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

• Does not provide 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 final 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 EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 7, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart RR—Tennessee

■ 2. Section 52.2220(e) is amended by adding a new entry for ''Knoxville; 1997 Annual Fine Particulate Matter 2002 Base Year Emissions Inventory'' at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State effective date	EPA approval date	Explanation
*	*	*	*	*
Knoxville; 1997 Annual Fine Particulate Matter 2002 Base Year Emissions Inventory.	Anderson, Blount, Knox, and Loudon Counties, and the portion of Roane County that falls within the census block that includes the Tennessee Valley Authority's Kingston Fossil Plant.	04/04/2008	08/21/2012 [Insert citation of publication].	

[FR Doc. 2012–20393 Filed 8–20–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA–2011–0152; Notice 2]

Petition for Approval of Alternate Odometer Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of final determination.

SUMMARY: The State of New York (''New York'') has petitioned for approval of alternate odometer requirements. New York's petition, as amended, is granted.

DATES: *Effective Date:* September 20, 2012.

ADDRESSES: New York's petition and comments are available for public inspection at the Docket Management Facility of the U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Marie Choi, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–1738) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION: 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 access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. You may also review the docket at the address listed above.

I. Introduction

Federal odometer law, which is largely based on the Motor Vehicle Information and Cost Savings Act of 1972 (Cost Savings Act) [1] and Truth in Mileage Act of 1986, as amended

[1] Sec. 401–413, Public Law 92–513, 86 Stat. 961–963.

(TIMA),[2] contains a number of provisions to limit odometer fraud and ensure that the buyer of a motor vehicle knows the true mileage of the vehicle. The Cost Savings Act requires the Secretary of Transportation to promulgate regulations requiring the transferor (seller) of a motor vehicle to provide a written statement of the vehicle's mileage registered on the odometer to the transferee (buyer) in connection with the transfer of ownership. This written statement is generally referred to as the odometer disclosure statement. Further, under TIMA, vehicle titles themselves must have a space for the odometer disclosure statement and states are prohibited from licensing vehicles unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Titles must also be printed by a secure process. Federal law also contains document retention requirements for odometer disclosure statements.

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

Seeking to replace an existing system of paper records for dealer inventories, transfers, and sales—including the transfer of titles and odometer disclosures—with an electronic system, New York has petitioned for approval of alternate odometer disclosure requirements. In its initial determination, NHTSA reviewed the statutory background and set out the agency's tentative view on applicable statutory factors governing whether to grant a state's petition. NHTSA determined that New York's initial petition [3] for approval of alternate disclosure requirements did not satisfy Federal odometer law because transfers to out-of-state purchasers involved the issuance of non-secure paper odometer disclosure receipts. *See* 76 FR 65485, Oct. 21, 2011. NHTSA invited public comments.

As part of its comments, New York submitted an amended petition.[4] After careful consideration of comments, NHTSA has made a final determination, which is set forth below.

II. Statutory Background and Purposes

A. Statutory Background

NHTSA reviewed the statutory background of Federal odometer law in its consideration of petitions for approval of alternate odometer disclosure requirements by Virginia, Texas, Wisconsin, Florida, and New York. *See* 74 FR 643, Jan. 7, 2009 (granting Virginia's petition); 75 FR 20925, Apr. 22, 2010 (granting Texas' petition); 76 FR 1367, Jan. 10, 2011 (granting Wisconsin's petition in part); 77 FR 36935, June 20, 2012 (granting Florida's petition in part, and denying Florida's petition in part); *see also* 76 FR 65485, Oct. 21, 2011 (initial determination denying New York's petition). The statutory background of the Cost Savings Act and TIMA, as related to odometer disclosure requirements, other than in the transfer of leased vehicles and vehicles subject to liens where a power of attorney is used, is discussed at length in NHTSA's final determination granting Virginia's petition. 74 FR 643; *see also* 77 FR 36935; 76 FR 48101, Aug. 8, 2011 (addressing leased vehicles and powers of attorney).[5] A brief summary of the statutory background of Federal odometer law follows.

In 1972, Congress enacted the Cost Savings Act to establish safeguards for consumers which prohibited odometer tampering. Among other things, the Cost Savings Act made it unlawful to alter an odometer's mileage, and required written disclosure of odometer mileage in connection with any transfer of ownership of a motor vehicle.[6] However, the Cost Savings Act had a number of shortcomings, which are discussed below.

