

Miami, FL, New York, NY, New Orleans, LA, and Seattle, WA, will also be broadcast online. The Web site for viewing those Webcasts can be found at <http://www.stcwregs.us>. The Webcasts will enable those using this feature only to view the proceedings and not to make remarks to those participating in the meetings in person. However, a verbatim record of these public meetings will be provided in the docket.

You may submit written comments identified by docket number USCG–2004–17914 before or after the meetings using any one of the following methods:

(1) *Federal eRulemaking Portal*:  
<http://www.regulations.gov>.

(2) *Fax*: 202–493–2251.

(3) *Mail*: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery*: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. Our online docket for this rulemaking is available on the Internet at <http://www.regulations.gov> under docket number USCG–2004–17914.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rulemaking, call or e-mail Mr. Mark Gould, Maritime Personnel Qualifications Division, U.S. Coast Guard, telephone 202–372–1409, e-mail: [Mark.C.Gould@uscg.mil](mailto:Mark.C.Gould@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background and Purpose**

The Coast Guard published a notice of proposed rulemaking (NPRM) in the *Federal Register* on November 17, 2009, entitled “Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.” In the NPRM, we stated our intention to hold public meetings and to publish a notice announcing the location and date. This document is the notice of those meetings.

In the NPRM, we seek to more fully incorporate the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention), as well

as the Seafarer’s Training, Certification and Watchkeeping Code (STCW Code) in the requirements for the credentialing of United States merchant mariners.

You may view the NPRM in our online docket, in addition to supporting documents prepared by the Coast Guard, and comments submitted thus far by going to <http://www.regulations.gov>. Once there, click on the “Read Comments” box. In the “Enter Keyword or ID” box, insert “USCG–2004–17914” and click search. Click the “Open Docket Folder” button in the “Actions” column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–40 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this rulemaking by submitting comments either orally at the meetings or in writing. If you bring written comments to the meetings, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the *Federal Register* (73 FR 3316).

##### **Information on Service for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the public meetings, contact Mr. Mark Gould at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: November 12, 2009.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards, U.S. Coast Guard.*

[FR Doc. E9–27639 Filed 11–17–09; 8:45 am]

**BILLING CODE 9110–04–P**

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 580**

[Docket No. NHTSA–2009–0174; Notice 1]

#### **Petition for Approval of Alternate Odometer Disclosure Requirements**

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

**ACTION:** Notice of initial determination.

**SUMMARY:** The State of Texas has petitioned for approval of alternate requirements to certain requirements under Federal odometer law. NHTSA has initially determined that Texas’s alternate requirements satisfy Federal odometer law, with limited exceptions. Accordingly, NHTSA has preliminarily decided to grant Texas’s petition, on the condition that before NHTSA makes a final determination, Texas amends its program to meet all the requirements of Federal odometer law or demonstrates that it meets the requirements of Federal law. This notice is not a final agency action.

**DATES:** Comments are due no later than December 18, 2009.

**ADDRESSES:** You may submit comments [identified by DOT Docket ID Number NHTSA–2008–0116] by any of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail: Docket Management Facility*: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier*: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax*: 202–493–2251.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. *Please see the Privacy Act heading below.*

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if

submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) 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 Truth in Mileage Act of 1986 (TIMA),<sup>2</sup> 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. Under regulations promulgated pursuant to provisions in the Cost Savings Act, the transferor (seller) of a motor vehicle must provide a written statement of the vehicle's mileage, signed and dated by the transferor, to the transferee (buyer) at the time of sale. 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 if the odometer disclosure statement on the title is not signed and dated by the transferor. In addition, titles must 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.

TIMA's requirements respecting the disclosure of motor vehicle mileage when vehicles are transferred or leased apply in a State unless the State has in effect alternative requirements approved by NHTSA. A State may petition NHTSA for the approval of alternate odometer disclosure requirements that apply in lieu of the Federal odometer requirements.

Seeking to implement an electronic vehicle title transfer system, the State of Texas has petitioned for approval of

alternate odometer disclosure requirements under TIMA. The Texas Department of Transportation proposes a paperless electronic title transfer scheme. Texas' program is similar to the Commonwealth of Virginia's alternate odometer disclosure program, which, after notice and comment, NHTSA approved on January 2, 2009. 74 FR 643, 650 (January 7, 2009). Similar to Virginia's, Texas's proposal does not implicate 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.

As discussed below, NHTSA's initial assessment is that the Texas program satisfies the requirements for approval under Federal odometer law, if Texas amends its program to or shows that its program provides for a transferee to obtain a paper title that complies with the requirements of TIMA,<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 requires dealers to satisfy their obligation under Federal law to retain copies of odometer disclosure statements that they issue or receive.<sup>5</sup> This notice proposes that NHTSA conditionally grant the Texas petition, subject to its resolution of these three concerns to NHTSA's satisfaction.

**II. Statutory Background**

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

In 1972, Congress enacted the Cost Savings Act, among other things, to prohibit tampering of odometers on motor vehicles and to establish certain

safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers. See Public Law 92-513, section 401, 86 Stat. 947, 961-63 (1972). The Cost Savings Act required that the transferor of a motor vehicle provide a written vehicle mileage disclosure to the transferee, included several provisions relating to tampering with odometers and provided for enforcement. See Public Law 92-513, section 408, 86 Stat. 947 (1972).<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 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.

<sup>6</sup> Section 408 stated:

(a) Not later than 90 days after the date of enactment of this Act, the Secretary shall prescribe rules requiring any transferor to give the following written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle:

(1) Disclosure of the cumulative mileage registered on the odometer.

(2) Disclosure 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.

Such rules shall prescribe the manner in which information shall be disclosed under this section and in which such information shall be retained.

(b) It shall be a violation of this section 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.

