

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Paint Rock, Town of, Jackson County ..	010214	July 30, 1975, Emerg; June 17, 1986, Reg; December 16, 2008, Susp.	.....do	Do.
Scottsboro, City of, Jackson County	010112	June 26, 1974, Emerg; September 18, 1985, Reg; December 16, 2008, Susp.	.....do	Do.
Stevenson, Town of, Jackson County ...	010113	October 16, 1974, Emerg; December 17, 1987, Reg; December 16, 2008, Susp.	.....do	Do.
Tennessee:				
Blaine, City of, Grainger County	470398	November 26, 1988, Emerg; December 5, 1990, Reg; December 16, 2008, Susp.	.....do	Do.
Jefferson City, Town of, Jefferson County.	475430	October 23, 1970, Emerg; April 9, 1971, Reg; December 16, 2008, Susp.	.....do	Do.
Region V				
Ohio:				
Magnetic Springs, Village of, Union County.	390839	April 30, 1999, Emerg; July 1, 2000, Reg; December 16, 2008, Susp.	.....do	Do.
Marysville, City of, Union County	390548	April 30, 1975, Emerg; April 2, 1986, Reg; December 16, 2008, Susp.	.....do	Do.
Milford Center, Village of, Union County	390662	May 14, 1975, Emerg; June 2, 1995, Reg; December 16, 2008, Susp.	.....do	Do.
Richwood, Village of, Union County	390549	July 11, 1975, Emerg; April 17, 1995, Reg; December 16, 2008, Susp.	.....do	Do.
Union County, Unincorporated Areas ...	390808	March 16, 1977, Emerg; September 27, 1991, Reg; December 16, 2008, Susp.	.....do	Do.
Region VI				
New Mexico:				
Eunice, City of, Lea County	350028	August 18, 1975, Emerg; August 22, 1978, Reg; December 16, 2008, Susp.	.....do	Do.
Hobbs, City of, Lea County	350029	September 20, 1976, Emerg; July 16, 1991, Reg; December 16, 2008, Susp.	.....do	Do.
Jal, City of, Lea County	350030	September 28, 1977, Emerg; August 19, 1985, Reg; December 16, 2008, Susp.	.....do	Do.
Tatum, Town of, Lea County	350032	October 16, 1980, Emerg; July 1, 1988, Reg; December 16, 2008, Susp.	.....do	Do.

* do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 12, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA-2008-0116; Notice 2]

Petition for Approval of Alternate Odometer Disclosure Requirements

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

ACTION: Notice of final determination.

SUMMARY: The Commonwealth of Virginia has petitioned for approval of alternate requirements governing certain aspects of Federal odometer law.

NHTSA is issuing a final determination granting Virginia's petition.

DATES: *Effective Date:* February 6, 2009. Request for reconsideration due no later than February 23, 2009.

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://www.gpoaccess.gov/fr>.

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: Nicholas Englund, 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

The Commonwealth of Virginia petitioned NHTSA to approve the Commonwealth's requirements on the disclosure of motor vehicle mileage when motor vehicles are transferred, which would apply in lieu of certain federal requirements, under 49 U.S.C. 32701, 32705(d). As described in detail in Section III below, Virginia's program will provide for the transfer of a vehicle's title with odometer disclosure information electronically, instead of through the execution of a paper title that is then submitted to the state for the issuance of a title to the new owner, for an in-state transaction where there is no security interest in the vehicle. NHTSA

issued an initial determination proposing to grant Virginia's petition. See Petition for Approval of Alternate Odometer Disclosure Requirements, Proposed rule; notice of initial determination, 73 FR 35617 (June 24, 2008). In its initial determination, NHTSA reviewed the statutory background and set out the agency's tentative view on applicable factors governing whether to grant a state's petition. NHTSA came to the tentative conclusion that Virginia's proposed alternate requirements met the statutory requirements for approval and invited public comment. After careful consideration of comments, NHTSA's final determination analysis is set forth below in section VI.