In 1986, Congress enacted TIMA to address the Cost Savings Act's shortcomings. Congress was specifically concerned with addressing odometer fraud in the commercial market, and noted that used car auctions, distributors, wholesales, dealers, and used car lots of new car dealers often may be directly involved in fraud.[7] TIMA also added a provision to the Cost Savings Act, allowing States to obtain approval for alternate odometer disclosure requirements. Pursuant to Section 408(f) of the Cost Savings Act, as amended by TIMA: The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

In 1994, in the course of the recodification of various laws pertaining to the Department of Transportation, the Cost Savings Act, as amended, was repealed, reenacted, and recodified without substantive change. *See* Public Law 103–272, 108 Stat. 745, 1048–1056, 1379, 1387 (1994). The odometer statute is now codified at 49 U.S.C. 32701 *et seq.* 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, with subsequent amendments, 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).

B. Statutory Purposes

In our final determinations, after notice and comment, granting the petitions for approval of alternate odometer disclosure requirements of Virginia, Texas, and, in part, Wisconsin and Florida, we identified the statutory purposes of TIMA.[8] 74 FR 643; 75 FR 20925; 76 FR 1367; 77 FR 36935. These purposes are summarized below.[9]

One purpose of TIMA was to ensure that the form of the odometer disclosure precluded odometer fraud. The Cost Savings Act did not require odometer disclosures to be made on a vehicle's title. This created a potential for odometer fraud, because a transferor could easily alter the odometer disclosure or provide a new statement with different mileage.[10] TIMA addressed this shortcoming of the Cost Savings Act by requiring mileage disclosures to be on a vehicle's title instead of a separate document. Titles

[2] Sec. 1–3, Public Law 99–579, 100 Stat. 3309–3311.

[3] New York's Petition for Approval of Alternate Odometer Disclosure Requirements dated September 30, 2010 shall be referred to as the ''initial petition.''

[4] New York's Amended Petition for Approval of Alternate Odometer Disclosure Requirements dated November 8, 2011 shall be referred to as the ''amended petition.''

[5] New York's petition does not address leased vehicles or powers of attorney.

[6] In 1976, Congress amended the odometer disclosure provisions in the Cost Savings Act to provide further protections to purchasers from unscrupulous car dealers. *See* Public Law 94–364, 90 Stat. 981 (1976).

[7] S. Rep. No. 99–47, at 2 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621.

[8] Any statements which refer to the ''purposes of TIMA'' or a ''purpose of TIMA'' should be interpreted to refer to the purpose of the disclosure required by subsection (d) or (e), as the case may be, as stated in Section 408 of the Cost Savings Act, as amended by TIMA.

[9] New York's amended petition does not pertain to leased vehicles or powers of attorney. Accordingly, the purposes of TIMA addressed below do not address these matters.

[10] *See* S. Rep. No. 99–47, at 2–3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621–22; H. Rep. No. 99–833, at 33 (1986).

also had to contain space for the seller's attested mileage disclosure.

A second purpose of TIMA was to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title, and a requirement for the title to be issued by the State.[11] This was intended to eliminate or significantly reduce abuses associated with lack of control of the titling process.[12] Prior to TIMA, odometer fraud was facilitated by the ability of transferees to apply for titles without presenting the transferor's title with the disclosure.

Third, TIMA sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. Prior to TIMA, titles could be printed through non-secure processes, and could be easily altered or laundered.[13] To address this shortcoming of the Cost Savings Act, TIMA required titles to be printed by means of a secure printing process or protected by other secure processes.[14]

A fourth purpose of TIMA was to create a record of the mileage on vehicles and a paper trail.[15] This would allow consumers to be better informed and provide a mechanism for tracing odometer tampering and prosecuting violators. Under the Cost Savings Act, prior to TIMA, odometer disclosures could be made on pieces of paper and did not have to be submitted with new title applications. TIMA required new applications for title to include the transferor's mileage disclosure statement on the title, creating a permanent record that could easily be checked by subsequent owners or law enforcement officials. This record would provide critical snapshots of the vehicle's mileage at every transfer, which are fundamental links in the paper trail.

