

and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This amendment does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$7.0 million to \$34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this amendment will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 for final rules of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this amendment will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995

dollars, updated annually for inflation. In 2010, that threshold is approximately \$135 million. This amendment will have no consequential effect on State, local, or Tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Because this amendment does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this amendment was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 410 as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

- 1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1834, 1871, and 1893 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395hh, and 1395ddd).

Subpart B—Medical and Other Health Services

§ 410.15 [Amended]

- 2. Section 410.15 is amended as follows:
 - A. In paragraph (a), in the definition of “First annual wellness visit providing personalized prevention plan services” removing paragraph (ix) and redesignating paragraph (x) as paragraph (ix).
 - B. In paragraph (a), in the definition of “Subsequent annual wellness visit providing personalized prevention plan services” removing paragraph (vii) and redesignating paragraph (viii) as paragraph (vii).
 - C. In paragraph (a), removing the definition of “voluntary advance care planning”.

CMS–1503–F2.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774,

Medicare—Supplementary Medical Insurance Program)

Dated: January 3, 2011.

Donald M. Berwick,
Administrator, Centers for Medicare & Medicaid Services.

Approved: January 4, 2011.

Kathleen Sebelius,
Secretary, Department of Health and Human Services.

[FR Doc. 2011–164 Filed 1–5–11; 4:15 pm]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA–2010–0046; Notice 2]

Petition for Approval of Alternate Odometer Disclosure Requirements

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

ACTION: Final Determination.

SUMMARY: The State of Wisconsin has petitioned for approval of alternate requirements to certain requirements under Federal odometer law. NHTSA is issuing this final determination granting Wisconsin’s petition as it pertains to vehicle transfers. This determination does not include vehicles covered by a lease agreement.

DATES: *Effective Date:* February 9, 2011.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://DocketInfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: David Case, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–2239) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Introduction

Federal odometer law, which is largely based on the Motor Vehicle

Information and Cost Savings Act (Cost Savings Act)¹ and the Truth in Mileage Act of 1986², as amended (TIMA), contains a number of provisions to limit odometer fraud and assure that the purchaser of a motor vehicle knows the true mileage of the vehicle. The Cost Savings Act requires the Secretary of Transportation to promulgate regulations requiring the transferor (seller) of a motor vehicle to provide a written statement of the vehicle's mileage registered on the odometer to the transferee (buyer) in connection with the transfer of ownership. This written statement is generally referred to as the odometer disclosure statement. Further, under TIMA, vehicle titles themselves must have a space for the odometer disclosure statement, and States are prohibited from licensing vehicles unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Titles must also be printed by a secure printing process or other secure process. TIMA also contains specific disclosure provisions on transfers of leased vehicles. Federal law also contains document retention requirements for motor vehicle dealers and lessors.

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

The State of Wisconsin has petitioned NHTSA for approval of alternate odometer disclosure requirements under TIMA. The Wisconsin Department of Transportation (WisDOT) proposes a paperless electronic title transfer scheme, described more fully in section IV, similar to the Commonwealth of Virginia's alternate odometer disclosure program, approved by NHTSA on January 2, 2009. 74 FR 643, 650 (January 7, 2009). Wisconsin's program will not apply to, or in lieu of, the provisions of Federal odometer law related to, transactions involving at least one out-of-State party.³

With limited exceptions, NHTSA initially determined that Wisconsin's proposal satisfied Federal odometer law, and proposed granting Wisconsin's petition on the condition that it amend its program or demonstrate that it meets the requirements of Federal law. See 75

FR 20965 (April 22, 2010). To gain final approval, Wisconsin was required to demonstrate that its program conforms to Federal odometer law disclosure requirements specifying that an odometer disclosure statement, including the brand, be made at the time of transfer when the seller is unavailable.⁴ NHTSA's Initial Determination also asked Wisconsin to address aspects of its e-Odometer program relating to transfer of leased vehicles. As addressed below, Wisconsin will submit a separate petition regarding transfer of leased vehicles. After careful consideration of comments, and the entire record, NHTSA is granting Wisconsin's petition for title transfers other than those involving a lease agreement. NHTSA's analysis is set forth below in Section VI.

II. Statutory Background

NHTSA reviewed the statutory background of Federal odometer law in its consideration and approval of Virginia's petition for alternate odometer disclosure requirements. See 73 FR 35617 (June 24, 2008) and 74 FR 643 (January 7, 2009). The statutory background of the Cost Savings Act and TIMA, and the purposes behind TIMA, are discussed at length in NHTSA's Final Determination granting Virginia's petition. 74 FR 643, 647-48. A brief summary of the statutory background of Federal odometer law and the purposes of TIMA follows.

In 1972, Congress enacted the Cost Savings Act, among other things, to prohibit tampering of odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers. See Public Law 92-513, section 401, 86 Stat. 947, 961-63 (1972). The Cost Savings Act required that, under regulations to be published by the Secretary, the transferor of a motor vehicle provide a written vehicle mileage disclosure to the transferee, prohibited odometer tampering and provided for enforcement. See *Id.* at section 408, 86 Stat. at 947. Section 408 states that the Secretary shall prescribe rules requiring any transferor of a motor vehicle to provide a written disclosure to the transferee that includes the cumulative mileage on the odometer and if the odometer reading is known to be different than the miles the vehicle has actually traveled, a statement that the actual mileage is unknown. In general, the purpose for the disclosure

was to assist purchasers to know the true mileage of a motor vehicle.

