustrated by requirements that set an unnecessarily higher bar than currently exists for paper documents. However, NHTSA believes that achieving the objectives of the statute—to ensure that consumers receive valid representations of the actual vehicle mileage at the time of transfer and to detect, prevent, and aid in prosecuting odometer fraud—some aspects of the specific disclosure requirements may need to differ for traditional and electronic systems. It is also neither helpful to the public nor wise to create rules that NHTSA must regularly amend to adapt to technological changes. Accordingly, NHTSA has been, and remains, aware of these lessons in developing this proposal.

<sup>1</sup> 79 FR 7517, 7519 (Feb. 7, 2014).

## III. Current Proposal

### A. Purpose of Odometer Disclosure Requirements

The overall purpose of the odometer disclosure provisions of the Cost Savings Act, as amended, is to protect consumers by assuring that they receive valid representations of a vehicle’s actual mileage at the time of transfer. An additional purpose is to create a system of records and a “paper trail” to facilitate detection and prosecution of odometer fraud. The statutory scheme and the current regulations adopted by NHTSA aim to achieve these overall purposes.

In developing the current proposal for electronic odometer disclosures pursuant to MAP–21, NHTSA desires a regulation that continues to achieve these purposes without imposing overly burdensome requirements that are not necessary to achieve these purposes in an electronic environment. That is, electronic disclosures must be made accurately by the actual parties to the transaction to protect consumers and provide assurances that a transferee receives a valid representation of a vehicle’s actual mileage at the time of transfer. In addition, electronic disclosure schemes must have retention requirements to create a secure and reliable electronic trail to facilitate detection and prosecution of odometer fraud. Unique issues the agency considered were the ability of different State electronic systems to share data, and the security of that information sharing, as well as the ability to issue secure paper documents for use in States which do not choose to adopt electronic disclosure requirements.

An additional issue considered by the agency was the possibility that, if NHTSA were to adopt only minimum requirements necessary to achieve the above stated purposes, States that voluntarily chose to permit electronic odometer disclosures could do so in ways which could eventually create enough variation to hinder on-going efforts among the States to develop a national system for electronic titling of motor vehicles. However, NHTSA determined that its authority under MAP–21 was intended only to facilitate the change to electronic odometer disclosures, not to impose additional requirements for odometer disclosures. NHTSA requests comments, however, on whether it should go further than proposed in this notice in order to prevent, or limit, variation among the various State systems.



### B. Odometer Disclosure Requirements

As noted earlier, NHTSA believes that meeting the objectives of the statute will require some variation in the requirements for traditional and electronic systems. To achieve this, NHTSA is proposing to restructure the requirements to accommodate both “physical” and “electronic” documents. Therefore we are proposing to amend 580.1 to add the option of electronic disclosures; 580.3 to add new definitions and amend existing definitions to accommodate physical and electronic filings; 580.4 to clarify separate requirements for the security of physical disclosures and electronic disclosures; 580.5 to clarify methods of disclosure for physical and electronic systems; 580.7 to add provisions allowing for the option of electronic disclosures for leased motor vehicles; 580.8 to include electronic copies among the forms of disclosures that must be retained and general requirements for that retention; 580.10 to update the address for NHTSA; 580.11 to add the newly created 580.6 to the sections a State may seek exemption from via petition for alternative disclosure requirements and update the address for NHTSA; 580.13 and 580.14 to revise the provisions relating to the use of a power of attorney to address the potential that transferors from an electronic title State wishing to convey a vehicle to a transferee in a physical title State may not have an opportunity to obtain a State issued secure physical title before transferring ownership of the vehicle and to correct a typographical error that would bring the disclosure requirements into conformity with the disclosure requirements under 580.5 and 580.7; 580.15 to add language clarifying that power of attorney certification is limited to physical document disclosures; and 580.17 to extend the disclosure exemption from ten years to twenty-five years and provide an updated example. NHTSA is proposing to strike the regulatory text in section 580.12 as the provision is obsolete and to reserve the section. Finally, NHTSA is proposing to create a new section 580.6 (previously reserved) which would contain unique requirements for electronic odometer disclosures.

#### 1. Definitions

The most basic proposed change NHTSA is making is to add new definitions for the terms “Electronic Document,” “Physical Document,” and “Sign or Signature,” which are necessary to provide clarity in the requirements for each, taking into

account the different security concerns and practical challenges that arise under the different disclosure systems. NHTSA requests comments on whether the following new definitions are appropriate and properly identify the items and actions intended.

*a. Electronic Document.* NHTSA proposes to add “Electronic Document” to the defined terms in part 580.3. This addition is necessary to provide clarity for the requirements and procedures applicable to these documents, as opposed to documents in paper format. NHTSA proposes to define “Electronic Document” to mean “a title, reassignment document or power of attorney that is maintained in electronic form by a state, territory or possession that meets all the requirements of this part.”

*b. Physical Document.* NHTSA proposes to add “Physical Document” to the defined terms in part 580.3. This addition is necessary to provide clarity for the requirements and procedures applicable to these documents, as opposed to documents in electronic format. NHTSA proposes to define “Physical Document” to mean “a title, reassignment document or power of attorney printed on paper that meets all the requirements of this part.”

*c. Sign or Signature.* NHTSA proposes to add definitions for “Sign or Signature” applicable to physical document disclosures and to electronic document disclosures to the terms defined in part 580.3. This addition is necessary to clarify the actions and requirements that qualify as a signature or the signing of a document in the different contexts of physical and electronic disclosures. Further, electronic records of contractual agreements are capable of verification through methods other than written words, and may include sounds, other symbols, or processes. See 15 U.S.C. 7006(5) (providing a definition of “electronic signature”). NHTSA proposes to define “Sign or Signature” as meaning “[f]or a paper odometer disclosure, a person’s name, or a mark representing it, as hand written personally” and “[f]or an electronic odometer disclosure, an electronic sound, symbol, or process using an authentication system equivalent to or greater than Level 3 as described in National Institute of Standards and Technology (NIST) Special Publication 800–63–2, *Electronic Authentication Guideline*, which identifies a specific individual.”

### 2. Identity of Parties to a Motor Vehicle Transfer and Security of Signatures

One issue NHTSA considered was the electronic equivalent of the existing requirements for physical signatures on odometer disclosures and how to securely authenticate an electronic signature. This is particularly important because in an electronic environment documents may be “signed” remotely. To address this issue, NHTSA reviewed the guidance in the National Institute of Standards and Technology (NIST) Special Publication 800–63–2, *Electronic Authentication Guideline*. The publication defines four levels of assurance, Levels 1 to 4, in terms of the consequences of authentication errors and misuse of credentials, with Level 1 being the lowest assurance level, and Level 4 as the highest. Based on the level, different levels of authentication are recommended to help ensure the security of the information. NHTSA also reviewed a December 16, 2003 memorandum from the Director of the Office of Management and Budget (OMB) to the Heads of all Federal Departments and Agencies.<sup>2</sup> This memorandum guidance was issued by OMB under the Government Paperwork Elimination Act of 1998, 44 U.S.C. 3504 in light of the NIST publication. Attachment A to this memorandum supplements OMB Circular A–130, Management of Federal Information Resources, Appendix II, Implementation of the Government Paperwork Elimination Act (GPEA). While both the NIST publication and the OMB memorandum are directed towards Federal Departments and Agencies, NHTSA believes they provide good guidance in this instance also.