Finally, the general purpose of TIMA was to protect consumers by ensuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures.[16] The TIMA amendments were directed at resolving shortcomings in the Cost Savings Act.

[11] *See* S. Rep. No. 99–47, at 2–3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621–22; H. Rep. No. 99–833, at 18, 32 (1986).

[12] *See* S. Rep. No. 99–47, at 2–3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621–22; Sec. 2, Public Law 99–579, 100 Stat. 3309.

[13] *See* S. Rep. No. 99–47, at 3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5622.

[14] *See* H. Rep. No. 99–833, at 18, 33 (1986).

[15] *See* H. Rep. No. 99–833, at 18, 33 (1986).

[16] *See* Preamble, Public Law 99–579, 100 Stat. 3309.

III. New York's Program

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

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

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

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

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

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

1. Accessing the Proposed System

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

To join the System, a dealer first would request access to the system from NYSDMV. NYSDMV would register the dealership as a group and designate a System administrator for that dealership (a dealership employee chosen by the dealer) to be responsible for assigning System accounts to employees (users) within the dealership.[17] The number of users and the level of access for each user would be determined and controlled by the administrator. User accounts created by the dealership's administrator would be subject to review during onsite audits by NYSDMV and enforcement staff.

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

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

2. Using the Proposed System

Under New York's proposal, if a vehicle were transferred to a dealership, the vehicle's identifying information would be entered into the System using a standardized template through a user's account. The vehicle identification number (VIN) would automatically be verified by the System using the appropriate Vehicle Identification Number Analysis (VINA) file. (VINA is a system used to verify and decode information contained in vehicle identification numbers.) If the vehicle were sold to another New York dealer, the purchasing dealer's System template for that vehicle would pre-fill with the vehicle's identification information from the System. During sales/transfer transactions, the seller would electronically disclose vehicle information including the current mileage and would be issued a unique transaction number.

Because it relies on dealers making entries into the system, New York's proposed Electronic Vehicle Inventory and Transfer System encompasses only transactions involving dealers.

a. Transactions to and Between New York Dealers

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

If a dealer sold a vehicle to another licensed New York dealer, the selling dealer would sign on to the System using its unique sign on and password and would access the vehicle's identifying information on the System. The selling dealer would enter current vehicle information including the current odometer reading and enter seller and purchaser information on the System. The System would then generate a transaction number. The purchasing dealer would sign on to the System using its unique sign on and password and would access the vehicle's identifying information on the System using the transaction number. The purchasing dealer would then review the vehicle's identifying information, including the odometer disclosure statement made by the selling dealer,[18] and would accept or reject the transaction. If the purchasing dealer accepted the transaction it would be considered complete. The original pre-dealer ownership document (still in the prior owner's name) would be surrendered to the purchasing dealer at the time of sale.

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

b. Transactions Between New York Dealers and Non-New York Dealer Purchasers, Both In-State and Out-of-State

If a vehicle owned by a New York dealer were sold to an in-state or out-of-state retail purchaser, salvage dealer, auction house, or other non-dealer purchaser, an authorized user at the selling dealer would sign on to the System and access the vehicle information on the System. The selling dealer would enter current vehicle information including the current odometer reading, and would enter seller and purchaser information on the System.

Under the initial proposal (which New York later amended), a two-part sales receipt/odometer statement would be created on the System. The purchaser would then review the information, including the odometer statement, on a draft receipt displayed on the computer screen. If the purchaser agreed with the odometer statement and other information, the authorized dealer representative would save the data in the System and then print a two-part sales receipt. Both parties would then sign the odometer disclosure statement printed on each of the two parts of the receipt. The dealer would retain the dealer part of the receipt for its files. The purchaser would be given the purchaser's copy of the receipt along with the original title. If the purchaser did not agree with any of the information displayed on the dealer's computer screen,[19] the purchaser could reject the transaction. In that case, the dealer would have to cancel the transaction in the System and resubmit it using the correct information.

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

IV. NHTSA's Initial Determination

In its initial determination, NHTSA restated the statutory purposes of the disclosure required by TIMA as amended. 76 FR 65487. NHTSA discussed New York's petition (*Id.* at 65487–65490) and analyzed whether it was consistent with the statutory purposes (*Id.* at 65490–65492). NHTSA preliminarily denied New York's petition because it was not consistent with certain purposes of the disclosure required by TIMA. Our concerns centered on sales to out-of-state purchasers.