II. Statutory Background

A. The Cost Savings Act

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

To assist purchasers to know the true mileage of a motor vehicle, Section 408 of the Cost Savings Act required the transferor of a motor vehicle to provide written disclosure to the transferee in connection with the transfer of ownership of the vehicle. See Public Law 92-513, § 408, 86 Stat. 947 (1972). Section 408 required the Secretary to issue rules requiring the transferor to give a written disclosure to the transferee in connection with the transfer of the vehicle. 86 Stat. 962-63. The written disclosure was to include the cumulative mileage registered on the odometer, or disclose that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled. The rules were to prescribe the manner in which information shall be disclosed under this section and in which such information shall be retained. *Id.* Section 408 further stated that it shall be a violation for any transferor to violate any rules under this section or to knowingly give a false statement to a transferee in making any disclosure required by such rules. *Id.* The Cost Savings Act also prohibited disconnecting, resetting, or altering motor vehicle odometers. *Id.* The statute subjected violators to civil and criminal penalties and provided for Federal

injunctive relief, State enforcement, and a private right of action.¹

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

B. The Truth in Mileage Act

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

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

TIMA also precluded the licensing of vehicles, the ownership of which was transferred, for use in any State unless several titling requirements were met. Titles must be printed by a secure printing process or other secure process. They must indicate the mileage and contain space for the transferee to disclose the mileage in a subsequent transfer. As to leased vehicles, the Secretary was required to publish rules requiring the lessor of vehicles with leases to advise its lessee that the lessee is required by law to disclose the

¹ 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, 983 (1976). It amended section 408(b) and added new subsection 408(c) requiring that no transferor shall violate any rule prescribed under this section or give a false statement to a transferee in making any disclosure required by such rule and no transferee who, for purposes of resale, acquires ownership of a motor vehicle shall accept any written disclosure required by any rule under this section if such disclosure is incomplete.

vehicle's mileage to the lessor upon the lessor's transfer of ownership of the vehicle. In addition, TIMA required that auction companies establish and maintain records on vehicles sold at the auction, including the name of the most recent owner of the vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction took possession of the vehicle.²

As amended by TIMA, section 408(f)(1) of the Cost Savings Act provided that its provisions on mileage statements for licensing of vehicles (and rules involving leased vehicles) apply in a State, unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. Section 408(f)(2) stated that "[t]he Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be."

² Section 408 of the Cost Savings Act, with the TIMA amendments, provided in pertinent part (100 Stat. 3309-3310):

(d)(1)(A) Any motor vehicle the ownership of which is transferred may not be licensed for use in any State unless the transferee, in submitting an application to a State for the title upon which such license will be issued, includes with such application the transferor's title and, if that title contains the space referred to in paragraph (2)(A)(iii), a statement, signed and dated by the transferor, of the mileage disclosure required under subsection (a).

(B) This paragraph shall not apply to any transfer of ownership of a motor vehicle which has not been licensed before the transfer.

(2)(A) Any motor vehicle the ownership of which is transferred may not be licensed for use in any State unless the title which is issued by the State to the transferee following such transfer—

- (i) is set forth by means of a secure printing process (or other secure process);
- (ii) indicates the mileage disclosure required to be made under subsection (a); and
- (iii) contains a space for the transferee to disclose (in the event of a future transfer) the mileage at the time of such future transfer and to sign and date such disclosure.

(B) The requirements of subparagraph (A) shall not be construed to require a State to verify, or preclude the State from verifying, the mileage information contained in the title.

(e)(1) In the case of any leased motor vehicle, the rules under subsection (a) shall require written disclosure regarding mileage to be made by the lessee to the lessor upon the lessor's transfer of ownership of the leased motor vehicle.

(2) Under such rules, the lessor of a leased motor vehicle shall provide written notice to the lessee regarding—

- (A) such mileage disclosure requirements, and
 - (B) the penalties for failure to comply with them.
- (3) The lessor shall retain the disclosure made by any lessee with respect to any motor vehicle under paragraph (1) for a period of at least 4 years following the date the lessor transfers that vehicle.

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

In 1988, Congress amended section 408(d) of the Cost Savings Act to permit the use of a secure power of attorney in circumstances where the title was held by a lienholder. The Secretary was required to publish a rule to implement the provision. See Public Law 100-561 § 40, 102 Stat. 2805, 2817 (1988), which added Section 408(d)(2)(C). In 1990, Congress amended section 408(d)(2)(C) of the Cost Savings Act. The amendment addressed retention of powers of attorneys by states and provided that the rule adopted by the Secretary not require that a vehicle be titled in the State in which the power of attorney was issued. See Public Law 101-641 § 7(a), 104 Stat. 4654, 4657 (1990).³

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

III. Virginia's Petition

As explained in NHTSA's initial determination, Virginia proposes to allow parties to transfer title through the Internet by electronic means and to maintain an electronic record of the title in the Virginia Department of Motor Vehicles (VADMV) system. The VADMV system would permit the transferee to request a hard copy of the title, printed by a secure printed process. The title will reside as an electronic record with the VADMV, but a hard copy of the title will be generated for the transferee, if requested.⁴

The Virginia petition states that its proposal would permit "the transferor to disclose the odometer mileage to the transferee and the transferee to view and acknowledge receipt of the transferor's

disclosure in connection with the sale of a motor vehicle, as part of a secure on-line transaction with the VADMV."

