

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, Ozone, Nitrogen dioxides, Particulate matter, Reporting and recordkeeping requirements, Transportation conformity, Transportation—air quality planning, Volatile organic compounds.

Dated: April 9, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 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 GG—New Mexico

■ 2. The second table in § 52.1620(c) entitled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” is amended by revising the entry for Part 3 (20.11.3 NMAC), Transportation Conformity, to read as follows:

#### § 52.1620 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA-APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Explanation
*	*	*	*	*
<b>New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board</b>				
*	*	*	*	*
Part 3 (20.11.3 NMAC) .....	Transportation Conformity .....	12/17/2008	April 22, 2010 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2010–9196 Filed 4–21–10; 8:45 am]

BILLING CODE 6560–50–P

#### DEPARTMENT OF TRANSPORTATION

##### National Highway Traffic Safety Administration

#### 49 CFR Part 580

[Docket No. NHTSA–2009–0174; 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 Texas has petitioned for approval of alternate requirements to certain requirements under Federal odometer law. NHTSA is issuing this final determination granting Texas's petition.

**DATES:** *Effective Date:* May 24, 2010. Request for reconsideration due no later than June 7, 2010.

**ADDRESSES:** Requests for reconsideration must be submitted in writing to Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Requests should refer to the docket and notice number above.

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

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

#### FOR FURTHER INFORMATION CONTACT:

Andrew DiMarsico, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–5263) (Fax: 202–366–3820).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

Federal odometer law, which is largely based on the Motor Vehicle Information and Cost Savings Act (Cost Savings Act)<sup>1</sup> and the Truth in Mileage Act of 1986,<sup>2</sup> 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.

<sup>1</sup> Pub. L. 92–513, 86 Stat 947, 961 (1972).

<sup>2</sup> Pub. L. 99–579, 100 Stat. 3309 (1986).

The State of Texas has petitioned NHTSA for approval of alternate odometer disclosure requirements under TIMA. The Texas Department of Transportation 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). Texas's proposal would not apply to, or in lieu of the provisions of Federal odometer law related to, leased vehicles, disclosures by power of attorney where the title is held by a lien holder, or transactions involving at least one out-of-State party.

NHTSA initially determined that Texas's proposal satisfied Federal odometer law with limited exceptions, and preliminarily decided to grant Texas' petition on the condition that it amend its program or demonstrate that it meets the requirements of Federal law. *See* 74 FR 59503 (November 18, 2009). To gain approval, Texas had to demonstrate that its program provides transferees a means for obtaining a paper title complying with TIMA's requirements,<sup>3</sup> incorporates the "brand" requirement in its electronic titling process (the brand states whether the odometer reflects the actual mileage, reflects the mileage in excess of the designated odometer limit or differs from the actual mileage and should not be relied upon)<sup>4</sup> and permits dealers to satisfy their obligation under Federal law to retain copies of odometer disclosure statements that they issue or receive.<sup>5</sup> After careful consideration of comments, and the entire record, NHTSA has determined to grant Texas's petition. NHTSA's final determination 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, § 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 § 408, 86 Stat. at 947.<sup>6</sup> 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, allowing States to have alternate requirements to those required

under TIMA respecting the disclosure of mileage, with the approval of the Secretary of Transportation. 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) further provided 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 § 40, 102 Stat. 2805, 2817 (1988), which added Section 408(d)(2)(C). In 1990, Congress amended section 408(d)(2)(C) of the Cost Savings Act. The amendment addressed retention of powers of attorneys by States and provided that the rule adopted by the Secretary not require that a vehicle be titled in the State in which the power of attorney was issued. *See* Public Law 101–641 § 7(a), 104 Stat. 4654, 4657 (1990).

In 1994, in the course of the 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, contains a specific provision on approval of State alternate odometer disclosure programs. Subsection 408(f)(2) of the Cost Savings Act (recodified in 1994 to 49 U.S.C. 32705(d)) provides that NHTSA “shall approve alternate motor vehicle mileage

<sup>3</sup> *See* Section 408(d)(2)(A)(i) of the Cost Savings Act, as added by TIMA, recodified at 49 U.S.C. 32705(b)(3)(A)(i) and 49 CFR 580.4.

<sup>4</sup> *See* Section 408 of the Cost Savings Act, recodified at 49 U.S.C. 32705, and 49 CFR 580.5(e).