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

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

TIMA added a provision to the Cost Savings Act that, with the approval of the Secretary of Transportation, allows States to have alternate requirements to those required under TIMA respecting the disclosure of mileage. It amended Section 408 of the Cost Savings Act to add a new subsection (f), which provided that the requirements of subsections (d) and (e)(1) respecting the disclosure of motor vehicle mileage when motor vehicles are transferred or leased shall apply in a State unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. Subsection (f) provided further that the Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

In 1988, Congress amended section 408(d) 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

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

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

³ It also does not apply to disclosures by power of attorney where the title is held by a lien holder because, in Wisconsin, lienholders do not hold the vehicle title.

⁴ See Section 408 of the Cost Savings Act, recodified at 49 U.S.C. 32705, and 49 CFR 580.5(c).

section 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 section 7(a), 104 Stat. 4654, 4657 (1990).

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

III. Statutory Purposes

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

Our Final Determination granting Virginia's petition for alternate odometer disclosure requirements identified the purposes of TIMA germane to petitions for approval of odometer disclosure requirements that did not include disclosures involving leased vehicles or disclosures by power of attorney.⁵ 74 FR 643, 647-48 (January 7, 2009). A brief summary of the purposes identified in the Virginia Final Determination follows. In the Initial Determination of Wisconsin's petition,

⁵ Since Virginia's program did not cover disclosures involving leased vehicles or disclosures by power of attorney, the purposes of Sections 408(d)(2)(C) and 408(e) of the Cost Savings Act, as amended, were not germane and were not addressed in the notice approving the Virginia program. *See* 74 FR 647 n. 12.

the Agency identified the purposes of TIMA relevant to odometer disclosures for transfer of leased vehicles. 75 FR 20972-73. Since, as explained below, Wisconsin has indicated that it will submit a separate petition regarding transfer of leased vehicles, the purposes of TIMA relevant to leased vehicles are not discussed here.

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

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

Third, TIMA sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. 74 FR 648. In furtherance of these purposes, paper titles (incorporating the disclosure statement) must be produced using a secure printing process or protected by "other secure process."⁶ *Id.*

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

⁶ Congress intended to encourage new technologies by including the language "other secure process." The House Report accompanying TIMA noted that "'other secure process' is intended to describe means other than printing which could securely provide for the storage and transmittal of title and mileage information." H.R. Rep. No. 99-833, at 33 (1986). "In adopting this language, the Committee intends to encourage new technologies which will provide increased levels of security for titles." *Id.* *See also* Cost Savings Act, as amended by TIMA, section 408(d), recodified at 49 U.S.C. 32705(b).

enforcement officials. This record provides critical snapshots of vehicle mileage at every transfer, which are the fundamental links of this paper trail.

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

IV. The Wisconsin Program

As explained in NHTSA's Initial Determination, Wisconsin petitions for approval of alternate odometer disclosure requirements. 75 FR 20965, 20967 (Apr. 22, 2010). Wisconsin requests alternate disclosure requirements for motor vehicle private party (including motor vehicle dealers) transfers, including transactions involving a lienholder.⁷ Wisconsin's petition included a request for alternate odometer disclosure requirements for transactions involving leased vehicles but, as explained below, Wisconsin states that it will submit a separate petition addressing electronic odometer disclosure for leased vehicle transfers.

Recent Wisconsin legislation establishes that the title, title application, and other specified information maintained by the DMV in its database are the original and controlling title records for a vehicle. *See* Wis. Stat. Ann. § 342.01(2)(ac) and § 342.09(4) (2009). Wisconsin proposes creating an electronic odometer statement (e-Odometer) residing in the WisDOT Department of Motor Vehicles (DMV) database as the official odometer statement. Under the proposal, a distinct e-Odometer system will be created to accept and maintain e-Odometer statements as stand-alone electronic records, separate from an electronic title. E-Odometer statements will be linked to, and become part of the title record in the DMV database. The DMV's titling system will automatically link the e-Odometer statements to a vehicle's title whenever an electronic title transaction occurs, and a title transfer could not be completed unless proper odometer disclosure is entered in the e-Odometer record. According to Wisconsin's petition, if a paper title is needed, the DMV will print it on secure paper with the odometer disclosure

⁷ Under Wisconsin law, a lienholder does not physically possess the title to the vehicle; the title remains with the vehicle owner. Thus, Wisconsin does not permit odometer disclosure by power of attorney when title is held by a lienholder and does not petition for alternate requirements regarding odometer disclosure by power of attorney. Wisconsin does accept a written odometer disclosure by power of attorney from an out-of-state party that registers the vehicle in Wisconsin.

statement in the proper location and format.