Under Virginia's proposal, to complete a sale of the motor vehicle, the owner of the vehicle (transferor), and the purchaser of the vehicle (transferee) would be required to perform several steps after they agree upon the sale. Included in this process is the creation and use of electronic signatures.⁵

Under Virginia's petition, an electronic signature would be created during the process of transferring the title. According to VADMV, the customer number, unique personal identification number (PIN), and date of birth (DOB) of the customer will be used in combination to create the electronic signature for each transferor and transferee. Thus, as a threshold matter, the process for transferring title would require both the transferor and the transferee to obtain a PIN from the VADMV.⁶

The online transaction begins when the transferor logs on to the VADMV's Web site using his/her customer number, DOB, and PIN to verify the transferor's identity. These also would be used to create the electronic signature of the transferor. The transferor would then select the "vehicle transfer of ownership" transaction and either choose the vehicle from a displayed list of eligible vehicles or enter the vehicle's VIN. The transferor would then enter the vehicle sales price, the odometer reading, and brand regarding the mileage disclosure (Actual, Not Actual, or Exceeds). After entering this data, the VADMV 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. The VADMV

⁵ 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).

⁶ According to Virginia, the process whereby a customer obtains a PIN is currently in place, as a PIN already provides a secure and confidential Internet access to VADMV services and is required in order to conduct a number of on-line transactions. In order to obtain a PIN, a customer must provide his or her unique customer number and date of birth and certify, under penalty of perjury, that the customer number and DOB submitted in the PIN request belong to the customer requesting the PIN. Within three (3) business days of the customer's request, the VADMV mails a randomly generated 4-digit PIN to the customer by first class mail, and the assigned PIN is encrypted on the customer's VADMV record. In order to conduct a transaction on VADMV's Internet Web site, the customer is prompted to enter the VADMV assigned PIN and the Web site will prompt the customer to personalize his/her PIN for added security.

system will also prompt the transferor to mail the existing vehicle title to the VADMV for destruction. According to the Virginia petition, if the transferor fails to return the existing vehicle title to the VADMV, the title is invalidated in the VADMV system and would be unable to transfer title in Virginia.

The transaction would remain in "pending" status with VADMV until the transferee logs on to complete the transfer of ownership transaction. Meanwhile, the VADMV system would automatically check the odometer reading entered by the transferor against the odometer reading on the VADMV system. If the odometer reading entered by the transferor is lower, the transaction will be immediately rejected and referred to the VADMV Law Enforcement Services Division for an investigation.

The transferee would then log on to VADMV's Web site, using his/her customer number, DOB, and PIN (this would be the transferee's electronic signature). The transferee would select the pending vehicle transfer of ownership transaction, and he/she would enter the unique transaction number that was provided by the transferor in order to obtain access to the pending transaction. Once such access is obtained, the transferee would verify the sales price, odometer reading, and brand that were entered by the transferor. The transaction would be processed if all the data entered by the transferor is verified and acknowledged as correct by the transferee. Ownership of the vehicle would transfer to the transferee and an electronic title record would be established by VADMV. The VADMV would then maintain the electronic title and would issue a paper title upon the request of the transferee.

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

Virginia's petition asserts that its proposed alternate odometer disclosure is consistent with Federal odometer law, but it did not address the purposes of TIMA. As advanced by VADMV, Virginia's alternative ensures that a fraudulent odometer disclosure can readily be detected and reliably traced to a particular individual by providing a means for the VADMV to validate and authenticate the electronic signatures of

³ NHTSA reviewed this legislative history in 1991 when adopting the current regulations governing powers of attorney. See Odometer Disclosure Requirements, Final Rule, 56 FR 47681 (Sept. 20, 1991).

⁴ In the Initial Determination, NHTSA addressed the question of where the title would reside. Virginia did not comment on NHTSA's discussion.

both parties. This verification is done through the generation of the customer number and unique PIN that are provided to customers of the VADMV. Virginia states that this unique electronic signature can be quickly and reliably traced to a particular individual.

Second, Virginia 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. During the transfer-of-ownership transaction, the transferee would view the odometer reading and brand information that was supplied by the transferor, thereby ensuring that the transferee is aware of the vehicle's mileage as well as any problem with the odometer that was disclosed by the transferor.