<sup>5</sup> *See* Section 408 of the Cost Savings Act, recodified at 49 U.S.C. 32705, and 49 CFR 580.8(a).

<sup>6</sup> In general, 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.

disclosure requirements submitted by a State unless [NHTSA] determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be.” (Subsections 408(d), (e) of the 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 Texas’s petition.<sup>7</sup>

Our Final Determination granting Virginia’s petition for alternate odometer disclosure requirements, after notice and comment, identified the purposes of TIMA germane to petitions for approval of certain alternate odometer disclosure requirements.<sup>8</sup> 74 FR 643, 647–48 (January 7, 2009). We restated these purposes in the notice of initial determination on the Texas petition, and provided an opportunity for comment. *See* 74 FR at 59503, 59505. We did not receive any comment on them. We ratify our previous adoption of the TIMA statutory purposes, which are summarized below.

One purpose of TIMA was to assure that the form of the odometer disclosure precluded odometer fraud. 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.

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 issued by the State. This provision was intended to eliminate or significantly reduce abuses associated with lack of control of the titling process.

Third, TIMA sought to prevent alterations of disclosures on titles and to

preclude counterfeit titles through secure processes. In furtherance of these purposes, in the context of paper titles, under TIMA, the title must be set forth by means of a secure printing process or protected by “other secure process.”<sup>9</sup>

Another purpose was to create a record of vehicle mileage and a paper trail. The underlying purposes of this record and paper trail were to enable consumers to be better informed and provide a mechanism for tracing odometer tampering and prosecuting violators. TIMA’s requirement that new applications for titles include the prior owner’s signed mileage disclosure statement on the title creates a permanent record that is easily checked by subsequent owners or law enforcement officials. This record provides critical snapshots of the vehicle’s mileage at every transfer, which are the fundamental links of this paper trail.

Finally, the general purpose of TIMA was to protect consumers by assuring that they received valid representations of the vehicle’s actual mileage at the time of transfer based on odometer disclosures.

#### IV. The Texas Program

As explained in NHTSA’s initial determination, Texas proposes an electronic title transfer system and to maintain electronic records of titles in the Texas Department of Transportation (TxDOT), Division of Vehicle Title and Registration (VTR) computer system. 74 FR 59503. According to Texas’s petition, the “title” will exist as an electronic record with the TxDOT, but “hard” copies of the title can be generated if needed. The scope of its program is limited; Texas does not have alternate disclosure requirements for leased vehicles, disclosures of odometer statements by power of attorney for vehicles subject to a lien holder, or transactions involving at least one out-of-State party. Accordingly, this final determination does not address odometer disclosure requirements germane to those transactions.

The petition also states that the proposed system would require sellers to accurately disclose vehicle mileage and allow buyers to record, view and

acknowledge receipt of the disclosure through a secure on-line transaction with TxDOT using the TexasOnline Authentication Service (TOAS). TOAS is described as a secure identity verification service that establishes electronic signatures<sup>10</sup> by authenticating individuals against a database. TOAS allows TexasOnline to collect user data, which is then matched against four personal data elements and two forms of identification in the TexasOnline Authentication Database (TOAD)<sup>11</sup> to authenticate and verify the identity of the user. TOAD data elements include: A Texas driver license or identification card number, current driver license or identification card audit number, date of birth, and the last four digits of the individual’s social security number.

A purchaser or seller cannot access the proposed electronic title system unless the purchaser’s or seller’s identity, and status as a Texas resident, holding a valid Texas driver’s license or identification card, is authenticated by TOAS. Therefore, the Texas petition asserts that out-of-state parties would be unable to initiate an electronic title transfer in an on-line transaction with TxDOT.

Under Texas’s proposal, completing a motor vehicle sale would require that the seller (transferor) and the purchaser (transferee) perform several steps. First, the seller’s identity must be authenticated using TOAS. Once authenticated, the seller can access the TxDOT VTR Registration and Titles System (VTR system). The seller then selects a “transfer of ownership” transaction and enters the Vehicle Identification Number (VIN). The vehicle’s information is automatically populated on the screen. The transferor is prompted to enter the vehicle sales price and odometer reading.<sup>12</sup> After these data are entered, the VTR system will provide the transferor with a unique transaction number. The transferor must provide the unique transaction number to the transferee to complete the transaction.