NHTSA stated that New York's alternate disclosure requirements did not meet the third purpose of preventing alternations of disclosure on titles and precluding counterfeit titles through secure processes, because the odometer disclosure statement printed by a New York dealer as part of a sale to a non-New York dealer would not be made by a secure process. *Id.* at 65491. In particular, the receipt that New York proposed using in transactions between New York dealers and out-of state-buyers would be susceptible to alteration and counterfeiting. *Id.*

NHTSA further stated that New York's proposed program would not be

[18] The System would automatically check the odometer disclosure statement entered by the seller against the odometer disclosure statement previously recorded on the System for that vehicle. If the odometer reading entered by the seller was lower than what was previously recorded, the transaction would not be processed without a proper notation explaining the odometer discrepancy. According to the NYSDMV, this notation could be either ''true mileage unknown'' or ''exceeds mechanical limits'', as indicated in a check-box in the System. This notation would remain in the vehicle's history through all subsequent transactions.

[19] As with transfers between licensed New York dealers described above, the System would automatically check the odometer disclosure statement entered by the seller against the odometer disclosure statement previously recorded on the System for that vehicle. If the odometer reading entered by the seller were lower than what was previously recorded, the transaction would be cancelled.

consistent with the fourth purpose of creating a record of mileage on vehicles and a paper trail in cases where a vehicle would be titled in a state other than New York. *Id.* Unlike the current MV–50 form printed on secure paper with a control number, the receipt that New York proposed using to title vehicles out-of-state would not be printed on secure paper, and could be easily substituted with another document. *Id.* NHTSA stated that the resolution of whether New York's proposed program satisfied the purpose of creating a paper trial turned on the security of the final reassignment document used to obtain title. *Id.*

NHTSA discussed TIMA's overall purpose of protecting consumers by ensuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. NHTSA stated that other than the portions of New York's proposed program related to the security of the odometer disclosure statement in the sale of a vehicle from a licensed New York dealer to an out-of-state buyer, New York's proposal likely would provide more protection for consumers than the current procedure. *Id.* at 65492.

V. Summary of Public Comments

NHTSA received two comments. The first was from the New York Division of Motorist Services (New York).[20] In its comment, New York amends its petition. For transfers to out-of-state buyers, New York states that it will use a secure MV–50 form instead of the two-part paper receipt it initially proposed. The second comment was from the National Auto Auction Association (NAAA).[21] NAAA's comments are largely based on portions of New York's initial petition which New York amended.

A. New York's Comment Amending Its Petition

In its comment, New York first identifies portions of NHTSA's initial determination where NHTSA indicated that New York's program was not consistent with the third, fourth, and overall purposes of the disclosure required by TIMA. New York then amends its petition in a manner which it believes addresses NHTSA's concerns.[22] New York's amendments primarily address transactions between New York dealers and out-of-state purchasers.

1. Transactions Between New York Dealers and Out-of State Purchasers

Initially, New York proposed using the same procedure for out-of-state transfers as in-state transfers. This proposal involved the issuance of a non-secure paper receipt, which would be used to title vehicles outside of New York. As explained in NHTSA's initial decision, the non-secure receipt is problematic. New York amended its petition.

Under New York's amended petition, the first stage of the transaction, where the dealer enters the vehicle's information into the system, is identical to the procedure described in New York's initial petition. However, in a sale of a vehicle to an out-of-state purchaser, the second stage of the transaction is different. New York now proposes that instead of using a two-part paper receipt, the selling dealer would use a secure paper MV–50 (Retail Certificate of Sale) to document the transaction. The dealer would indicate the mileage of the vehicle in the System and also indicate which uniquely numbered MV–50 was used for the transfer. Both parties would sign the MV–50. The dealer would retain one copy of the MV–50, and the purchaser would retain another copy. If the buyer went to title the vehicle outside of New York, the out-of-state department of motor vehicles could use the *Polk Motor Vehicle Registration Manual* and/or a web application to identify that the MV–50 was authentic. A web application would be available to both in-state and out-of-state purchasers, allowing them to verify basic New York State odometer history by entering a vehicle's VIN.