Third, VADMV asserts that its proposal provides a level of security equivalent to that of a disclosure on a secure title document. According to Virginia, the unique electronic signatures (customer number, PIN, and DOB) utilized by each party to the transaction in addition to the unique transaction number generated by the VADMV ensure secure access to the on-line transaction and a reliable means of verifying the identities and electronic signatures of each individual. In addition, Virginia notes added security in its proposal because the information from the transferor and transferee must match exactly. If a discrepancy exists that is not corrected, the transaction would automatically be rejected and transfer of ownership would not take place. Virginia states that the same process would be used in dealer transactions with additional safeguards.⁷ The additional safeguards will include a requirement that a dealership notify the VADMV of employees authorized to do titling activities for the dealership. This authorization will be stored by the VADMV on-line system. When the employee logs onto the VADMV on-line system, he or she will also be requested to enter the dealer number that is assigned by the VADMV and the employee's logon information. If the VADMV does not show an authorization by the dealership, the employee will not be eligible to continue with the transaction for that dealership.

⁷ Under the VADMV program, dealers will continue to be subject to the dealer retention requirements as set forth in 49 CFR 580.8(a), which requires dealers and distributors to retain a copy of odometer disclosure statements that they issue and receive for five years. These requirements are not based upon the TIMA amendments that added Section 408(d) to the Cost Savings Act.

Virginia refers to an April 25, 2003 letter by former NHTSA Chief Counsel, Jacqueline Glassman, stating that an electronic signature in the lessee-to-lessee context satisfies the requirement for a written disclosure under 49 CFR 580.7(b).⁸ Virginia contends that the written disclosure requirements under 49 CFR 580.7(b) are no different than those under 49 CFR 580.5(c). It also maintains that the electronic record and signature aspects of its proposal comport with the Electronic Signatures in Global and National Commerce Act (E-Sign), 15 U.S.C. 7001 *et seq.*, and Virginia's Uniform Electronic Transactions Act (UETA), Va. Code 46.2-629. Last, Virginia notes that it does not have regulations in effect that address odometer mileage disclosure requirements. Current state law permits the creation of electronic certificates of title, but requires a paper certificate of title for all transfers of vehicle ownership. Va. Code 46.2-603. When approved, VADMV will seek legislation to amend Section 46.2-603 to implement the alternate odometer disclosure requirements.

IV. Summary of Public Comments

NHTSA received thirteen comments from the following entities: (1) The Texas Department of Transportation; (2) the Iowa Department of Transportation—Motor Vehicle Division; (3) Oregon Driver and Motor Vehicle Services; (4) the Wisconsin Department of Transportation; (5) the Michigan Department of State; (6) the National Auto Auction Association (NAAA); (7) the American Financial Services Association (NTSF); (8) triVIN, Inc. (a company which provides automated title and registration transaction processing and business process outsourcing solutions); (9) the Alabama Department of Revenue; (10) the National Automobile Dealers Association (NADA); (11) the South Carolina Department of Motor Vehicles; (12) the Nevada Department of Motor Vehicles; and, (13) United Parcel Service (UPS). Below is a discussion of the comments NHTSA received.

Of the thirteen comments received, nine commenters support Virginia's petition without reservation (the Texas Department of Transportation, the Iowa Department of Transportation—Motor Vehicle Division, Oregon Driver and Motor Vehicle Services, the Wisconsin Department of Transportation, NTSF, triVIN, Inc., the Alabama Department of Revenue, NADA, and UPS). For

⁸ 49 CFR 580.7, Disclosure of odometer information for leased motor vehicles, governs lessee-to-lessee disclosures.

example, the Iowa Department of Transportation states that NHTSA's initial determination analysis was "well reasoned" and leads to the correct initial determination—to preliminarily grant the Commonwealth's petition. Oregon Driver and Motor Vehicle Services notes that, in its view, the method offered by Virginia for capturing and retaining odometer disclosure information provides a more secure process than currently provided for in Federal law. UPS notes that it has worked with VADMV since 1999 on automating the registration and title of new commercial vehicles. UPS stated that it does not receive "hard copy" paper titles and allows titles to reside electronically with VADMV. In practice, when UPS does require a paper title, such as for the disposition of a vehicle, UPS can electronically request a copy from VADMV, which is then printed, sent, and received within a few days. UPS states that in its experience the automation of these types of routine but necessary transactions and the elimination of paper documents, unless needed, saves time, costs, and unnecessary trips to VADMV offices.