NHTSA is aware that the American Association of Motor Vehicle Administrators (AAMVA) published a report from its Electronic Odometer Task Force in December 2014 (E-Odometer Task Force Report).<sup>3</sup> In this report AAMVA recommends that States implement an electronic signature verification system that complies with at least NIST Level 2, however it also notes that some of the identification discussed would comply with NIST Level 3. As discussed below, NHTSA has made a preliminary determination that at least NIST Level 3 verification should be required, both to prevent the potential harm of fraudulent disclosures and to aid in their prosecution.

Attachment A to the OMB memorandum sets out six potential

<sup>2</sup> OMB Memorandum M–04–04, 12/16/03, <https://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy04/m04-04.pdf>.

<sup>3</sup> <http://www.aamva.org/e-Odometer-Task-Force/>.

impact categories, and then, depending on whether the impact is low, moderate, or high, assigns a NIST assurance level. The Attachment does not provide specific guidance for how to assign an overall assurance level if potential impact categories fall in different levels. The impact categories are:

- Inconvenience, distress or damage to standing or reputation.
- Financial loss or agency liability.
- Harm to agency programs or public interests.
- Unauthorized release of sensitive information.
- Personal Safety.
- Civil or criminal violations.

In reviewing these impact categories, NHTSA notes a definite potential for financial loss. The purpose of odometer fraud is to induce consumers to pay more for a used vehicle than they would if they knew the accurate mileage. For an individual consumer, it is important that the value of the vehicle reasonably match the price agreed to, and paid, based upon the information available to the consumer and provided by the seller. In addition, odometer fraud is often committed by the same individual(s) or entities multiple times, resulting in high dollar amounts of damages. State electronic title and odometer disclosure systems will also contain sensitive personal information that could be subject to unauthorized release if the system were not sufficiently secure. Last, odometer fraud is a criminal offense that victimizes innocent consumers. NHTSA and other enforcement agencies use odometer disclosure documents to prove these criminal violations.

Therefore, after reviewing this document, NHTSA has made a preliminary decision that a high level of assurance in the accuracy of the identity of the person making an odometer disclosure is necessary, and therefore the appropriate level of security for odometer disclosures is Level 3 according to the NIST guidelines. NHTSA is therefore proposing that any State which allows electronic odometer disclosures require security protocols at this level or higher. Under the NIST guidelines (<http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-2.pdf>), a Level 3 system must have certain minimum attributes. These attributes include verification of the name associated with the user, issuance of a credential to the user through a separate channel such as postal mail, text message or telephone call directed at an address or number confirmed through examination of different independent databases and use of that credential to gain access to the

Level 3 system. For example, a person wishing to make odometer disclosures electronically without having to appear in person at a State motor vehicle agency would need to have a valid Government ID number and a financial institution or utility account number that could be confirmed through examining records containing those numbers. The State entity providing the e-title and odometer disclosure service would then check the information provided by the individual and confirm that the name, date of birth, and other personal information in the examined records are consistent and sufficient to identify a unique individual. The State entity would then issue a credential by postal mail or some other means that would direct the credential to the proper person. The issued credential would then be employed by the user to obtain access to the electronic odometer and title system. As outlined in the NIST guidelines, other methods may be employed to attain Level 3 authentication but the important principle, in NHTSA's view, is that Level 3 requires multi-factor identification of an individual applicant who, once their identity has been verified, is provided with a unique credential in order to access the system.

NHTSA is therefore proposing that the requirement for Level 3 authentication be incorporated in the definition of "signature" for electronic disclosures. However, this also will require the use of computers by all parties for all transfers in electronic title States. NHTSA requests comments on the appropriate NIST level and if specific identification verification(s) should be required, and further requests comments on how such a system should be implemented, including whether dealers should be required to provide secure computing services to transferors and transferees and what security measures should be mandatory for such services.

Next, NHTSA is proposing to require that each "signature" in an electronic environment apply only to a single individual, not to an organization. For example, if a dealership wished to allow multiple employees to execute odometer disclosures on behalf of the dealership, each employee would be required to have and maintain a distinct access identity or code to the electronic odometer system so that the actual individual making the disclosure, not just the dealership, is identified by the "signature." The dealer or entity on whose behalf the individual is making the disclosure must also be identified in the transaction and the dealer(s) and entity on whose behalf the individual

works must be recorded as part of the individual's distinct access identity or code.

NHTSA also considered the existing requirements that various parties provide copies of documents as part of the odometer disclosure process, and what would qualify as an equivalent in an electronic environment. For example, section 580.5(f) requires the transferee to return a copy of the odometer disclosure document to the transferor after it is signed. Under the current system, the transferee may apply for a new title for the vehicle, and generally, a State will not title a vehicle without an odometer disclosure statement that contains the signatures of both the transferor and the transferee. However, the State does not usually verify that a copy of the document was returned to the transferor or that the transferor retained it. For this reason, NHTSA is concerned about imposing any requirement in the electronic environment that would be more restrictive than these current requirements. NHTSA therefore proposes to specify only that the requirement to provide a document is satisfied by electronically transmitting the document, provided that the State allows the parties to the transaction access to the completed disclosure statements.

As discussed previously, one purpose of the signature requirement is to aid in the prosecution of odometer fraud. For this reason, NHTSA proposes requiring an electronic "signature" to identify an individual, not a business, for example. NHTSA requests comment on whether any other requirements are necessary to ensure that investigators can back trace an electronic "signature" to identify the individual and/or computer used in the electronic equivalent of a "paper trail." Conversely, if an odometer disclosure is altered, do the proposed system requirements develop an adequate "paper trail" to lead investigators to the IP address or computer used to alter the disclosure, and if not, what additional system requirements are necessary?

### 3. Security of Title Documents

Currently, § 580.4 requires that titles, which are necessarily all physical documents except in the five jurisdictions with approved petitions for electronic systems pursuant to 49 U.S.C. 32705(d), be printed using a secure printing or other secure process. Further, currently any power of attorney forms and all documents used to reassign title must be issued by the State and be created using a secure process. It is central to the integrity and efficacy of the motor vehicle titling systems and

odometer disclosure laws that the authenticity and security of title documents, at a minimum, be maintained at their current levels in moving to electronic disclosure and titling systems. Currently, investigators are able to examine physical documents and observe indicators of tampering. Unlike paper documents, however, alterations to electronic documents are much more difficult to detect from a visual inspection. Further, while electronic documents and transactions provide opportunity to enhance security, as with physical documents, these systems are still susceptible to manipulation and attacks.