2. Transactions Between New York Dealers and Non-Dealer, In-State Purchasers

New York amends its proposal with respect to transactions between New York purchasers and in-state, non-dealer purchasers only slightly. New York would continue using the two-part sales receipt, but amends its petition to require the two-part sales receipt to contain a statement advising purchasers that the receipt may only be used to register the vehicle in New York State.[23] If the purchaser intended to register the vehicle outside of New York, the dealer would be required to issue a secure paper MV–50 instead of the non-secure two-part receipt.

B. The National Auto Auction Association's Comment

NAAA represents hundreds of auto auctions. NAAA's comments are based on New York's initial petition.

NAAA comments that New York's proposed system creates a potential for odometer fraud and unnecessarily complicates the transfer of vehicles across state lines. NAAA states that the non-secure paper receipt, which is not generated by a secure process and is separate from the original title document, could be altered or counterfeited by an out-of-state buyer. NAAA also argues that the information gaps created by maintaining odometer information in two separate locations (electronically for New York dealers and on paper for everyone else) are a cause for concern. NAAA states that without a complete history of odometer information in one location, it will be difficult for out-of-state purchasers to identify potential odometer fraud. If title information is altered after a purchase is made from a New York dealer, a subsequent purchaser will not be able to ascertain the vehicle's odometer history without both the paper title and access to New York's System. NAAA states that this would be at odds with the purposes of TIMA, and that it could negatively affect interstate commerce and the value of vehicles titled in New York. Finally, NAAA states that New York's proposed system's susceptibility to odometer fraud, the existence of two separate titling processes, and the absence of a complete odometer history once a New York dealer vehicle is sold to a non-New York dealer may dissuade bidders from purchasing New York vehicles at auction. NAAA concludes that New York's system, as proposed, does not adequately address the issues created by the transfer of vehicles to non-New York dealers.

VI. Statutory Purposes

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 as amended by TIMA (now recodified at 49 U.S.C. 32705(d)) provides that NHTSA shall approve alternate motor vehicle mileage disclosure requirements submitted by a

[20] Letter from Ida L. Traschen, First Assistant Counsel, State of New York Department of Motor Vehicles, to O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration (''New York's Comment'') (Nov. 8, 2011).

[21] Letter from Bertha M. Phelps, Chair, Legislative and Government Relations Committee, National Auto Auction Association, to O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration (''NAAA's Comment'') (Nov. 21, 2011).

[22] New York attached an Amended Petition for Approval of Alternate Odometer Disclosure Requirements to its comment.

[23] We expect that the sales receipt, along with the information the dealer enters into the System, to contain all of the information required by 49 CFR 580.5.

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, which were amended by TIMA and subsequently amended, were recodified to 49 U.S.C. 32705(b) and (c)).

Neither New York's nor NAAA's comments dispute the relevant Cost Savings Act purposes set forth in NHTSA's initial determination. New York restates and applies the purposes of TIMA to its Amended Petition for Approval of Alternate Odometer Disclosure Requirements. NAAA does not challenge NHTSA's analysis of statutory purposes in the initial determination in its comment.

After careful consideration of the comments, as part of the agency's final determination, we adopt the purposes stated in the initial determination of New York's petition. 76 FR 65487.

VII. NHTSA's Final Determination

Section 408(f)(2) of the Cost Savings Act sets forth the legal standard for approval of state alternate vehicle mileage disclosure requirements: 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) of section 408, as the case may be. In this section, we consider New York's program in light of the purposes of the disclosure required by subsection (d) of section 408,[24] and address New York's and NAAA's comments.

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

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

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

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

New York's proposal meets the TIMA purpose of ensuring that the form of the odometer disclosure precludes odometer fraud. We note that New York's proposal involves a proper odometer disclosure on the title itself when the seller is the person in whose name the vehicle is titled. Following transfer of a vehicle to a New York dealer, when the vehicle is not re-titled in the name of the dealer, the proposed New York system would provide for odometer disclosures to be made electronically in a secure electronic system with sign offs by the seller and buyer instead of on the paper reassignment documents currently being used. In addition, the paper title with an odometer disclosure would be transferred to the transferee/purchasing dealer. This is comparable to paper reassignments employing a paper State title and paper State reassignment form. Ultimately, for sales from New York dealers to consumers and other non-dealer buyers, the odometer disclosure would be recorded in the State's electronic system and on a two-part receipt or MV–50 signed by both buyer and seller. The receipt or MV–50—a form of paper reassignment document—memorializes the electronic disclosure. This would accompany the initial title with an odometer disclosure.