Wisconsin's original petition encompassed transfers of leased vehicles. In the Initial Determination, NHTSA raised questions about this aspect of Wisconsin's program. In its comments on that Determination, Wisconsin stated that lessee odometer disclosure would be addressed in the second implementation phase, and that the State would consult with NHTSA. Wisconsin asked that NHTSA approve its petition with the understanding that Wisconsin would consult with NHTSA to satisfy all requirements. If NHTSA is unable to approve the State's petition with that provision, the State requested approval of the petition except for the lessor/lessee transaction process. The State would expect to file a separate petition for approval of the lessor/lessee transaction in the future. NHTSA cannot approve a petition or part of a petition on the basis of future consultations. As a result, NHTSA is unable to grant Wisconsin's petition as it pertains to transfers of vehicles involving a lease agreement. This is without prejudice for Wisconsin to develop e-Odometer provisions for the transfer of leased vehicles in a future phase of its implementation plan and to petition NHTSA for approval of electronic leased vehicle odometer disclosure in the future. We will not discuss Wisconsin's proposal for leased vehicles below.

A. Overview of Wisconsin's Electronic Titling System

Wisconsin has implemented a titling system that permits individuals, organizations and businesses (collectively, DMV Customers) to process vehicle title transactions electronically through its automated processing partnership system (APPS) program. See Wis. Admin. Code § Trans 1565.01. Under APPS, a vendor⁸ approved by the DMV⁹ creates a computer system to link or interface DMV customers with the DMV database. The link permits the DMV customer to

access the DMV database and conduct authorized title transactions.

In order to gain direct access to the DMV's database under the vendor system, a DMV customer must enter into an agreement with an approved vendor, obtain DMV approval to process title transactions, and enter into a contract with the DMV. To maintain system security and integrity, employees of DMV customers using the interface will have to submit a signed affidavit to the DMV before accessing the system. Once the DMV customer complies with these requirements, the DMV customer will be able to perform authorized title transactions directly within the DMV's system.

Currently, Wisconsin requires motor vehicle dealers to electronically process title transactions for vehicles that they sell. See Wis. Stat. Ann. § 342.16(1)(a) and (am) (2009); Wis. Admin. Code § Trans 141.01. Motor vehicle dealers can perform electronic titling transactions through APPS or through an Internet-based interface with the DMV, known as e-MV11. In order to process title transactions using the e-MV11, a DMV customer must apply to the DMV by submitting an application setting forth the name, address and contact of the entity and providing the names and access authority of employees performing title transactions. After setting up the required security protocols, the DMV customer can enter the appropriate title transaction.¹⁰ Also, under Wisconsin's electronic titling program, motor vehicle dealers are required to maintain and keep their title transactions records, including odometer disclosure statements, for five years. See Wis. Admin. Code § Trans 141.08(2).

According to Wisconsin's petition, the electronic titling program will be expanded to include other persons, businesses, and organizations. These businesses and organizations, such as

¹⁰ According to Wisconsin's petition, authorized transactions for amending an electronic odometer record are or will be:

1. Dealer sales to private buyers, including purchases and trade-ins from private buyers;
2. Dealer reassignments to other dealers;
3. Consignor statement when consigning a vehicle for sale;
4. Dealer or auction purchase of out-of-state vehicle and subsequent sale of vehicle with Wisconsin title (Wisconsin could produce a secure paper title for use by the other State.);
5. DMV odometer corrections on title;
6. Involuntary liens from towing/storage, landlord, or mechanic;
7. Repossessions;
8. Private sales where title is processed by DMV agent or financial institution;
9. Lessee to lessor statement upon relinquishing a leased vehicle; and
10. Private sales using e-MVPublic.

lienholders or auction companies, will conduct electronic title transactions through APPS. Individuals conducting private sales of unencumbered vehicles will eventually have the ability to perform title transfer and odometer disclosure through an Internet-based application called e-MVPublic.

B. Wisconsin's e-Odometer Program

Wisconsin asserts that e-Odometer entries will provide a virtual replacement of existing secure paper odometer disclosure statements for vehicle transactions. Under Wisconsin's proposal, the e-Odometer system will be a unique electronic application within Wisconsin's electronic title transfer system. Although the e-Odometer entry will be a stand-alone secure electronic record, it will be safely and securely electronically linked to the electronic title record of the vehicle by the vehicle identification number (VIN) and become part of the vehicle title. Title transfer could not occur unless the transferor and transferee, or other authorized persons such as dealer employees, perform the required disclosure and acceptance through the e-Odometer system. Once the odometer disclosure and acceptance is completed, the statement is stored in the e-Odometer system and linked to the electronic title record by the VIN.

The petition states that the following information will be stored in the secure e-Odometer record:

1. VIN;
2. Description of the vehicle by make, model, model year and body type;
3. Odometer reading and date of the reading;
4. The Brand (actual, not actual or exceeds limits of odometer);
5. Name, address of person disclosing odometer reading (must match the transferor);
6. Name, address of person accepting odometer reading (must match the transferee); and
7. Statement reference to Federal law requirement and potential penalties.