The proposed changes and additions to § 580.4 seek to clarify that the existing requirements apply to physical documents, moving the language to a new paragraph (a), and set forth requirements for electronic documents, in a new paragraph (b), to ensure comparable levels of security and authenticity in electronic documents as exist currently for paper documents. Such requirements are necessary to protect both the financial interests of motor vehicle owner's and potential buyers, as well as to aid law enforcement in preventing, detecting, and prosecuting odometer fraud. NHTSA seeks comments as to whether the proposed changes and additions to § 580.4 appropriately match the security and authenticity requirement for electronic documents to the existing requirements, which apply to paper documents.

#### a. Electronic Odometer Disclosure System Security

As discussed previously, § 580.4 requires the title, power of attorney or reassignment documents used for odometer disclosures to have certain security safety features to inhibit altering the disclosure and to aid in the detection of alterations.

NHTSA contemplated proposing specific minimum requirements for system security, but has preliminarily determined that it would be counter-productive, and thus inappropriate, to do so. NHTSA based this decision on the knowledge that the rulemaking process is typically slow, while developments in technology are fast and frequent. While proactive changes to enhance cyber security are constantly evolving and improving, cyber-attacks and efforts to undermine the security of electronic data systems are also changing rapidly and frequently. The rulemaking process would not be able to keep pace with these technological changes and it is foreseeable that, if NHTSA imposed specific system

requirements, the specific requirements could become obsolete, yet remain the requirements while a new rulemaking is undertaken. Alternatively, to the extent that rulemaking by NHTSA would be able to keep up with the dynamic technological landscape, such constant revisions to the regulations would result in an ever-changing set of specific requirements for States to adhere to.

Further, the potential risks to property interests and commerce presented by insecure vehicle titling and odometer disclosure systems are obvious, since it is critical that the owners, buyers, and sellers of motor vehicles have certainty in their ownership status and avoid being defrauded in the fundamental details about the vehicle they own or are buying.

By NHTSA's adoption of more general minimum requirements, any State that chooses to adopt an electronic disclosure system will be able to select the specific system requirements it believes are most appropriate, while ensuring information security for motor vehicle owners, buyers, and law enforcement.

While NHTSA's expectation is that any State implementing an electronic disclosure system would take these various risks into account and establish appropriate safeguards, NHTSA nonetheless requests comments on whether it should establish minimum specific security requirements in this rulemaking and, if so, what requirements would be appropriate. NHTSA requests comment on whether requirements should be included for the hardware used in an electronic odometer system to protect the system from threats which could disrupt the electronic records, either from natural or manmade sources and, if so, what requirements should be included in a final rule. For example, the Federal Information Security Management Act (FISMA) defines a framework to protect Federal government information systems from such threats. Should NHTSA, for example, require any computer or server attached to an electronic odometer system comply with FISMA?

#### 4. Odometer Disclosures

NHTSA considered the issue of what odometer information disclosures and procedures should be required for paper and electronic disclosures, and what appropriate modifications can and should be made for electronic disclosures. In an effort to track the electronic disclosure requirements to the existing requirements, NHTSA makes the following proposals regarding the odometer disclosures and procedures.

In § 580.5 paragraph (a), NHTSA proposes to add the phrase "whether a physical or electronic document" to make clear that the disclosure requirements specified in § 580.5 apply to all titles issued. The requirements currently apply to all title transfers and, as a practical matter, this results in no change in the disclosure requirements whether made on a physical document or electronically.

Paragraph § 580.5(c) sets forth certain specific disclosures that must be made as part of a transaction transferring title of a vehicle, including that the odometer disclosure must be made on the title, or on a document being used to reassign the title. As currently written, this requirement necessarily implies the ability to affix information onto a document. To clarify this requirement, NHTSA proposes to add language specifying "physical document" in instances of paper title transfers and "electronic form incorporated into the electronic title" for instances of electronic title transfers. The requirement for making electronic disclosures on an electronic form incorporated into the electronic title means that paper disclosures would become the rare exception when electronic disclosure and titling is available. Further, the electronic systems would need to be designed to contain or otherwise embed the electronic odometer disclosure in the electronic title. Finally, for electronic transfers where the transferor is the individual in whose name the vehicle is titled, reassignment documents would not be necessary. NHTSA seeks comments on the proposal that disclosures be made on an electronic form incorporated into the electronic title.

NHTSA also considered the issue of how to provide the warnings currently contained in § 580.5(d) to parties conducting electronic transfers. NHTSA proposes to extend these existing requirements to electronic transfers by amending § 580.5(d), specifying that in instances of electronic transfer, the required information must be displayed on the screen, and acknowledged as understood by that party, before any signature can be applied to the transaction. This proposed requirement is intended to ensure that the information is provided in a size and location that is clearly viewable and readable to individuals making electronic transfers, and that transferors do not unintentionally bypass this information without having an opportunity to review it. NHTSA envisions that the acknowledgement would typically be a box for the party

to click acknowledging having seen and understood the information, not unlike the boxes often seen on Web sites and computer programs today acknowledging service limits or contractual rights prior to gaining access to content or services.

NHTSA considered the existing requirements of § 580.5(f), that a transferee print his or her name on the disclosure and return a copy to the transferor and believes that the requirement on a transferee to “print” their name is inappropriate for electronic transfers, but that any electronic system should be able to provide some record of the disclosure for the transferor and transferee. NHTSA proposes to not extend the printed name requirement to electronic disclosures because the purpose of the printed name is to provide hand writing exemplars for use in fraud investigations and prosecutions. However, at present, NHTSA is not aware of electronic systems that capture handwriting with the level of clarity and precision that exists when applying hand-writing to paper. As a result, unlike physical handwriting exemplars, NHTSA does not currently believe that electronic handwriting exemplars would provide the intended investigatory and prosecution tools to law enforcement. The requirement that the transferee print his or her name on the disclosure therefore need not be extended to electronic disclosures. In contrast, it remains important for both parties to the transaction to have access to a record showing the disclosure that was made, and it is appropriate to extend the current requirement that the transferee provide a copy of the disclosure to the transferor to electronic transfers.

In an electronic disclosure jurisdiction, the parties would not have physical control of the disclosure documents and the responsibility to provide copies of the disclosure must fall to the operator(s) of the disclosure system. Thus, NHTSA proposes to amend § 580.5(f) to require that jurisdictions with electronic disclosure systems provide a way for the transferor and transferee to obtain copies, in the form of some detailed record, of the disclosure. These records not only provide assurance to the parties of what information was relied upon in the transaction, but could also aid law enforcement in investigations and prosecutions. NHTSA requests comments on the proposal to not extend the printed name requirement to electronic disclosures, including technologies that provide comparable electronic hand-writing exemplars as paper document exemplars, and on the

proposal to require that any electronic system be capable of providing the transferor and transferee with a copy or record of the disclosure made.