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

A third purpose of TIMA is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. The agency initially determined that New York's alternate disclosure requirements did not satisfy this purpose. However, in its comment, New York amended its petition. New York's proposal as amended is consistent with the third purpose of the disclosure required by TIMA.

When a vehicle is first transferred to a dealer, the transfer and required odometer disclosure statement are made using the vehicle's secure paper title

[24] Subsection (3) of section 408 involves leased motor vehicles which are not at issue here.

document (MV–999). Subsequent transfers between licensed New York dealers are processed electronically—the selling dealer submits the vehicle's identifying information into the System, including the odometer disclosure statement; the purchasing dealer then verifies the information on the System, including the odometer disclosure statement made by the selling dealer, and either accepts or rejects the transaction electronically.

Upon final retail sale of a vehicle to an in-state consumer or other non-New York dealer entity, the odometer disclosure statement would be made electronically and on a two part paper receipt, one part of which is given to the new owner to use in obtaining a title. More particularly, the selling dealer would access the Electronic Vehicle Inventory and Transfer System and enter the odometer disclosure and the dealer's and buyer's information into the system. If the odometer reading entered was not lower than a prior entry, a two-part odometer statement and receipt would be created electronically. The purchaser would review the information on the receipt prior to the receipt being printed and verify the odometer disclosure statement on the receipt. If the purchaser accepted the information, then the two-part sales receipt would be printed and both parties would sign the odometer disclosure statement printed on each part of the receipt. The dealer would retain the dealer part of the receipt for its files and the purchaser would be given the purchaser part of the receipt along with the original ownership document. Prior to registering and titling the vehicle in the new purchaser's name, NYSDMV's System, which would have the odometer reading, would check the information on the paperwork submitted by the purchaser (i.e. the paper receipt and title) against the information in the System.

Sales to out-of-state purchasers would mirror sales to in-state purchasers up to the point of printing a two-part sales receipt. Instead of a two-part sales receipt, the dealer would use a secure MV–50 form to document the transaction. The MV–50 form is printed using a secure printing process, and each MV–50 form bears a unique identification number. When transferring a vehicle, a dealer would indicate which uniquely numbered MV–50 form was being used for the transfer in the system. Both parties would complete and sign the MV–50, and the dealer and purchaser would each retain a copy of the MV–50. New York controls the distribution and use of MV–50 forms and requires dealers to account for every MV–50 they receive. 15 NYCRR § 78.10. We are satisfied that New York's proposal, as amended, is consistent with the purpose of preventing alterations of disclosures on titles and precluding counterfeit titles through secure processes. New York's amendment of its program from a non-secure paper receipt to the secure MV–50 also addresses concerns raised in NAAA's comment that the paper receipt could be altered or counterfeited by an out-of-state buyer.

A fourth purpose of TIMA is to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record and paper trail are to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. We initially determined that New York's alternate disclosure requirements did not satisfy this purpose. In response, New York amended its petition.

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

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

In those cases in which a New York dealer sells a vehicle to a person who would title and register it out-of-state, as described in the amended petition, the buyer would be provided with the title used to transfer it initially to a dealer and a MV–50 containing the odometer disclosure. A dealer would be required to annotate the unique MV–50 number from the MV–50 being used for the transaction in New York's System. This would create a paper trail linking the electronic records to the paper MV–50 given to the out-of-state buyer. Both parties would receive a copy of the MV–50, which could be authenticated outside of New York by using a *Polk Motor Vehicle Registration Manual* and/or Web application. Additionally, as described in New York's initial proposal, a Web application would allow both in-state and out-of-state purchasers to verify basic New York State odometer history by entering the vehicle's VIN.