<sup>10</sup> The term “electronic signature” means an electronic sound, symbol or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. 15 U.S.C. 7006(5) (2004).

<sup>11</sup> Currently, TexasOnline permits users to perform several services online, such as renewal of driver licenses, voter registration address changes, and ordering driving records.

<sup>12</sup> Texas’s initial petition did not address the brand requirement. *See* 49 CFR 590.5(e). In response to NHTSA’s initial determination, Texas submitted comments stating that it will continue to indicate/show the odometer reading and brand on paper titles and maintain an electronic record of the odometer reading and the brand.

<sup>7</sup> Texas’s petition does not address disclosures in leases or disclosures by power of attorney. In view of the scope of Texas’s petition, Texas will continue to be subject to current Federal requirements as to leases and disclosures by power of attorney, and we do not address the purposes of the related provisions.

<sup>8</sup> Since Virginia’s program did not cover disclosures in leases 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.

<sup>9</sup> Congress intended to encourage new technologies by including the language “other secure process.” The House Report accompanying TIMA noted that “‘other secure process’ is intended to describe means other than printing which could securely provide for the storage and transmittal of title and mileage information.” H.R. Rep. No. 99–833, at 33 (1986). “In adopting this language, the Committee intends to encourage new technologies which will provide increased levels of security for titles.” *Id.* *See also* Cost Savings Act, as amended by TIMA, § 408(d), recodified at 49 U.S.C. 32705(b).

The transaction would remain in “pending” status until the transferee logs on to complete the transfer of ownership transaction. Meanwhile, the VTR system would automatically check the odometer reading entered by the transferor against VTR odometer records. If the odometer reading entered by the transferor is lower than in the State’s records, the transaction will be immediately rejected.

Once transferees log on to TexasOnline and are authenticated, TOAS will transfer them to the TxDOT VTR system where they can select “vehicle transfer of ownership” and enter the unique transaction number obtained from the transferor. The transferee must enter the correct transaction number to continue. Once access is obtained, the transferee would verify the sales price, odometer reading and brand entered by the transferor. If all the data entered by the transferor are verified and acknowledged as correct by the transferee, ownership of the vehicle would pass to the transferee and an electronic title record would be established by the VTR system. The VTR system would then contact the transferor and request that the transferor’s original paper title be mailed to the VTR for destruction.<sup>13</sup>

If the transferee does not agree with the information entered by the transferor, then the VTR system will reject the transaction. The transferor will have the opportunity to correct the sales price and odometer reading for the rejected transaction. The transferee would then re-verify the information to ensure its accuracy. A second discrepancy would result in cancellation of the electronic transaction.

Texas’s petition states that the same process, along with additional safeguards, will be used in dealer assignments and reassignments of vehicle ownership. According to Texas, such safeguards include requiring the dealership to notify VTR of the employees authorized to do titling activities for the dealership.<sup>14</sup> This authorization will be stored in the TxDOT VTR system. To complete a transaction, the authorized employee will be required to enter his or her

authorization number and the dealer number.

Texas asserts that its proposed alternate odometer disclosure is consistent with Federal odometer law. As advanced by TxDOT, Texas’s alternative ensures that a fraudulent odometer disclosure can readily be detected and reliably traced to a particular individual by providing a means for TxDOT to validate and authenticate individual identities through electronic signatures. As described above, the parties’ electronic signatures are established and their identities authenticated through the four TOAD data elements: Texas driver’s license or identification card number, driver’s license or identification card audit number, date of birth, and the last four digits of social security number. TOAS then verifies the identity of the transferor and transferee through the submission of the required information. To conduct any transaction, both the transferor and transferee will have to authenticate their identity by submitting the correct data elements.

Texas also asserts that its proposal provides a level of security equivalent to that of an existing disclosure on secure paper titles and that on-line identity authentication acts in lieu of an actual signature on the title. Furthermore, Texas states that the electronic odometer disclosure provided by the transferor will be available to the transferee at the time ownership of the vehicle is transferred.

The Texas petition maintains that the electronic record and signature components of the proposal comport with the Electronic Signatures in Global and National Commerce Act (E-Sign), 15 U.S.C. 7001 *et seq.* Current State law permits the creation of electronic certificates of title, but requires a paper certificate of title for all transfers of vehicle ownership. Tex. Transp. Code Ann. § 501.117. If its proposal were approved, Texas could pass pending legislation that would implement its proposed electronic title system.