Four of the nine commenters who support Virginia's petition go further, and request that NHTSA allow all states to enact similar disclosure systems without the need to file separate petitions (the Texas Department of Transportation, NTSF, NADA, and triVIN, Inc.).⁹

In addition to the nine commenters that support Virginia's petition without reservation, three additional commenters indicate support for the Virginia petition, but raise certain concerns: the South Carolina Department of Motor Vehicles, the Michigan Department of State, and NAAA. The concerns are not in connection with why, in the view of the commenters, Virginia's proposed alternate requirements would not be consistent with the purpose of the disclosure required by subsection (d) or (e) of Section 408 of the Cost Savings Act, as is required under the standard set forth in Section 408(f)(2) of the Cost Savings Act. Instead, the concerns relate to how Virginia's proposal would operate in practice.

⁹ NTSF and the Texas Department of Transportation requested a final rule that defines electronic signatures using the ESIGN Act and allows any electronic signature for odometer disclosures where the process of obtaining the signature and disclosing the odometer mileage is consistent with TIMA purposes. NADA and triVIN encourage NHTSA to amend disclosure regulations to allow all states to take advantage of electronic titling by outlining alternate electronic odometer disclosure requirements.

For example, the South Carolina Department of Motor Vehicles questions how Virginia would approach liens and powers of attorney, questions which, as NHTSA explained in its initial determination, are outside of the scope of Virginia's petition.¹⁰ The Michigan Department of State, at the outset, states that Virginia's petition is consistent with Federal odometer standards. However, it notes that many states, including Michigan, require dealers to possess assigned certificates of title prior to transfer to the buyer, typically accomplished by holding a paper title. It notes that Virginia's petition would require Virginia owners to obtain a paper title for out-of-state transfers, thereby adding complication to out-of-state transactions.¹¹ NAAA states that it generally supports Virginia's proposal. However, it contends that Virginia's approach may be an impediment to interstate transfers due to the three day wait period for a PIN. NAAA contends that this wait period creates an impediment to out-of-state wholesale purchasers and sellers; per NAAA, without the ability to make a same-day transaction, potential purchasers may steer clear of auto auctions potentially involving Virginia titles. NAAA, therefore, proposes that Virginia's petition serve as an optional method for Virginians to transfer title while keeping paper transfers as a valid procedure, even for vehicles issued electronic titles. However, to the extent Virginia's proposal does not continue to support

¹⁰ Additionally, the bulk of the South Carolina Department of Motor Vehicles' comments raise matters that NHTSA could only address in a rulemaking of general application to the states for electronic titling. For example, the South Carolina Department of Motor Vehicles contends other states' technological and legal restrictions may prevent a state from enacting the type of electronic disclosure proposed by Virginia. It contends that NHTSA should provide each state enough flexibility to create a system that satisfies TIMA's purposes while staying within specific state restrictions. NHTSA appreciates these suggestions. However, as noted above, this approach is not authorized by Section 408(f)(2) of the Cost Savings Act, and is neither within the scope of Virginia's petition nor NHTSA's initial determination.

¹¹ The Michigan Department of State also questions how data fields would be presented by VADMV to potential transferors to fulfill TIMA's purposes of title disclosures—for instance, how a transferor would be alerted to a salvaged title. The Michigan Department of State thus requested clarification on what information or data fields would be made available for parties to a transaction. The Michigan Department of State also questions how Virginia's approach would handle multiple sellers or purchasers, or how liens would be discharged and perfected, but conceded that those matters were beyond the scope of Virginia's petition. The Michigan Department of State also requested clarification on what appeals are available to a customer who accepted a transaction and later realizes he/she made an error in accepting the transaction.

traditional paper transfers as an option, NAAA does not support the petition.

Only one of thirteen commenters does not support Virginia's petition: The Nevada Department of Motor Vehicles. It contends that an electronic titling process would be more time consuming and expensive than existing paper systems and raises questions as to how the system would operate in practice, particularly in connection with how Virginia's electronic system would recognize mileage differences entered by the buyer and seller. The Nevada Department of Motor Vehicles also raises concerns in connection with the purposes of TIMA. It contends that, under Virginia's petition, unless requested by the buyer, vehicles could be transferred multiple times without a paper title. By eliminating paper titles, the Nevada Department of Motor Vehicles recognizes that the likelihood of attempted alterations would decrease. However, it contends that it may be easier to pass branded titles because not all states use the National Motor Vehicle Title Information System (NVMTIS). The Nevada Department of Motor Vehicles further contends that for a vehicle coming from such a state into Virginia, VADMV would not have the odometer reading in its system, save for what the transferor enters, thus creating the potential to launder out-of-state titles through Virginia.