NHTSA has considered how to handle odometer disclosure for a vehicle that has not been titled or for which the title does not contain a space for the information required. Under the existing paper disclosure systems, in such instances the parties execute the odometer disclosure as a separate paper document. This system would not make sense in an electronic disclosure system since the first time a title was obtained for any given vehicle the odometer disclosure would be incorporated into that electronic title at the time of creation and no electronic title system would be created that did not provide space for the required information. The option relating to insufficient space on the title is a holdover from when odometer disclosures were first required on the title and jurisdictions needed time to bring titles into conformity with the new regulation. That concern is not applicable here since electronic disclosure systems will be designed and implemented using the requirements established in this rule. Similarly, no special provision is needed for providing the information in the first instance of titling in an electronic disclosure jurisdiction, since any electronic system will include the execution of an electronic disclosure that is incorporated into the electronic title upon creation. NHTSA thus proposes to amend § 580.5(g) to add language clarifying that the existing regulation allowing for disclosure on a separate document for first title and instances where the title does not contain space for the disclosure is limited to transactions conducted using physical documents while disclosures for first title issuance in an electronic disclosure system must be made in the electronic system. NHTSA requests comments on the proposal to limit the current separate document disclosures for first title issuance and when the title does not contain sufficient space for the disclosure requirements to paper title jurisdictions, and requiring disclosures for first title issuance to be conducted within the electronic title system in electronic disclosure jurisdictions.

##### 5. Requirements for Electronic Transactions

NHTSA has considered the differences between disclosures made on physical documents and those made on electronic documents and preliminarily determined that additional requirements are necessary to ensure the accuracy and authenticity of

electronic disclosures. NHTSA has also considered the complications that could arise, including competing claims of vehicle ownership, if both paper and electronic titles co-exist as an official form of title issued within a jurisdiction. To address these issues, NHTSA is proposing to add a new § 580.6 (previously reserved), to provide requirements that apply only to electronic transactions.

##### a. Document Integrity

First, NHTSA proposes to add § 580.6(a)(1), requiring that any electronic record be retained in a format that cannot be altered and, further, that indicates any attempts to alter it. This proposed requirement adds as an explicit condition for electronic disclosures an implicit reality of disclosures on physical documents. Disclosures on physical documents provide some method for detection of alterations or attempts to alter the document. While techniques for altering the physical documents evolve over time, they nonetheless leave an indicator, however hard to detect, of that alteration or attempt. Electronic documents thus present a different challenge since many documents are easily altered, and some of the techniques used can be difficult to trace. A system that prevents alteration is critical for consumer confidence in the disclosure system and information relating to the alteration of disclosure documents is critical to the enforcement of the odometer disclosure laws and in preventing odometer fraud. NHTSA requests comments on this proposed additional requirement for electronic disclosures and what, if any, more specific requirements would be appropriate to ensure that electronic records are not altered and indicate any attempts to alter them.

##### b. Individual Identity Assigned to all Unique Electronic Signatures

Currently, each person signs their own name to a physical document when completing an odometer disclosure and is uniquely identified as an individual. Or at least that is presumed for non-fraudulent transactions. Similarly, in an electronic disclosure system, each individual person will need to be uniquely identified by their own unique electronic signature. This is necessary to protect the financial interests of vehicle owners and purchasers, providing certainty that the vehicle title remains with the lawful owner and that odometer disclosures are made by the appropriate individuals, who can be located, if needed.

As a practical matter, this is particularly necessary for transactions involving individuals who complete portions of disclosures on behalf of others, like an employer. For example, when a vehicle owner seeks to trade in a car at a car dealership in an electronic disclosure jurisdiction the parties would no longer need to provide power of attorney and reassignment documents for the dealer to use in selling the vehicle at a later date, but instead would simply transfer title from the vehicle owner to the car dealer and make the odometer disclosure on the electronic form which is incorporated into the title. This will require an individual at a car dealership to enter information into the electronic disclosure system on behalf of the business or entity on whose behalf that individual is operating.

NHTSA has considered the importance of maintaining confidence that the parties are who they claim to be for ownership and law enforcement purposes. NHTSA has also considered challenges created in fraud investigation and prosecution if both the individual and business, or entity, are not identified by the code or signature associated with an individual acting in this capacity to input data into the system. Accordingly, NHTSA is proposing to add § 580.6(a)(2) requiring that any electronic signature identify an individual and, further, that if the individual is acting in a business capacity or otherwise on behalf of any other individual or entity, that the business or entity also be identified as part of that unique electronic signature. NHTSA requests comments on this proposal.

#### c. Availability of Documentation in Electronic Disclosure Systems

The physical document disclosure system currently established in § 580 generally requires in various places that individuals be provided with specific documentation. However, in an electronic system, in many cases there will not be any document to provide, and instead, information can be made available to the parties via the electronic system. Moreover, part of the rationale for using an electronic disclosure and titling system is to reduce the amount of paper being used. It would defeat one of the purposes of electronic disclosure to require the printing and delivery of documentation at various stages. It could also add unnecessary complications to the electronic delivery of documentation if specific electronic delivery mechanisms were required. Having considered this factors, NHTSA proposes to add § 580.6(a)(3), providing

that any requirement in the regulations to disclose, issue, execute, return, notify, or otherwise provide information to another person is satisfied when a copy of the electronic disclosure or statement is electronically transmitted or otherwise electronically accessible to the party required to receive the disclosure. NHTSA requests comments on the usefulness of this proposal.

#### d. Physical Documents Used in Making Electronic Disclosures

The continued use of physical documents to accomplish transfer of title or odometer disclosure in an electronic disclosure jurisdiction is strongly discouraged, as each different document presents a new opportunity for fraudulent activity to occur. However, to the extent that the continued use of physical documents is necessary in an electronic system, any physical documents used must comply with all requirements of this part. NHTSA thus proposes the new § 580.6(a)(7) to require that any physical documents used to make electronic disclosures comply with the existing applicable requirements.

#### e. Co-Existing Physical and Electronic Disclosures and Titles

NHTSA considered the issue of which title and/or odometer disclosure is, and should be, the official document in certain situations. In a written environment it is possible to determine which document has an original signature and, therefore, to distinguish original (or official) documents from copies. This method of determining the original/official document is not available when the original document was created electronically. In addition, when a print copy is made of an electronic odometer disclosure, what should be done to specify whether the print document is now the official document or the electronic document remains the official document? This issue could arise when a vehicle titled with an electronic odometer disclosure is moved to a State which either does not participate in electronic odometer disclosures or which has an electronic odometer system that cannot communicate directly with the system in the State in which the vehicle is currently titled. It could also occur if a vehicle owner in an electronic disclosure State would like a paper copy of a title and/or odometer disclosure for record-keeping purposes.