Some of the e-Odometer information and other vehicle information will be available to DMV personnel through a DMV vehicle inquiry function, while limited information will be available to the public through a public inquiry function. The information available to DMV personnel includes:

1. Vehicle description;
2. Title owner information;
3. Brands, if any;
4. Most current odometer reading, status and date recorded;
5. Odometer reading, status and record date history;
6. Lien information; and

⁸ According to Wisconsin's petition, a "vendor" is a person, business or organization that contracts with the DMV to provide a host computer system by which agents may obtain access to specified information services. Wis. Admin. Code § Trans 156.02(8). An approved vendor must work with Wisconsin's DMV to develop an automated interface software application that meets the automated interface specifications prescribed by DMV. Wis. Admin. Code § Trans 156.03(4).

⁹ In order to become an approved vendor, an entity must submit an application with certain information to DMV, submit an approved implementation plan, work with DMV to meet the automated interface specifications prescribed by DMV and execute a contract with DMV.

7. Owner in possession of the vehicle. The publicly available information includes:

1. Vehicle description;
2. Most current odometer reading, status and date recorded;
3. Brands, if any; and
4. Lien information.

Wisconsin's petition states that creation of or amendments to e-Odometer records will be possible only when titles are transferred in the course of authorized transactions by authorized persons.

C. Wisconsin e-Odometer Implementation Schedule

Wisconsin plans to implement its e-Odometer program in three phases. Because motor vehicle dealers are already required to complete title transactions electronically, Wisconsin intends to begin the e-Odometer program with these dealers. See Wis. Stat. Ann. § 342.16(1)(a) and (am) (2009); Wis. Admin. Code § Trans 141.01. The second phase will implement e-Odometer in title transfers involving lienholders, motor vehicle auctions, and vehicle repossessions. The final phase will implement e-Odometer in transfers of unencumbered motor vehicles between private individuals. Phase two and three are still under development and Wisconsin has not provided an estimated implementation schedule. According to the petition, during phase-in, some odometer disclosure transactions will be electronic but some will continue to be on the secure paper title and secure paper odometer statement.

1. Phase One: e-Odometer in Dealer Transactions

Wisconsin's petition states e-Odometer will apply first to motor vehicle transfers through motor vehicle dealers. During this phase, eligible title transactions include reassignments among dealers, consignments, and retail sales. In order to complete a transaction, there must be an odometer disclosure and acceptance of the odometer statement. The odometer disclosure and acceptance will be permitted between the following persons: (1) Authorized dealer personnel and an individual buyer; (2) an individual seller trading in a vehicle and authorized dealer personnel; (3) authorized dealer personnel in the case of dealer reassignments; and (4) an individual vehicle owner and an authorized person on behalf of a consignee in the case of vehicle consignment. According to Wisconsin, the identities of all persons involved will be verified and

authenticated through the DMV's processes.

Under Wisconsin's plan, dealer title transfer transactions will be completed through an APPS's vendor interface application or the e-MV11 Internet-based application. During these title transfer transactions, e-Odometer forms will be imported into the transaction and completed by the authorized persons.

2. Phase 2: e-Odometer in Title Transactions between Private Parties Involving Lienholders and Other Commercial Entities

Wisconsin's petition states that the second phase will incorporate e-Odometer procedures into title transfers in a number of circumstances, including between private parties when there is a lien on the vehicle. These title transactions will be processed by the financial institution holding the lien. During this phase, e-Odometer will be available to the financial institution through the APPS application or an application WisDOT develops for these lenders. Because lienholders do not possess titles under Wisconsin law, a satisfied lienholder will access e-Odometer to electronically release the lien to allow production of a clear title. To facilitate this process, e-Odometer forms will be available to buyers and sellers through an Internet application allowing completion of the required odometer disclosures and acceptances.

During this second phase, Wisconsin also plans to incorporate use of the e-Odometer system into title transfers involving motor vehicle auctions, involuntary vehicle transfers (*i.e.* involuntary liens and repossessions), corrections to odometer information on titles, and other transactions involving secure odometer statements.

3. Phase 3: e-Odometer in Private Sales

The last phase of Wisconsin's program will incorporate e-Odometer entries into private sales of unencumbered vehicles. The title transfer will be conducted through an on-line application called e-MVPublic.¹¹ For private transfers of motor vehicles, odometer disclosure and acceptance will be accomplished by the seller and buyer through e-MVPublic once their identities are verified by DMV processes.

¹¹ For individuals without Internet access, Wisconsin is considering providing access to e-MVPublic at its DMV service centers. At a minimum, Wisconsin states that public libraries offer public access to computers and the Internet, which will enable individuals without Internet to use e-Odometer.

D. Identity Verification Under Wisconsin e-Odometer

Wisconsin's petition describes two verification processes whose operation differs depending on whether the user is a DMV partner or regular customer (such as a dealer or financial institution) or an intermittent user. For a DMV partner or regular customer, the first step is being approved by the DMV to access its database. As part of the approval process, the entity must provide the legal business name and address of the business. After approval, identity verification procedures will require these users to enter into an agreement with the DMV that includes security procedures—including establishing an account and secure logon ID. The users are identified and authenticated through a unique "user ID" and password that are traced to a particular person on the account.