V. Statutory Purposes of TIMA

The Cost Savings Act, as amended by TIMA in 1986, contains a specific provision on approval of State alternative odometer disclosure programs. Subsection 408(f)(2) of the Cost Savings Act (now recodified at 49 U.S.C. 32705(d)) provides that NHTSA shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless NHTSA determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be. (Subsections 408(d), (e) of the Costs Savings Act were recodified to 49 U.S.C. 32705(b) and (c)). In light of this provision, an important question is what are the purpose(s) of the disclosure required by section 408(d), (e) of the Cost Savings Act as amended by TIMA. We now turn to our interpretation of the purposes of these subsections, as germane to Virginia's petition.¹²

¹² Virginia's petition does not address, among others, disclosures involving leased vehicles. In view of the scope of Virginia's petition, Virginia will continue to be subject to current Federal requirements as to leased vehicles and in this notice we do not address the purposes of the related provisions.

In the initial determination, NHTSA set forth its tentative view of the purpose(s) of the disclosure required by section 408(d) of the Cost Savings Act as amended by TIMA. NHTSA also provided a full opportunity for comment, including on the statutory purposes that govern the resolution of a state's petition. As noted above, most commenters agreed with NHTSA's initial determination. While some expressed concern about how Virginia's program would operate in practice, none disagreed with NHTSA's delineation of the purposes of the disclosure under TIMA. Indeed, no commenter directly addressed the purposes of TIMA set forth in our initial determination. In these circumstances, and upon careful consideration, the agency adopts the statement of the purposes in the initial determination, which are set out below.

One purpose of TIMA was to assure that the form of the odometer disclosure precluded odometer fraud. To prevent odometer fraud, which was facilitated in some States by disclosure statements that were separate from titles, under TIMA the disclosure must be contained on the title provided to the transferee and not on a separate document. Related to this, the title was required to contain space for the disclosures. The Senate Report associated with TIMA noted that Federal law had not specified the form in which the odometer reading disclosure must be made. *See* S. Rep. No. 99-47, at 3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620. In some States, where the disclosure statement was on a separate piece of paper from the vehicle's title, the transferor could easily alter it or provide a new statement with a different mileage. The vehicle could be titled with a lower mileage than in the transferor's disclosure in a State that does not require an odometer reading on the title. *Id.* In this regard, in some States there was no place for recording the odometer reading on the title when the vehicle was sold. *Id.* at 2. A consequence of these practices was that the new title contained no odometer reading and the purchaser/wholesaler could then disclose whatever odometer reading it chose. *Id.*

Another 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. 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. To eliminate or significantly

reduce abuses associated with this lack of controls, TIMA required that a vehicle, the ownership of which is transferred, may not be licensed unless the application for the title is accompanied by the title of such vehicle. Thus, "in the case of an application for a new motor vehicle certificate of title, if the prior owner's title certificate contains a space for the disclosure of the mileage, when the title certificate is submitted to the State * * *, it shall contain a statement, signed and dated by the prior owner, of the mileage required to be disclosed by the prior owner." See S. Rep. No. 99-47, at 2-3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5625-26, *see also* Cost Savings Act, as amended by TIMA, § 408(d), 49 U.S.C. 32705(b).

TIMA also 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. It could also be set forth by other secure process that might evolve in the future. As noted in the legislative history, because the title could be printed through a non-secure process, persons could alter it or launder it. See S. Rep. No. 99-47, at 3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620. The House Report noted that "[o]ther 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), 49 U.S.C. 32705(b).

Another purpose was to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record and trail was to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. The creation of a paper trail would improve the enforcement process by providing evidence of fraudulent transfers, including by consumers and the individuals engaged in such practices. More specifically, the paper trail would document transfers and create evidence showing the incidence of odometer rollbacks. Under TIMA, as part of the paper trail, the title must include a space for the mileage of the vehicle. New applications for titles must include a mileage disclosure statement signed by the prior owner of the vehicle. There