First, NHTSA is proposing that once an odometer disclosure is incorporated in the electronic title, the electronic title containing the disclosure is the official record of ownership and mileage. The

electronic disclosure does not continue as a record separate from the electronic title as that would be contrary to TIMA and would provide additional opportunity for fraud. If an electronic title (containing an odometer disclosure) must be converted to a paper document as the official document, NHTSA is proposing additional requirements. First, only a State or State-authorized entity can create the new official document. Second, the paper document must be set forth by means of a secure printing method as a physical, paper document. As a practical matter, this may present certain logistical challenges, particularly for individuals in an electronic title State who seek to buy a new car, and trade-in their old car, in another State. This issue is discussed at greater length below regarding Power of Attorney, and NHTSA requests comments on how this logistical challenge can be avoided or mitigated. Third, the electronic record must be altered to clearly indicate that an official paper document has been issued, to whom, and the date of issuance.

Second, NHTSA is proposing to allow States to authorize the issuance of some type of record of ownership document that would contain the information on a title and/or odometer disclosure but would not replace the official document. This document could be used for persons who would like a paper copy but would not like the official document to be converted to a paper document. In the proposed § 580.6(a)(5) jurisdictions with electronic title and odometer disclosure systems would be allowed to provide vehicle owners with a paper record of ownership including the odometer disclosure information so long as the document clearly indicates that it is not an official title or odometer disclosure for that vehicle. NHTSA requests comments on the benefits and drawbacks of such a record and whether the option of obtaining such a document should be required under the regulations.

Finally, in reverse situations where a vehicle titled in a State that does not participate in an electronic odometer system is moved to a State with an electronic odometer system, NHTSA is proposing a new § 580.6(a)(4) to require that the prior title and odometer disclosure be copied electronically for retention by the electronic system State and that the paper document(s) be destroyed at the time they are converted to electronic documents. NHTSA further proposes that the electronic copy of the physical document be retained for a minimum of five years, in an order that

permits systematic retrieval, and in a format that cannot be altered and that indicates any attempts to alter it. The five year retention requirement proposed in this paragraph matches the retention period of similar documentation held by dealers and distributors of motor vehicles and auction companies. Finally, NHTSA is also proposing that any paper documents scanned or copied electronically for storage in an electronic system be converted through a process providing a minimum resolution of 600 dots per inch (dpi) to ensure the preservation of security features during the conversion process.

NHTSA requests comments on what standards should be used for scanning and maintaining the documents including whether the scan must be in color, be made at a minimum resolution (and if so, what required minimum resolution should be), or preserve the security features of the original to ensure that fraud or alteration could be detected, should it occur.

#### *C. Leased Vehicles*

Section 580.7 deals with the disclosure obligations and requirements for leased vehicles. NHTSA is not aware of any reason why electronic disclosures could not be made for leased vehicles, though lessors wishing to utilize such a system for communications between themselves and lessees would need to develop an electronic system complying with the technological requirements established in § 580.4(b) of this part unless the jurisdiction where the leased vehicle is titled provides such a system. These requirements are necessary as security and authenticity of disclosure information is fundamental to all types of disclosures within the odometer disclosure system. Otherwise, disclosures regarding leased vehicles would continue on physical documents. As with all other electronic disclosures, it is appropriate and necessary that individuals making the disclosure be provided with the notice of Federal law and possible penalties for providing false information. The substantive disclosures would not change for electronic disclosure except that, as with all other electronic disclosures, the person making the disclosure need not provide their “printed name” for the reasons previously discussed.

Having considered the issues involved in lessor-lessee communications regarding odometer disclosure statements, NHTSA proposes to add language to § 580.7(a) specifying that legal notices given on paper odometer disclosure documents must be provided to, and acknowledged by, an

individual making an electronic disclosure; add language to § 580.7(b) clarifying that a printed name need not be provided for electronic disclosures; and add a new § 580.7(e) requiring any electronic system maintained by a lessor for the purpose of complying with this section meet the requirements set forth in proposed § 580.4(b) or this part. NHTSA requests comments as to whether electronic disclosures of leased vehicles should be a required part of the electronic system established by a jurisdiction or are best left to individual companies/lessors to establish and whether the current proposal would sufficiently aid law enforcement in detecting altered documents.

#### *D. Record Retention*

Sections 580.8 and 580.9 include requirements for odometer disclosure record retention by motor vehicle dealers and distributors and by auction companies, respectively. Section 580.8(a) specifies that dealers and distributors must retain a “Photostat, carbon copy or other facsimile copy of each odometer mileage statement which they issue and receive.” An electronic odometer disclosure system that does not allow for dealers and distributors to maintain records in electronic format would undermine the purpose for moving to such a system. NHTSA is therefore proposing to amend this requirement to include electronic copies or electronic documents as an acceptable form of record.

Under both sections, records must be stored for five years in a manner and method so they are accessible to NHTSA investigators and other law enforcement personnel. The records must also be stored so they are difficult or impossible to modify. As previously discussed, unlike paper documents, alterations to electronic documents are much more difficult to detect from a visual inspection. Therefore, NHTSA is proposing to add a specific requirement in a new § 580.8(d) and in § 580.9 that electronic records kept by motor vehicle dealers and distributors and by auction companies must be stored in a format that cannot be altered and which indicates any attempts to alter the document, consistent with the standards set forth in proposed § 580.4(b). NHTSA requests comment on whether this requirement would be sufficient to allow law enforcement to detect altered documents.

#### *E. Power of Attorney*

NHTSA is proposing to modify the power of attorney provisions. A power of attorney generally should not be needed for transfers and disclosures

within jurisdictions using electronic systems since there will not be a “lost” title, as the State system will hold the title record with the odometer disclosure, and any lienholder will not physically hold the title since the title will be on file in the State’s electronic system. However, NHTSA proposes to amend § 580.13(a) and (b), to allow an individual with a vehicle titled in an electronic title State to use a power of attorney to sell a vehicle in a paper title State. In this way, the electronic title with the required odometer disclosure is equivalent to a lost title or a title held by a lienholder. Without this additional permitted use of power of attorney, the seller from an electronic title State cannot trade-in his old car and buy a new car in a paper title State unless the seller first remembers, and plans ahead, to obtain a printed title from the electronic title State before going car shopping. For example, assume Mr. Smith lives in an e-title State but goes to a paper title State to trade-in his old car and buy a new car. He must either get his paper title first or there must be some means for him to make his odometer disclosure without a title. Electronic title States will not likely be in a position to provide secure paper titles on demand. This means Mr. Smith cannot buy a new car unless he gets his electronic title printed as a physical title first. The agency believes this is unlikely to happen in many, if not most, instances.

While the use of power of attorney provides an additional step in the transfer process, and thus another opportunity for fraud to occur, the agency believes as a practical matter that there must be some other way for a vehicle owner from an electronic title State to sell the vehicle in a paper title State without first obtaining a converted official paper title from the electronic title State. However, power of attorney laws vary from State to State, so even with this modification there may still be States that retain paper title systems where vehicles registered in electronic title States could not be sold without the converted official paper title. NHTSA requests comments on the benefits and drawbacks of this proposal as well as other ideas to address this challenge while maintaining adequate safeguards of accurate disclosures and a paper-trail.