Vendors will manage the verification process. The Wisconsin APPS program requires approved vendors to design precise electronic security and audit trail procedures into its interface, which DMV will then verify. This interface requires three administrative steps to identify, authenticate, and authorize users of the DMV's database. First, vendors must create an audit journal to identify the individual responsible for each transaction. Vendors assign each user a "user ID" that can be traced to the individual user. Next, to authenticate the user, a password known only to the user that is associated with the "user ID" is entered before a transaction is allowed. If an individual user is not authorized by the vendor for the type of transaction requested, the system will immediately terminate the transaction. Last, vendors must authorize the user to access the appropriate information. In addition to the identification protocols, vendors must create and maintain access logs that can be used for auditing and recording keeping, which include, among other things, a history of each customer transaction.

Under Wisconsin's plan, DMV partners and regular customers must submit the identity of each employee who will conduct title transactions and specify each employee's authority to perform transactions in the DMV's database. Prior to obtaining authorization from the DMV to conduct title transfer transactions, each employee must submit a signed affidavit acknowledging security procedures and safeguards. The DMV must confirm each user's authorization before the user can process title transactions.

For individuals who are not DMV partners or regular customers,

Wisconsin will require individuals to establish an electronic signature that can uniquely identify the person. Identity verification begins with the customer entering a minimum of three personal identifiers for the correct customer record in the DMV database. Personal identifiers include name, address, date of birth, product number, Driver License/ID number, and a Federal Employer Identification Number or partial Social Security Number (possibly the last four or five digits).¹² After the user inputs the personal identifiers into the system, the system will check DMV customer records and verify that the user is the correct individual or business, and will authorize the customer to update the odometer statement. Once the user is verified, the user can begin the title transaction.

E. Odometer Disclosure Under Wisconsin e-Odometer

Wisconsin's petition states that two parties must engage in an authorized e-Odometer transaction to effectuate the odometer disclosure. In order to conduct the e-Odometer disclosure, each party will access the DMV database by providing information to satisfy the identity verification requirements of the system and the VIN of the vehicle. Under Wisconsin's proposal, a transferor must disclose the odometer reading and brand (actual/not actual/exceeding odometer limits) and the transferee must accept the odometer reading to allow the transaction to go forward.¹³ The e-Odometer transaction

¹² Wisconsin prohibits nonresidents from applying for a Wisconsin title, except in certain limited exceptions. See Wis. Admin. Code § Trans 154.13(2). A nonresident who is eligible to apply for a Wisconsin title will not be considered a DMV partner or regular customer. These nonresidents will be subject to the e-Odometer requirements as long as the vehicle is titled and transferred within Wisconsin.

¹³ Wisconsin states that there are a limited number of exceptions under Wisconsin law and e-Odometer to the requirement for two parties to engage in a transaction to update a title. One exception is involuntary transfer of the vehicle through repossession by a financial institution in which the title is issued to the financial institution. This exception is permissible under Federal odometer law because repossession is not a transfer of ownership and does not require an odometer disclosure statement. See 49 CFR 580.3. Another exception is when the seller is not available. If the seller is not available, the DMV database permits the transferee to state the odometer reading with a brand of "not actual." If the transferor becomes available to make the disclosure, DMV will change the recorded status to "actual." This exception does not conform to Federal odometer law, which requires an odometer disclosure statement, including the brand, at the time of transfer of ownership. 49 U.S.C. 32705(a)(1); 49 CFR 580.5(a). Federal odometer law does not permit subsequent alterations to the brand as contemplated by Wisconsin. NHTSA believes that permitting such an

will remain in a pending status between the transferor and transferee until each party completes the required actions, e.g., disclosure by the seller and acceptance by the buyer. Once both actions have been accomplished, the e-Odometer record will be secured within DMV's database and become part of the electronic title through the VIN.

To clarify the e-Odometer procedure, Wisconsin provides an exemplar title transaction involving a dealer trade-in. In a vehicle trade-in transaction, the customer (transferor) must bring the paper title to the dealer (transferee) at the time of the transfer. After entering all the required data in the Wisconsin electronic title system and initiating the e-Odometer process, the dealer will then destroy the paper title.¹⁴ Under the e-Odometer process, the customer discloses the odometer reading (and brand) and the dealer accepts the odometer reading. The vehicle's odometer reading is then stored in the DMV database and linked virtually to the vehicle's title through the VIN. Upon later sale of the trade-in vehicle, the dealer (as the transferor) must disclose the odometer reading (and brand) and the vehicle buyer (as the transferee) must accept the odometer reading. The dealer and buyer will access e-Odometer at the time of the sale to complete the disclosure and acceptance of the odometer statement, which upon acceptance by the buyer secures the odometer statement in the DMV's database. After the sale of the vehicle is completed, the dealer completes title processing in APPS or e-MV11 by titling the vehicle in the consumer's name, verifying that secure odometer disclosure has been completed. After titling is complete, the updated e-Odometer entry becomes part of the title record. For in-State transactions, a paper title is issued only upon request.