In NHTSA's view, New York's proposed program, as amended, would create a scheme of records equivalent to the current ''paper trail'' that assists law enforcement in identifying and prosecuting odometer fraud. Use of a secure MV–50 form whose unique identification number is recorded in the System adds a level of security that was lacking in New York's initial proposal, as it would be executed in out-of-state transfers. New York could use the MV–50 form to document in-state transfers in lieu of the non-secure paper receipt as well. Accordingly, New York's program as amended is consistent with the fourth purpose of the disclosure required by TIMA.[25]

[25] NAAA commented that New York's proposal would create information gaps because odometer information would be maintained in two separate

Continued

TIMA's overall purpose is to protect consumers by ensuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. New York's proposed alternate disclosure requirements, as amended are consistent with this purpose. New York's proposed alternate disclosure requirements include characteristics that would ensure that representations of a vehicle's actual mileage would be as valid as those found in current paper title transfers and reassignments. Transfers of vehicles between licensed New York dealers, including the required odometer disclosure statements, would be processed and the records maintained electronically in the System. Transfer records would be maintained on the System. The paper title used for the initial transfer to a licensed New York dealer would follow the vehicle and would be required when applying for registration and titling of the vehicle in the final purchaser's (not a licensed New York dealer's) name. Potential buyers could examine the most recent odometer disclosure statement online before purchasing the vehicle. Mileage disclosures made on paper receipts for in-state transfers would be checked against information in the System. Out-of-state transfers would be documented on a secure MV–50 form, which could be verified outside New York, and which would be linked to a particular transaction by a unique MV–50 identification number.

NAAA commented that New York's proposal was susceptible to fraud and that the absence of a complete odometer history would dissuade bidders from purchasing New York vehicles at auction. We note that New York stated in its initial petition that it would make a Web application available to in-state and out-of-state purchasers, which would allow purchasers to verify New York State odometer history by entering a vehicle's VIN.

VIII. Conclusion

For the foregoing reasons, and upon review of the entire record, the agency concludes that New York's proposed alternate disclosure requirements, as amended, are consistent with the purposes of the disclosure required by TIMA and its amendments. NHTSA hereby issues a final determination granting New York's amended petition for requirements that apply in lieu of the federal requirements adopted under section 408(d) of the Cost Savings Act. Other requirements of the Cost Savings Act continue to apply in New York. NHTSA reserves the right to rescind this grant in the event that information acquired after this grant indicates that, in operation, New York's alternate requirements do not satisfy one or more applicable requirements.

Authority: 49 U.S.C. 32705; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: August 14, 2012.

David Strickland,

Administrator.

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locations—electronically for New York dealers and on paper for everyone else. We do not believe this is a reason to disapprove New York's program. Odometer information is currently maintained in many locations in New York. Each New York dealer keeps records of odometer mileage in vehicles the dealership has transferred in a paper Book of Registry. The proposed changes to New York's program consolidate the Books of Registry maintained by each individual dealer into a single electronic system.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XC160

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2012–2013 Accountability Measure and Closure for Gulf King Mackerel in Western Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for commercial king mackerel in the western zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) through this temporary final rule. NMFS has determined that the commercial annual catch limit (ACL) (equal to the commercial quota) for king mackerel in the western zone of the Gulf EEZ will have been reached by August 22, 2012. Therefore, NMFS closes the western zone of the Gulf to commercial king mackerel fishing in the EEZ. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective noon, local time, August 22, 2012, until 12:01 a.m., local time, on July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, 727–824–5305, email: *Susan.Gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for the Gulf migratory group king mackerel in the western zone is 1,180,480 lb (535,457 kg) (76 FR 82058, December 29, 2011), for the current fishing year, July 1, 2012, through June 30, 2013.

Regulations at 50 CFR 622.49(h)(1)(i) and 50 CFR 622.43(a)(3) require NMFS to close the commercial sector for Gulf migratory group king mackerel in the western zone when the ACL (quota) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on the best scientific information available, NMFS has determined the commercial ACL (commercial quota) of 1,180,480 lb (535,457 kg) for Gulf migratory group king mackerel in the western zone will be reached by August 22, 2012. Accordingly, the western zone is closed effective noon, local time, August 22, 2012, through June 30, 2013, the end of the fishing year to commercial fishing for Gulf group king mackerel. The Gulf group king mackerel western zone begins at the United States/Mexico border (near Brownsville, Texas) and continues to the boundary between the eastern and western zones at 87°31.1′ W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three