NHTSA also proposes to add the word “physical” in multiple places in § 580.13(f), § 580.14(a), (e), and (f), and in § 580.15(a). In § 580.13(f) this is necessary to make clear that the title being referenced at the two specified points is a physical title and not an electronic title, unlike the other references to “title” within paragraph

(f), which apply to either a physical or electronic title depending on in which format the transferor's title is currently held. The word "physical" is needed to clarify three documents in § 580.14(a) that must be physical documents for the purposes of using reassignment documents and power of attorney since these documents will only be utilized in transactions outside of electronic disclosure systems. Similarly, the word "physical" is also needed in § 580.14(e) and (f) to make clear that power of attorney forms would be physical documents, since power of attorney would not be needed or utilized in electronic title and disclosure jurisdictions. Finally, the addition of the word "physical" is necessary in six instances in § 580.15(a) to clarify that the disclosures made and documents reviewed involved physical documents, since the use of power of attorney, and related documents, would not be necessary to accomplish transfers within electronic title and disclosure jurisdictions.

NHTSA requests comments on whether power of attorney would be necessary in an electronic odometer system for intra-state transfers. Second, NHTSA notes that the requirements in section 580.13 permitting disclosures by power of attorney assume that the power of attorney document itself is a physical document. Therefore, NHTSA requests comments on whether odometer disclosure by power of attorney would be made on other than a paper document, *i.e.* electronically, in these situations and, if so, explanation of how that would work. Further, NHTSA has concerns that the validity of power of attorney may vary from State to State and the possible implications of that variability in interstate transactions and requests comment on this issue.

NHTSA proposes to correct a typographical error that appears in both § 580.13(b)(5) and § 580.14(b)(5) by adding a comma between "model year," which would bring the disclosure requirements for power of attorney forms into conformity with standard transfer disclosures and leased vehicle disclosures. This typographical error in the regulation creates inconsistency within the reporting scheme. Accordingly, NHTSA proposes to change "model year" to "model, year" in these two reporting provisions.

#### F. Exemptions

Section 580.17(3) currently exempts any vehicle which is more than 10 years old from the odometer disclosure requirements. The average age of the United States vehicle fleet has been trending upward and recently reached

11.5 years.<sup>4</sup> Because of this, NHTSA is proposing to raise this exemption to 25 years. NHTSA also requests comments on whether this exemption should be eliminated.

#### G. Miscellaneous Amendments

The agency is no longer located at the address currently provided in § 580.10. Accordingly, NHTSA is proposing to amend § 580.10(b)(2) to provide the correct address for applications for assistance to, which is the Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W41-326, Washington, DC 20590.

Section 580.11 provides States with procedures by which to petition NHTSA for approval of disclosure requirements differing from those required by 49 CFR part 580, specifically § 580.5, § 580.7, and § 580.13(f). NHTSA is proposing to amend § 580.11(a) to add the new § 580.6 to the sections for which a State may petition the agency to utilize different disclosure requirements and to add § 580.6 to the explanation of the effect of a grant or denial of a petition contained in § 580.11(c). NHTSA requests comments on whether a State should be permitted to use alternative disclosure requirements to those proposed in § 580.6.

Section 580.11 also provides the prior address for the agency, and NHTSA is proposing to amend § 580.11(b)(2) to provide the current address, which is the Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W41-326, Washington, DC 20590.

The petition provided for in § 580.12, allowing a State to seek an extension of time beyond the April 29, 1989 deadline to bring its laws into conformity with the requirements of Part 580, was due to the agency by February 28, 1989. These dates having long ago passed and States having brought applicable laws into compliance, the provisions within § 580.12 are now obsolete. Accordingly, NHTSA proposes to strike the regulatory text of § 580.12 and replace it with "[Remove and Reserve]" to reserve the section.

#### IV. Public Participation

##### *How do I prepare and submit comments?*

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

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

Your comments must not be more than 15 pages long. (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 supporting documents to your comments. There is no limit on the length of the attachments.

Comments may be submitted to the docket electronically by logging onto the Docket Management System Web site at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under

#### ADDRESSES.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at: <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at: [http://www.bts.gov/programs/statistical\\_policy\\_and\\_research/data\\_quality\\_guidelines](http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines).

##### *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

<sup>4</sup> Average age of U.S. fleet hits record 11.5 years, IHS says, Autonews.com (July 29, 2015), <http://www.autonews.com/article/20150729/RETAIL/150729861/average-age-of-u.s.-fleet-hits-record-11.5-years-ihs-says> (last visited March 14, 2016).



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 will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), 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 above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

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.

## V. Regulatory Notices and Analyses

### A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies require this agency to make determinations as to whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the aforementioned Executive Orders. Executive Order 12866 defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or  
 (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the potential impact of this proposal under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures, and have determined that it is not significant. This proposal amends existing requirements to allow States a new alternative means of complying with those requirements. It does not impose any new regulatory burdens. Therefore, this document was not reviewed by the Office of Management and Budget under E.O. 12866 and E.O. 13563.

### B. National Environmental Policy Act

We have reviewed this rule for the purposes of the National Environmental Policy Act and determined that it would not have a significant impact on the quality of the human environment.

### C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies the proposal would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal would not have a significant economic impact on a substantial number of small entities.

In compliance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed rule on small entities. The head of the agency has certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. This proposal is only allowing States the option of an alternative means of complying with an existing

requirement and therefore would not impose any new impact on any small entities.

### D. Executive Order 13132 (Federalism)

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999). Executive Order 13132 requires agencies to determine the federalism implications of a proposed rule. The agency has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule merely adds another option to the way States are allowed to process and issue existing odometer disclosure requirements, and does not alter the effect on the States of existing statutory or regulatory requirements.

### E. Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, Executive Order 12988 specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposal is discussed above in connection with Executive Order 13132. NHTSA has also considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

### F. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part: The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases,

the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA requests public comment on whether (a) “regulatory approaches taken by foreign governments” concerning the subject matter of this rulemaking, and (b) the above policy statement, have any implications for this rulemaking.

#### *G. National Technology Transfer and Advancement Act*

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments, except when use of such a voluntary consensus standard would be inconsistent with the law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the SAE International. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. NHTSA is proposing to reference the standards provided in NIST Special Publication 800–63–2, *Electronic Authentication Guideline*, to determine the appropriate level of security to authenticate electronic signatures.

#### *H. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually

(adjusted for inflation with base year of 1995). In 2011 dollars, this threshold is \$139 million.<sup>5</sup>

This proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or more than \$139 million annually, and would not result in the expenditure of that magnitude by the private sector.

#### *I. Paperwork Reduction Act*

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Today’s NPRM does not propose any new information collection requirements, it merely allows States to provide an alternative means of collecting information they already collect.

#### *J. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public’s needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn’t clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

#### *K. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

#### *L. 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 organization, business, labor union, etc.). You may review DOT’s complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://www.dot.gov/privacy.html>.