would be a permanent record on the vehicle's title at the place where the vehicle is titled, usually the State motor vehicle administration. This record could be checked by subsequent owners or law enforcement officials, who would have a critical snapshot of the vehicle's mileage at every transfer, which is the fundamental link in the paper trail for enforcement. These provisions were aimed at providing purchasers and law enforcement with the much-needed tools to combat odometer fraud. The House Report associated with TIMA focused on the lack of evidence or "paper trail" showing the incidence of rollbacks as one of the major barriers to decreasing odometer fraud. H.R. Rep. No. 99-833, at 18 (1986). The House Report noted that a purpose of section 408(d), which required the seller to disclose the mileage on the title and titles to include the mileage disclosure and a space for recording mileage on the next transfer, is to create a permanent record or paper trail for car owners and law enforcement and other State officials to track odometer fraud. *Id.* A permanent record on the vehicle's title would be maintained at the place where it is titled. *Id.* Thus, the underlying purpose of this record and trail was to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. See Cost Savings Act, as amended by TIMA, § 408(d), 49 U.S.C. 32705(b).

Moreover, 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. The TIMA amendments were directed at resolving shortcomings in the Cost Savings Act.

VI. NHTSA's Final Determination

In this part, NHTSA considers the Virginia program in light of the purposes of the disclosure required by subsection (d) of section 408.¹³

As an initial matter, under section 408(f)(2) of the Cost Savings Act, 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) of section 408, as the case may be. The purposes of the odometer disclosure are discussed above, as is the Virginia program.

¹³ Since Virginia's program does not cover leased vehicles, the purposes of Section 408(e) of the Cost Savings Act as amended by TIMA are not germane.

The majority of the commenters agreed with the initial determination. Of those commenters that did not fully support the initial determination, the concerns raised by the South Carolina Department of Motor Vehicles, the Michigan Department of State, and NAAA do not implicate whether or not Virginia's proposed alternate requirements satisfy the purposes of section 408(d) of the Cost Savings Act. In particular, how powers of attorney are handled, how liens are perfected and discharged, how dealers are affected, how the system will handle auto auctions, and the potential costs and time associated with implementing Virginia's system, all fall outside the scope of Virginia's petition¹⁴ and do not implicate whether or not Virginia's proposed alternate requirements are consistent with TIMA.

As to commenters' suggestion that NHTSA allow all states to pursue an approach like Virginia's proposal, such an approach is not within the scope of Virginia's petition nor NHTSA's initial determination. NHTSA, therefore, is unable to address such a request within the scope of NHTSA's final determination here. Also, section 408(f)(2) of the Cost Savings Act contemplates a submission of alternate requirements by a State.

As explained in NHTSA's initial determination, a purpose of TIMA is to assure that the form of the odometer disclosure precludes odometer fraud. NHTSA has determined that Virginia's alternate disclosure requirements satisfy this purpose. Under Virginia's program, the title will reside as an electronic record with the VADMV; however, a hard copy of the title will be generated for the transferee, if requested. Virginia'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, NHTSA does not believe the electronic transaction Virginia as outlined implicates the space requirement. NHTSA, however, assumes that if a hard copy of the title is requested, Virginia will continue to provide a separate space on the hard copy title, in keeping with TIMA and current practice.

Another purpose of TIMA was to prevent odometer fraud by processes

¹⁴ NHTSA's final determination does not address odometer requirements that are not based on Section 408(d) of the Cost Savings Act, as codified at 49 U.S.C. 32705(b). Virginia will continue to be subject to all Federal requirements that are not based on Section 408(d).

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. During the proposed on-line process for retitling, the disclosure of odometer information occurs during the transfer of ownership and a title is required by Virginia's proposal to complete the transaction. During the on-line transaction, the transferor is instructed to mail the existing title to the VADMV for destruction.¹⁵ If the transaction is successful, the VADMV will retain an electronic title, which includes a record of the transaction and the odometer disclosure information.

Another purpose of TIMA is to prevent alterations to disclosures on titles and to preclude counterfeit titles, through secure processes. In this regard, NHTSA has determined that Virginia's proposed process satisfies this purpose. By eliminating paper titles, the Nevada Department of Motor Vehicles concedes that the likelihood of attempted alterations would decrease. The Nevada Department of Motor Vehicles did express the concern that, under Virginia's petition, unless requested by the buyer, vehicles could be transferred multiple times without a paper title which may "serve as a way to pass along branded vehicles." Nevada did not explain how this problem would arise. In any event, NHTSA respectfully does not agree. In our view, Virginia's alternate disclosure requirements provide at least equivalent security protections against altering, tampering, or counterfeiting titles to a paper title printed through a secure process. Electronic recordation of the odometer reading decreases the likelihood of any subsequent odometer disclosure being altered by erasures or other methods. Under Virginia's system, once the transaction is completed, VADMV stores an electronic version of the title and may upon request send a paper copy of the title to the transferee. The transferee may never request a paper title, even if there is a subsequent transfer. However, subsequent transferees will view an electronic odometer disclosure at the time of transfer as they verify the transferor's mileage disclosure. Under this system, all subsequent transfers may be performed through the on-line process. Each time an on-line transfer occurs, the VADMV stores the electronic version of the title, and VADMV issues a paper title only upon request. As an electronic title, the likelihood of an individual altering, tampering, or