F. Wisconsin's Position on Meeting the Purposes of TIMA

Wisconsin has maintained that its e-Odometer program meets the purposes of TIMA, as described by NHTSA in its Final Determination on the Commonwealth of Virginia's petition for alternate odometer disclosure requirements. See 74 FR 643, 647-48 (January 7, 2009).

Wisconsin's petition states that e-Odometer is part of the vehicle's title. Under e-Odometer, the VIN links the

exception could create a loophole that will be abused.

¹⁴ According to Wisconsin, the dealer's failure to destroy the title subjects the dealer to civil penalties and other sanctions, such as license suspension or removal.

odometer statement to the title record. The system automatically imports e-Odometer into the title transfer transaction process conducted by the transferor and transferee. A title transaction cannot occur unless the odometer disclosure statement is made and accepted. The e-Odometer information is then secured, stored, and becomes visible through the vehicle's electronic title record.

According to the petition, other system requirements provide a significant level of security for the e-Odometer system. First, title transfer cannot occur unless the authorized persons update e-Odometer entries. Second, only those persons authorized to make title transfer transactions (e.g., authorized dealer personnel or authenticated private owners) are able to make e-Odometer statements. Third, odometer disclosure under the e-Odometer system is only permitted when a title is transferred.¹⁵ If a title is required to be printed on a secure title paper, the DMV system will automatically include the odometer disclosure information on the printed title. If a title on secure title paper is used in a vehicle transfer, the odometer information shown on the secure paper title will be entered into the e-Odometer electronic record during the title transfer transaction process and the paper title will be destroyed.

Wisconsin's petition also states that odometer disclosure is a required data input for application for a title and a required output on the title. According to the petition, the odometer disclosure and acceptance is a required input to an electronic title transaction, whether performed through APPS or e-MV11. Although APPS permits odometer disclosure and acceptance at different times, e-Odometer secures the disclosure and acceptance and stores it electronically until the odometer disclosure is imported during title processing.

Wisconsin's petition asserts that e-Odometer provides a level of security against altering, tampering, and counterfeiting equivalent to the odometer statement on a secure paper title. According to Wisconsin, the e-Odometer statement is secured in the DMV database as soon as the transferor electronically discloses and the transferee accepts the odometer reading. After the transferee accepts the odometer disclosure, e-Odometer stores that mileage disclosure, the date, and the names and addresses of the

¹⁵ As noted above, there are some exceptions under Wisconsin law.

transferor and transferee, and will not allow any changes to that entry.

Finally, Wisconsin's petition contends that the authentication and verification of the transferor's and transferee's electronic signatures are readily detectable and reliably traced to the particular individual. Wisconsin states that the DMV has established extensive security procedures for vendors who process vehicle transactions on behalf of the DMV and regularly interact with the DMV, and for individuals and intermittent business customers who wish to make entries in DMV records. Wisconsin's security procedures are governed under Wisconsin statutes, administrative rules, contracts, DMV policy and procedure, and electronic security protocols. DMV Partners and regular business customers will access the e-Odometer system through secure applications that are already in use for vehicle title transactions. Individuals and intermittent business customers will access the e-Odometer system through a secure Internet application. Both applications require information, such as electronic signatures, that can authenticate and verify the users' identity.

V. Summary of Public Comments

NHTSA received comments from two entities: (1) WisDOT; and (2) the American Automotive Leasing Association (AALA). The AALA comments are discussed in section VI below.

WisDOT's comments responded to NHTSA requirements in the Agency's Initial Determination that Wisconsin (1) conform its program to the requirements of Federal odometer law by not permitting the alteration of the brand on an electronic odometer statement when the seller of the vehicle is unavailable at the time of the transfer, or fully explains how this exception complies with the law and its purposes; (2) permit lessors to retain each odometer disclosure statement they give and receive; and (3) clarify the system's ability to allow lessors to place a different brand on the disclosure statement in those instances where the lessor believes, or has reason to believe, that the statement provided by the lessee is inaccurate. WisDOT submitted comments indicating that it will manage e-odometer disclosure when a seller is unavailable by requiring the buyer to give the odometer reading with a brand of "not actual," and specifying that the "not actual" brand cannot be changed, even if the seller appears later.

While Wisconsin will seek approval of alternate odometer disclosure

requirements for leased vehicle transfers at a later date, its comments addressed NHTSA's concerns about these transfers. Wisconsin indicated that it will create a mandatory system for lessors to retain all odometer statements they receive for the five-year period required by Federal regulations, 49 CFR 580.8(b). Wisconsin also indicated that it will build e-Odometer to facilitate odometer statements by lessors if the lessor believes, or has reason to believe, that the lessee's disclosure does not reflect the actual mileage of the vehicle.

VI. NHTSA's Final Determination

In this part, NHTSA considers the Wisconsin program in light of the purposes of the disclosure required by subsection (d) of section 408 of the Cost Savings Act.¹⁶ We also respond to comments.

Under the Cost Savings Act, as amended by TIMA, the standard is 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. The purposes are discussed above, as is the Wisconsin alternate program.