#### **List of Subjects in 49 CFR Part 580**

Consumer protection, Motor vehicles, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, NHTSA proposes to amend 49 CFR part 580 as follows:

#### **PART 580—ODOMETER DISCLOSURE REQUIREMENTS**

- 1. Revise the authority citation to read as follows:

**Authority:** 49 U.S.C. 32705; Pub. L. 112–141; delegation of authority at 49 CFR 1.95.

- 2. Revise § 580.1 to read as follows:

##### **§ 580.1 Scope.**

This part prescribes rules requiring transferors and lessees of motor vehicles to make electronic or written disclosure to transferees and lessors respectively, concerning the odometer mileage and its accuracy as directed by sections 408 (a) and (e) of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1988 (a) and (e). In addition, this part prescribes the rules requiring the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors and the retention of certain other information by auction companies as directed by sections 408(g) and 414 of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1990(d) and 1988(g).

- 3. Amend § 580.3 by adding in alphabetical order, definitions for “*Electronic Document*”, “*Physical Document*” and “*Sign or Signature*” to read as follows:

##### **§ 580.3 Definitions.**

\* \* \* \* \*

*Electronic Document* means a title, reassignment document or power of attorney that is maintained in electronic form by a state, territory or possession that meets all the requirements of this part.

\* \* \* \* \*

*Physical Document* means a title, reassignment document or power of attorney printed on paper that meets all the requirements of this part.

\* \* \* \* \*

<sup>5</sup> Adjusting this amount by the implicit gross domestic product price deflator for the year 2011 results in \$139 million (113.361/81.606 = 1.39).

*Sign or Signature* means either:

(a) For a paper odometer disclosure, a person's name, or a mark representing it, as hand written personally.

(b) For an electronic odometer disclosure, an electronic sound, symbol, or process using an authentication system equivalent to or greater than Level 3 as described in National Institute of Standards and Technology (NIST) Special Publication 800-63-2, *Electronic Authentication Guideline*, which identifies a specific individual.

\* \* \* \* \*

■ 4. Revise § 580.4 to read as follows:

**§ 580.4 Security of title documents and power of attorney forms.**

(a) Each physical title shall be set forth by means of a secure printing process or other secure process. In addition, physical power of attorney forms issued pursuant to §§ 580.13 and 580.14 and physical documents which are used to reassign the title shall be issued by the State and shall be set forth by a secure process.

(b) Each electronic title shall be maintained in a secure environment so it is protected from unauthorized modification, alteration or disclosure. In addition, electronic power of attorney forms maintained and made available pursuant to §§ 580.13 and 580.14 and electronic documents which are used to reassign the title shall maintained by the State in a secure environment so that it is protected from unauthorized modification, alteration and disclosure. Any system employed to create, store and maintain the aforementioned electronic documents shall record the dates and times when the electronic document is created, the odometer disclosures contained within are signed and when the documents are accessed, including the date and time any attempt is made to alter or modify the electronic document and any alterations or modifications made.

■ 5. Amend § 580.5 by revising paragraphs (a), (c), (d), (f), and (g) to read as follows:

**§ 580.5 Disclosure of odometer information.**

(a) Each title, whether a physical or electronic document, at the time it is issued or made available to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of future transfer.

\* \* \* \* \*

(c) In connection with the transfer of ownership of a motor vehicle using a physical document, each transferor shall disclose the mileage to the transferee on the physical title or, except as noted below, on the physical document being used to reassign the title. In connection with the transfer of ownership of a motor vehicle using an electronic document, each transferor shall disclose the mileage to the transferee on an electronic form incorporated into the electronic title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on an electronic form incorporated into the electronic title or on the physical title, and not on a reassignment documents. This disclosure must be signed by the transferor and if made on a physical title, must contain the transferor's printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the disclosure. In addition to the signature of the transferor, the disclosure must contain the following information:

\* \* \* \* \*

(d) In addition to the information provided under paragraph (c) of this section, the statement shall refer to the Federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law. If the transaction at issue is electronic, the information specified in this paragraph shall be displayed, and acknowledged as understood by the party, prior to the execution of any electronic signatures.

\* \* \* \* \*

(f) The transferee shall sign the disclosure statement, and in the case of a disclosure made on a physical title, shall print his name, and return a copy to his transferor. If the disclosure is incorporated into an electronic title, the electronic system shall provide a means for making copies of the disclosure statement available to the transferee and transferor.

(g) In jurisdictions employing paper title and odometer disclosure schemes, if the vehicle has not been titled or if the physical title does not contain a space for the information required, the written disclosure shall be executed as a separate physical document. In jurisdictions maintaining electronic title and odometer disclosure systems, the system shall provide a means for making the disclosure electronically and

incorporating this disclosure into the electronic title when the title is created.

\* \* \* \* \*

■ 6. Revise § 580.6 to read as follows:

**§ 580.6 Requirements for Electronic Transactions.**

(a) Additional Requirements for Electronic Odometer Disclosures

(1) Any electronic record shall be retained in a format which cannot be altered, and which indicates any attempts to alter it.

(2) Any signature shall identify an individual, and not solely the organization the person represents or is employed by. If the individual executing the electronic signature is acting in a business capacity or otherwise on behalf of another individual or entity, the business or other individual or entity shall also be identified when the signature is made.

(3) Any requirement in these regulations to disclose, issue, execute, return, notify or otherwise provide information to another person is satisfied when a copy of the electronic disclosure or statement is electronically transmitted or otherwise electronically accessible to the party required to receive the disclosure.

(4) Upon creation of an electronic title to replace an existing physical title, an electronic copy of the physical title shall be created and retained, for not less than five years, by the State issuing the electronic title and the physical title shall be destroyed immediately following the successful creation of the electronic record. The electronic copy of the paper record shall be retained

(i) in a format which cannot be altered, and which indicates any attempts to alter it; and

(ii) in an order that permits systematic retrieval.

(5) A State allowing electronic odometer disclosures may provide for a paper record of ownership which includes the odometer disclosure information, provided the document clearly indicates it is not an official title, nor official odometer disclosure, for the vehicle.

(6) States maintaining an electronic title and odometer disclosure system shall retain the capacity to issue physical titles meeting all the requirements of this part. Once a physical title is created by a State with an electronic title and odometer disclosure statement system, the electronic record must indicate that a physical title has been issued and the electronic title and disclosure statement have been superseded by the physical title as the official title. The State electronic title and odometer disclosure

system shall record the date on which the physical title was issued and record the identity of the recipient of the physical title as well as the owner(s) named on the physical title.

(7) Any physical documents employed by transferors and transferees to make electronic odometer disclosures shall comply with all requirements of this part.

(8) Any conversion of physical documents to electronic documents employed to comply with any of the requirements of this part must maintain and preserve the security features incorporated in the physical document so that any alterations or modifications to the physical document can be detected in the physical document's electronic counterpart. Scanning of physical documents must be made in color at a resolution of not less than 600 dots per inch (dpi).