## V. Summary of Public Comments

NHTSA received comments from three entities: (1) The State of Texas, (2) the Alabama Department of Revenue (Alabama), and (3) the National Auto Auction Association (NAAA). In general, Alabama and NAAA supported the Texas’s petition.

Texas’s comments responded to NHTSA’s requirements, in its initial determination, that Texas meet certain conditions for approval of its petition. Texas’s comments respond to NHTSA’s conditions that Texas demonstrate that its program (1) enables transferees to

obtain a paper copy of the title that meets the requirements of TIMA, (2) permits dealers to retain a copy of all odometer disclosures that they issue and receive, and (3) requires disclosure of the brand, or demonstrates that these requirements are met. Texas submitted comments that indicate that the alternate odometer program will enable transferees to obtain a paper copy of the title if requested by the owner or lien holder. In addition, Texas stated that dealers will be provided with a paper or electronic record of the odometer disclosure. Finally, Texas responded that it will continue to require the odometer reading and brand on paper titles and maintain electronic copies of the odometer reading and brand.

In addition to supporting Texas’s petition, the State of Alabama requests that NHTSA allow all states to enact similar disclosure systems without the need to file separate petitions. Alabama adds that it recently implemented an electronic title application system, but must require paper as part of the process due, in part, to Federal odometer law. In Alabama’s view, NHTSA’s authorization for electronic titling will permit each State to determine its own method of secure identification and title transfers between motor vehicle owners.

NAAA raises a concern that the Texas title transfer system could be an impediment for out-of-state wholesale purchasers and sellers because Texas’s system differs from other States’ title transfer systems.

## VI. NHTSA’S Final Determination

In this part, NHTSA considers the Texas program in light of the purposes of the disclosure required by subsection (d) of section 408 of the Cost Savings Act.<sup>15</sup> 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 Texas alternate program.

The State of Alabama and NAAA agreed with the initial determination. Alabama also proposed that NHTSA authorize all states to implement

<sup>13</sup> According to the Texas petition, the previous title, regardless if it were electronic or paper, would be superseded by the “new” electronic title. The “old” title is invalidated in the VTR system and would be unable to transfer title in Texas.

<sup>14</sup> Texas’s petition did not address the dealer retention requirements as set forth in 49 CFR 580.8(a). In response to NHTSA’s initial determination, Texas submitted comments stating that dealers will be provided with a paper or electronic record of any odometer disclosure.

<sup>15</sup> Since Texas’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, Texas continues to be subject to all Federal requirements that are not based on sections 408(d)(1)(A), (B), and (2).

electronic odometer disclosure so each state could determine its own methodology for odometer disclosure. This approach is not within the scope of Texas's petition or NHTSA's initial determination. NHTSA is, therefore, unable to address such a request. In addition, while we appreciate Alabama's view that NHTSA should provide a general authorization for electronic odometer disclosure, the Cost Savings Act does not authorize such an approach. The Cost Savings Act established odometer disclosure requirements for general application. Alternate odometer requirements in individual states are authorized under Section 408(f)(2), which requires individual state petitions.

NAAA added that Texas's alternate program could create an impediment for out-of-state wholesale purchasers and sellers who are unaware of the electronic transfer requirements. These comments fall outside of the scope of Texas's petition and do not implicate whether or not Texas's proposed alternate requirements are consistent with TIMA's purposes. As a practical matter, NAAA would prefer uniform State systems and that Texas's alternate electronic odometer program accommodate practices in other States. That approach is not consistent with TIMA's requirement that NHTSA approve individual State alternate mileage disclosure requirements if statutory conditions are met.

We now turn to whether the Texas program is consistent with TIMA's purposes. As explained above, a purpose of TIMA is assuring that the form of the odometer disclosure precludes odometer fraud. NHTSA has determined that Texas's proposed alternate disclosure requirements satisfy this purpose. Under Texas's proposal, the "title" will reside as an electronic record with the TxDOT, but a hard copy of the title will be generated upon request. Texas's proposed system will, therefore, continue to have the odometer disclosure on the virtual "title" itself, as required by TIMA, and not as a separate document. As to TIMA's requirement that the title contain a space for the transferor to disclose the vehicle's mileage, the Texas electronic title contains a data element that is required for the transaction, which is consistent with the space requirement. Hard copies of these electronic titles will provide a separate space for owners to execute a proper odometer disclosure in keeping with TIMA and current practice.