As explained above, one purpose of the disclosures under section 408(d) and (e) of the Cost Savings Act is to assure that the form of the odometer disclosure precludes odometer fraud. NHTSA has determined that Wisconsin's alternate electronic odometer disclosure requirements satisfy this purpose. Under Wisconsin's program, the vehicle's odometer reading must be entered in the course of the title transfer transaction for transfer of title to occur. The reading is disclosed by the transferor and, if valid, accepted by the transferee. Thereafter the odometer disclosure statement will reside as an electronic record in the DMV database and will be linked to the vehicle's title by the VIN. This electronic odometer disclosure is a required element of the transfer and part of the title record in the DMV database. If a hard copy of the title is needed, Wisconsin generates a title with the odometer disclosure statement on the title using a secure printing process. Wisconsin's system will, therefore, have the odometer disclosure as part of the vehicle title as

¹⁶ Since Wisconsin's program does not cover disclosures by power of attorney or transfers involving leased vehicles, the purposes of sections 408(d)(1)(c) and (e) of the Cost Savings Act as amended by TIMA are not germane. Thus, Wisconsin continues to be subject to all Federal requirements that are not based on sections 408(d)(1)(A), (B), and (2).

required by TIMA. Also, Wisconsin's electronic title and odometer system provides an electronic equivalent to TIMA's requirement that the title contain a space for the transferor to disclose the vehicle's mileage. For conventional paper transactions in Wisconsin, hard copies of electronic titles will continue to provide a separate space for owners to execute a proper odometer disclosure in keeping with TIMA and current practice.¹⁷

Another purpose of TIMA is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer mileage on the title a condition for the application for a title and a requirement for the title issued by the State. NHTSA has determined that Wisconsin's title transfer process satisfies this purpose by requiring disclosure and acceptance of odometer information before the transaction can be completed. If the transaction is successful, the DMV's system will create or amend an electronic title and store the linked electronic odometer statement. A new title will not be issued without entry and acceptance of the odometer disclosure. Our Initial Determination raised a question about alteration of the brand. Wisconsin indicated in its petition that, if the seller is not available at the time of transfer of ownership, the DMV database permits the transferee to state the odometer reading with a brand of "not actual." If the transferor later becomes available to make the disclosure and does so, DMV would change the recorded status to "actual." In the Initial Determination, NHTSA stated that a change to the title subsequent to transfer of the vehicle does not conform to Federal odometer law, which requires an odometer disclosure statement, including the brand, to be made at the time of transfer. 75 FR 20965, 20971 (April 22, 2010) (citing 49 U.S.C. 32705(a)(1); 49 CFR 580.5(a)). Wisconsin's comments to our Initial Determination indicate that Wisconsin's program will not permit a post-transfer change of the brand. Wisconsin allows the buyer to give the odometer reading a brand of "not actual" where not properly completed by the seller, and this brand cannot be changed, even if the seller appears later. The Agency notes that a transferor and/or transferee cannot incorporate a "not actual" brand to the odometer disclosure statement as a matter of course or convenience, but only if the mileage

¹⁷ Wisconsin notes that paper titles will be produced for title transfer transactions that involve out-of-state parties, such as a vehicle sale to an out-of-state dealer or retail purchaser, an auction sale to an out-of-state dealer or a retail consumer in Wisconsin that requests a paper title.

indicated on the odometer and on the odometer disclosure statement is inaccurate. 49 U.S.C. 32705(a)(3); 49 CFR 580.5(e)(3). 49 U.S.C. 32705(a)(3).

Another purpose of TIMA is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. The agency has determined that Wisconsin's electronic disclosure requirements are as secure as current paper titles. Wisconsin's electronic odometer statement is disclosed by the transferor and accepted by the transferee, and thereafter stored in a secure DMV database system. When the State maintains the e-Odometer database with appropriate levels of security, electronic recording of odometer readings and disclosures will be maintained in a way in which alteration is unlikely. The odometer reading, which will be linked to the electronic title record by the VIN, cannot be altered except when it is updated during the title transfer process by authorized users. On subsequent title transfers, the transferor and transferee will have to complete the odometer disclosure and acceptance for the transaction to be completed.

When fully implemented, all subsequent title transfers will be performed through the APPS or e-MV11, or other secure on-line process. Each time an on-line title transfer occurs, the DMV database system stores the electronic version of the odometer statement. The DMV will issue a paper title only when necessary, *e.g.*, title transfer transactions that involve out-of-State parties. Since the title and odometer statement remain in electronic form under State care and custody, the likelihood of an individual altering, tampering or counterfeiting the title or odometer statement is significantly decreased. These electronic records will be maintained in a secure environment and any unauthorized access will be detected by the system. Moreover, under Wisconsin law, the electronic title record is the official and controlling title. If a conflict exists between the electronic title and a paper title, the paper title is void.