■ 7. Amend § 580.7 by revising paragraphs (a) and (b), and add paragraph (e), to read as follows:

**§ 580.7 Disclosure of odometer information for leased motor vehicles.**

(a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing on a physical document or within an electronic document stating that the lessee is required to provide a written disclosure to the lessor regarding the mileage. This notice shall contain a reference to the Federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law. If the transaction at issue is electronic, the information specified in this paragraph shall be displayed, and acknowledged as understood by the party, prior to the execution of any electronic signatures.

(b) In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written statement regarding the mileage of the vehicle. This statement must be signed by the lessee. If executed using a physical document, this statement, in addition to the information required by paragraph (a) of this section, shall contain the information in paragraphs 1 through 9 as set forth below. If executed using an electronic document, this statement, in addition to the information required by paragraph (a) of this section, shall contain the name of the person making the disclosure and the information contained in paragraphs 2 through 9 as set forth below.

(1) The printed name of the person making the disclosure;

(2) The current odometer reading (not to include tenths of miles);

(3) The date of the statement;

(4) The lessee's name and current address;

(5) The lessor's name and current address;

(6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;

(7) The date that the lessor notified the lessee of disclosure requirements;

(8) The date that the completed disclosure statement was received by the lessor; and

(9) The signature of the lessor if executed using a physical document or the electronic signature of the lessor if statement is made electronically.

\* \* \* \* \*

(e) Any electronic system maintained by a lessor for the purpose of complying with the requirements of this section shall meet the requirements of § 580.4(b) of this part.

■ 8. Amend § 580.8 by revising paragraph (a) and to add paragraph (d) to read as follows:

**§ 580.8 Odometer disclosure statement retention.**

(a) Dealers and distributors of motor vehicles who are required by this part to execute an odometer disclosure statement shall retain for five years a photostat, carbon, other facsimile copy or electronic copy or document of each odometer mileage statement which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

\* \* \* \* \*

(d) Any electronic record shall be retained in a format which cannot be altered, and which indicates any attempts to alter it.

■ 9. Amend § 580.9 by revising the introductory text to read as follows:

**§ 580.9 Odometer record retention for auction companies.**

Each auction company shall establish and retain in physical document form, or electronic document form that complies with the requirement of § 580.4(b), at its primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

\* \* \* \* \*

■ 10. Amend § 580.10 by revising paragraph (b)(2) as follows:

**§ 580.10 Application for assistance.**

\* \* \* \* \*

(b) \* \* \*

(2) Be submitted to the Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W41-326, Washington, DC 20590;

\* \* \* \* \*

■ 11. Amend § 580.11 by revising paragraphs (a), (b)(2), and (c) to read as follows:

**§ 580.11 Petition for approval of alternate disclosure requirements.**

(a) A State may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of § 580.5, § 580.6, § 580.7, or § 580.13(f) of this part.

(b) \* \* \*

(2) Be submitted to the Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W41-326, Washington, DC 20590;

\* \* \* \* \*

(c) Notice of the petition and an initial determination pending a 30-day comment period will be published in the **Federal Register**. Notice of final grant or denial of a petition for approval of alternate motor vehicle disclosure requirements will be published in the **Federal Register**. The effect of the grant of a petition is to relieve a State from responsibility to conform the State disclosure requirements with § 580.5, § 580.6, § 580.7, or § 580.13(f), as applicable, for as long as the approved alternate disclosure requirements remain in effect in that State. The effect of a denial is to require a State to conform to the requirements of § 580.5, § 580.6, § 580.7, or § 580.13(f), as applicable, of this part until such time as the NHTSA approves any alternate motor vehicle disclosure requirements.

■ 12. Remove and reserve § 580.12.

**§ 580.12 [Removed and Reserved]**

■ 13. Amend § 580.13 by revising paragraphs (a), (b), and (f) to read as follows:

**§ 580.13 Disclosure of odometer information by power of attorney.**

(a) If the transferor's title is physically held by a lienholder, if the transferor's title exists in electronic form and the transferee is located in a State that does not create or maintain electronic titles, or if the transferor to whom the title was issued by the State has lost his title and the transferee obtains a duplicate title on behalf of the transferor, and if otherwise permitted by State law, the transferor may give a power of attorney to his transferee for the purpose of

mileage disclosure. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in part A, a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section. If a State permits the use of a power of attorney in the situation described in § 580.14(a), the form must also contain, in part B, a space for the information required to be disclosed under § 580.14, and, in part C, a space for the certification required to be made under § 580.15.

(b) In connection with the transfer of ownership of a motor vehicle, each transferor to whom a title was issued by the State whose title is physically held by a lienholder, whose title exists in electronic form and the transferee is located in a State that does not create or maintain electronic titles or whose title has been lost, and who elects to give his transferee a power of attorney for the purpose of mileage disclosure, must appoint the transferee his attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the power of attorney form issued by the State. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type and vehicle identification number.

\* \* \* \* \*

(f) 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. The transferee shall submit the original power of attorney form to the State that issued it, with a copy of the

transferor's physical title or with the actual physical title when the transferee submits a new title application at the same time. The State shall retain the power of attorney form and title for three years or a period equal to the State titling record retention period, whichever is shorter. If the mileage disclosed on the power of attorney form is

lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title.

■ 14. Amend § 580.14 by revising paragraphs (a), (b), (e), and (f) to read as follows:

**§ 580.14 Power of attorney to review title documents and acknowledge disclosure.**

(a) In circumstances where part A of a secure power of attorney form has been used pursuant to § 580.13 of this part, and if otherwise permitted by State law, a transferee may give a power of attorney to his transferor to review the physical title and any physical reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the physical title. The power of attorney shall be on part B of the form referred to in § 580.13(a), which shall contain a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section and, in part C, a space for the certification required to be made under § 580.15.

(b) The power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type and vehicle identification number.

\* \* \* \* \*

(e) The transferee shall sign the physical power of attorney form, and print his name.

(f) The transferor shall give a copy of the physical power of attorney form to his transferee.

■ 15. Amend § 580.15 by revising paragraph (a) to read as follows:

**§ 580.15 Certification by person exercising powers of attorney.**

(a) A person who exercises a power of attorney under both §§ 580.13 and 580.14 must complete a certification that he has disclosed on the physical title document the mileage as it was provided to him on the physical power of attorney form, and that upon examination of the physical title and any physical reassignment documents, the mileage disclosure he has made on the physical title pursuant to the power of attorney is greater than that previously stated on the physical title and reassignment documents. This certification shall be under part C of the same form as the powers of attorney executed under §§ 580.13 and 580.14 and shall include:

\* \* \* \* \*

■ 16. Amend § 580.17 by revising paragraph (a)(3) and example to paragraph (a)(3) to read as follows:

**§ 580.17 Exemptions.**

\* \* \* \* \*

(a) \* \* \*

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

*Example to paragraph (a)(3):* For vehicle transfers occurring during calendar year 2016, model year 1991 or older vehicles are exempt.

\* \* \* \* \*

Issued in Washington, DC, on March 18, 2016. Under authority delegated in 49 CFR part 1.95

**Mark R. Rosekind,**  
*Administrator.*

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