counterfeiting the title is decreased significantly. Moreover, the electronic recordation can detect an attempted alteration or fraudulent disclosure almost immediately. If a transferee requests a paper title, the VADMV will issue a paper title, printed through a secure process, with the requisite odometer information on the title.

Another purpose of TIMA is to create a record of the mileage on vehicles and a paper trail. NHTSA has determined in this matter that Virginia's alternate disclosure requirements provide for a system that creates an equivalent to a "paper trail" that assists law enforcement in identifying and prosecuting odometer fraud. NHTSA has analyzed the concern of the Nevada Department of Motor Vehicles that, under Virginia's proposal, it may be easier to pass branded titles because not all states use the National Motor Vehicle Title Information System (NVMTIS). NHTSA does not agree. Here, the paper trail under Virginia's proposal starts with the establishment of the electronic signatures of the parties. The electronic signatures of the transferor and transferee are readily detectable and can be reliably traced to the particular individual due to the system's means for validating and authenticating the electronic signature of each individual. VADMV can validate and authenticate an individual electronic signature because the electronic signature consists of the individual's unique customer number, DOB, and PIN. In order to obtain a unique customer number, VADMV must have an individual's address on file. In order to obtain a PIN, the individual must also certify, under penalty of perjury, that the customer number and DOB submitted in the PIN request belong to the customer requesting the PIN. The customer number and PIN are required to log on to the VADMV system. Based upon the information provided by each individual to the transaction, the VADMV can trace the PIN to the assigned individual. The ability to identify the individuals to the transaction through the electronic signature¹⁶ maintains the purposes behind the creation of a paper trail since the VADMV will have a history of each

transfer of the vehicle and can discover incidences of rollbacks. After the transaction is completed, the title is electronically recorded and stored by the VADMV. It includes the mileage of the vehicle at the transfer. These electronic records will create the electronic equivalent to a paper based system and are accessible to law enforcement officials.

Moreover, the overall purpose of TIMA is to protect consumers by assuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. In connection with this TIMA purpose, NHTSA has analyzed the concern of the Nevada Department of Motor Vehicles that, under Virginia's proposal, for a vehicle coming into Virginia from another state, VADMV would not have the odometer reading in its system, save for what the transferor enters, thus creating the potential to launder out-of-state titles through Virginia. Again, NHTSA does not agree. Transactions involving out-of-state titles are outside the scope of Virginia's electronic disclosure proposal. Here, Virginia's alternate disclosure requirements include several prerequisites, including a vehicle titled in Virginia, that make it unlikely that the representations of a vehicle's actual mileage by the transferor to the transferee would be of lesser validity than representations made through a vehicle transfer by paper title and potentially deter odometer fraud better than a paper title. These prerequisites include the verification of the individuals to the transfer transaction through the issuance of a PIN number from VADMV. Virginia's alternate disclosure requirements also include procedures to assure that a transferee verifies the odometer disclosure made by the transferor. In addition, the verification of the odometer reading provides indication of potential fraud to the transferee should the transferor attempt to enter a different mileage into the system than the mileage the transferee observed on the vehicle when the agreement to purchase was made.¹⁷

For the foregoing reasons, and upon review of the entire record, NHTSA hereby issues a final determination granting Virginia's petition for requirements that apply in lieu of the

¹⁶ 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).

¹⁷ Further protection is provided by the VADMV system itself. The system automatically cross references the odometer reading entered by the transferor against the odometer reading on the VADMV system. If the odometer reading entered by the transferor is lower than the mileage recorded in the VADMV system, the VADMV system will immediately reject the transaction and refer the individual to the VADMV Law Enforcement Services Division for investigation.

¹⁵ If the transferor does not return the existing title to VADMV, the existing title will be invalid once the vehicle transfers to the transferee.

federal requirements adopted under section 408(d) of the Cost Savings Act. Other requirements of the Cost Savings Act continue to apply in Virginia. NHTSA reserves the right to rescind this grant in the event that information

acquired after this grant indicates that, in operation, Virginia'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: January 2, 2009.

David Kelly,

Acting Administrator.

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