Another purpose of TIMA is to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record trail are to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. In NHTSA's view, the proposed Wisconsin's electronic title transfer system will create a scheme of records, equivalent to the current "paper trail," that assists law enforcement in identifying and prosecuting odometer fraud. Under the

Wisconsin program, creation of a paper trail starts with the requirement for certain DMV customers to process title transactions through the APPS program. Under APPS, a DMV customer must sign a written agreement with the DMV that includes security procedures, an account, and a secure logon ID. DMV customers also must provide the DMV with the names of the individuals authorized to conduct transactions in APPS. These individuals are issued a secure logon ID and password that can be traced by the DMV to their transactions. In addition, APPS vendors must create security protocols that include an audit journal that can identify each person responsible for each title transaction. Vendors must also provide the DMV with a daily report detailing all security violations. Furthermore, Wisconsin requires motor vehicle dealers to retain copies of electronic titles for motor vehicles owned and offered for sale and odometer statements received and given for a period of 5 years.¹⁸

For individuals not using APPS, the identity verification procedures require the establishment of electronic signatures of the parties. Due to the system's procedures for validating and authenticating the electronic signature of each individual through DMV's database, the electronic signatures of the transferor and transferee are reliable, readily detectable and can easily be linked to particular individuals.¹⁹ Because the electronic signature consists of data elements such as the name, address, date of birth, product number, driver license or identification card number, and a Federal Employer Identification Number or the last four or five digits of the individual's Social Security number, Wisconsin's e-Odometer system can validate and authenticate individual electronic signatures. This authentication process also allows Wisconsin to trace the individuals involved in the transaction. This capacity maintains the purposes of creating a paper trail since the Wisconsin system will have a history of each vehicle's title transfer and

odometer disclosure. These electronic records will create the electronic equivalent to a paper based system that will be readily available to law enforcement.

TIMA's overall purpose is to protect consumers by assuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. Here, the alternate disclosure requirements of Wisconsin's program include characteristics that will assure that representations of a vehicle's actual mileage will be as valid as those found in current paper title transfers. Identity authentication, maintenance in a secure electronic environment, and transferee verification of the mileage data reported by the transferor all help to ensure valid disclosures. In addition, by providing rapid access to records of past transfers and by maintaining audit logs of each and every title transfer transaction, the Wisconsin program could potentially provide a superior deterrent to odometer fraud. Furthermore, Wisconsin's program offers the public the opportunity to view the most recent odometer reading and date of that reading through an Internet application. A prospective purchaser can access the public e-Odometer information to assess a vehicle's true value by comparing the vehicle's current odometer reading to the electronic record stored with the DMV.

As discussed above, NHTSA has not approved Wisconsin's plan insofar as it concerns leased vehicles. That program is under development. We recognize that while, in general, the AALA supported the Wisconsin petition, in its comments to the Initial Determination the AALA raised several concerns. The organization stated that Wisconsin's program should address interstate transactions. The AALA's comments also contended that requiring lessors to retain lessee odometer statements is unnecessary since these statements will be retained in Wisconsin's e-Odometer system. The AALA further contended that lessees should be allowed to fill out odometer statements electronically and that the Secretary should make clear that this practice is allowed. In the AALA's view, lessors should also be able to electronically submit their own odometer value when a lessee does not submit an odometer statement and the lessor is confident that it can provide a valid odometer reading. The AALA also requested that Wisconsin's system allow lessors to issue odometer statements that will be verified by purchasers to account for any miles accrued during the resale process. The organization added that lessors should be allowed to issue disclosure statements where

¹⁸ Wisconsin indicates that its e-Odometer system will permit motor vehicle dealers the ability to retain copies of all odometer disclosure statements received or given by the dealers.

¹⁹ Electronic signatures are generally valid under applicable law. Congress recognized the growing importance of electronic signatures in interstate commerce when it enacted the Electronic Signatures in Global and National Commerce Act (E-Sign). See Public Law 106-229, 114 Stat. 464 (2000). E-Sign established a general rule of validity for electronic records and electronic signatures. 15 U.S.C. 7001. It also encourages the use of electronic signatures in commerce, both in private transactions and transactions involving the Federal government. 15 U.S.C. 7031(a).

multiple or amended statements are needed to ensure accurate reporting when leased vehicles are purchased by lessees or a lessee's employee but no third-party reseller is involved. Finally, the AALA stated that Wisconsin's proposal should state clearly that the lessee odometer disclosure statement may be provided by the driver. Since this notice does not resolve the leased vehicle part of Wisconsin's program, we are not addressing AALA's comments. If Wisconsin resubmits a petition regarding leased vehicles, the AALA

will have an opportunity to comment on it.

For the foregoing reasons, and upon review of the entire record, NHTSA hereby issues a final determination granting Wisconsin's petition for requirements that apply in lieu of the Federal requirements adopted under section 408(d) of the Cost Savings Act, other than the portions of the petition addressing transfer of leased vehicles, which Wisconsin indicates in its comments will be addressed in a separate petition. Other requirements of

the Cost Savings Act continue to apply in Wisconsin. NHTSA reserves the right to rescind this determination in the event that future information indicates that the operation of Wisconsin's alternative disclosure system does not satisfy one or more applicable requirements.

Issued on: January 4, 2011.

David L. Strickland,
Administrator.

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