Another purpose of TIMA is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a

condition of the application for a title and a requirement for the title issued by the State. NHTSA has determined that Texas's proposed process satisfies this purpose. The proposed on-line title transfer process requires disclosure of odometer information before the transaction can be completed. One item of odometer information omitted from Texas's initial submission was the statement whether the odometer reflects the actual mileage or if the actual mileage is unknown, commonly referred to as the "brand." See 49 CFR 580.5(e). Texas's comments indicate that its electronic disclosure requirements will require the transferor to state the brand. Following the disclosure of the odometer information and if the transaction is successful, the VTR system will retain an electronic title, which includes a record of the transaction and the odometer disclosure information. Once the transaction is complete, transferors are instructed to mail the existing title to the VTR for destruction.<sup>16</sup>

Another purpose of TIMA is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. VTR's alternate disclosure requirements appear to be as secure as current paper titles. Electronic recording of odometer readings and disclosures decreases the likelihood of any subsequent odometer disclosure being altered by erasures or other methods. As we understand Texas's proposal, once the transaction is completed, the VTR system stores an electronic version of the title unless the transferee requests it.

Under the VTR system, all subsequent transfers may be performed through the on-line process. Each time an on-line transfer occurs, the VTR system stores the electronic version of the title, and issues a paper title only upon request. Since the title remains in electronic form under State care and custody, the likelihood of an individual altering, tampering or counterfeiting the title is significantly decreased. These electronic records are maintained in a secure environment and any attempted alteration would be detected by the system. Finally, if a transferee requests a paper title, the VTR will issue a paper title that complies with TIMA's requirements.

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 better inform consumers and provide a mechanism to

trace odometer tampering and prosecute violators. In NHTSA's view, the proposed electronic title transfer system will create a scheme of records equivalent to the current "paper trail" now assisting law enforcement in identifying and prosecuting odometer fraud. Under the Texas proposal, creation of a paper trail starts with the establishment of the electronic signatures of the parties. The system's procedures for validating and authenticating the electronic signature of each individual through TOAS and TOAD and the electronic signatures of the transferor and transferee are reliable, readily detectable and can easily be linked to particular individuals.<sup>17</sup> Because using an electronic signature employs data elements such as the Texas driver license or identification card number, driver license or identification card audit number, date of birth and last four digits of the individual's social security number, the VTR system can validate and authenticate such individual electronic signatures. This authentication process also allows the VTR system to trace the individuals involved in the transaction. Furthermore, Texas's comments indicate that the VTR system will enable dealers to retain a paper or electronic copy of all odometer disclosures that they issue and receive. The Texas system meets the purposes of creating a paper trail since the VTR system will have histories of odometer disclosures linked to individuals for each title transfer. These electronic records will create an electronic equivalent to a paper based system that will be equally valuable to law enforcement.

Finally, TIMA's overall purpose is protecting consumers by assuring that they receive valid representations of actual vehicle mileage at the time of transfer. Here, Texas's proposed alternate disclosure requirements include several characteristics that would assure that representations of a vehicle's actual mileage would be as valid as those found in current paper title transfers. These characteristics include identity and residency authentication, an automatic system check of the reported mileage against previously reported mileage, and

<sup>17</sup> 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).

<sup>16</sup> If the transferor does not return the existing title to VTR, the existing title will be invalid once the vehicle transfers to the transferee.

transferee verification of the data reported by the transferor.<sup>18</sup> In addition, by providing rapid access to records of past transfers, the scheme proposed by Texas could potentially provide

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<sup>18</sup> Further protection is provided by the VTR system itself. The system automatically cross references the odometer reading entered by the transferor against the odometer reading on the VTR system. If the odometer reading entered by the transferor is lower than the mileage recorded in the VTR system, the VTR system will immediately reject the transaction.

superior deterrence to odometer fraud when compared to the current paper title system.

For the foregoing reasons, and upon review of the entire record, NHTSA hereby issues a final determination granting Texas's 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 Texas. NHTSA

reserves the right to rescind this determination in the event that future information indicates, in operation, Texas's alternative requirements do not satisfy one or more applicable requirements.

Issued on: April 7, 2010.

**David Strickland,**

*Administrator.*

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