<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.

<sup>1</sup> Public Law 92-513, 86 Stat. 947, 961 (1972).

<sup>2</sup> Public Law 99-579, 100 Stat. 3309 (1986).

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 as follows:

(f)(1) 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. The Secretary may promulgate regulations establishing procedures for the consideration and approval of such alternate requirements.

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

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

### III. Statutory Purposes

As discussed above, the Cost Savings Act, as amended by TIMA in 1986, 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 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). These purposes are summarized below.

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

A second purpose of TIMA 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. 74 FR 647. This provision was intended to eliminate or significantly reduce abuses associated with lack of control of the titling process. *Id.*

Third, TIMA sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. 74 FR 648. In furtherance of these purposes, in the

<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.

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> *Id.*

Another purpose was to create a record of the mileage on vehicles and a paper trail. 74 FR 648. The underlying purposes of this record and paper trail were to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. TIMA’s requirement that new applications for titles include the prior owner’s signed mileage disclosure statement on his or her 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. *Id.*

### IV. The Texas Petition

Because it seeks to implement an electronic title transfer system, Texas petitions for approval of alternate odometer disclosure requirements. The scope of its petition is limited; Texas does not request alternate disclosure requirements for leased vehicles, disclosures of odometer statements by power of attorney, such as for vehicles subject to a lien, or transactions involving at least one out-of-State party.

Texas proposes maintaining electronic records of titles in the Texas Department of Transportation (TxDOT), Division of Vehicle Title and Registration (VTR) computer system. According to Texas’s petition, the “title” will reside as an electronic record with the TxDOT, but that “hard” copies of the title can be generated if needed.

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

<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).

with TxDOT using the TexasOnline Authentication Service (TOAS). TOAS is described as a secure identity verification service that establishes electronic signatures by authenticating individuals against a database. TOAS allows TexasOnline to collect user data, which it matches four personal data elements and two forms of identification submitted by the user against the TexasOnline Authentication Database (TOAD)<sup>10</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>11</sup> After entering this data, 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.

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 and odometer reading entered by the transferor. If all the data entered by the transferor is 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>12</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 the 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>13</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's petition 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 the individuals through the electronic signatures of both parties. As described above, the parties' electronic signatures are established and their identities authenticated through the four TOAD data elements, Texas driver's license, driver's license audit number, date of birth and 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 a disclosure on a secure title document and provides an on-line authentication for identity management solution 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 an electronic title system.

## V. Analysis

Under TIMA, 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 alternative. We now provide our initial assessment whether Texas's proposal

<sup>10</sup> Currently, TexasOnline permits users to perform several services online, such as renewal of driver licenses, voter registration address changes, and ordering driving records. 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> Texas does not address the brand requirement. Under the Cost Savings Act, a person transferring ownership must provide written disclosure that the actual mileage is unknown, if the transferor knows that the odometer reading is different from the number of miles the vehicle has actually traveled. See 49 CFR 590.5(e).

<sup>12</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>13</sup> Texas does not address 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. It is unclear whether Texas's program includes a mechanism for the dealer or distributor to retain a copy of any odometer disclosure statement involved in a transaction.

satisfies TIMA's purposes as relevant to its petition.<sup>14</sup>

One purpose is to assure that the form of the odometer disclosure precludes odometer fraud. In this regard, NHTSA has initially determined that Texas's proposed alternate disclosure requirements satisfy this purpose. Under Texas's proposal, it appears that 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, NHTSA does not believe the proposed Texas electronic title is inconsistent with the space requirement. The agency, however, expects that 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 initially 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. 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>15</sup>

Another purpose of TIMA is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. The agency has initially determined that 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 until 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, but the Texas submission does not state that the paper title will comply with TIMA requirements, which it must.

Another purpose of TIMA is to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record trail are to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. In NHTSA's preliminary 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. Due to the system's procedures for validating and authenticating the electronic signature of each individual through TOAS and TOAD, the electronic signatures of the transferor and transferee are reliable, readily detectable and can easily be linked to particular individuals.<sup>16</sup> Because the electronic signature consists of 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 individual electronic signatures. This authentication process also allows the VTR system to trace the individuals involved in the transaction. This capacity maintains the purposes of

creating a paper trail since the VTR system will have histories of odometer disclosures for each title transfer. These electronic records will create the electronic equivalent to a paper based system that will be readily available to law enforcement. The one exception is that the program does not require dealers to retain a copy of all odometer disclosures that they issue and receive.

Finally, TIMA's overall purpose 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. 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, with one exception. These characteristics include identity and residency authentication, an automatic system check of the reported mileage against previously reported mileage, and transferee verification of the data reported by the transferor.<sup>17</sup> In addition, by providing rapid access to records of past transfers, the scheme proposed by Texas could potentially provide superior deterrence to odometer fraud when compared to the current paper title system. The one exception is that Texas's alternate disclosure requirements do not require the transferor to state whether the odometer reflects the actual mileage or if the actual mileage is unknown. *See* 49 CFR 580.5(e). This statement is referred to as the "brand."

## VI. NHTSA's Initial Determination

For the foregoing reasons, NHTSA preliminarily grants Texas's proposed alternate disclosure requirements on the condition that Texas amends its program to enable transferees to obtain a paper copy of the title that meets the requirements of TIMA, requires dealers to retain a copy of all odometer disclosures that they issue and receive, and requires disclosure of the brand, or demonstrates that these requirements are met. This is not a final agency action. NHTSA invites public comments within the scope of this notice. Should NHTSA decide to issue a final grant of Texas' petition, it would likely reserve the right to rescind that grant in the event that information acquired after

<sup>16</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>17</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.

<sup>14</sup> Texas would continue to be subject to all federal requirements that are not based on Section 408(d) of the Cost Savings Act as amended, recodified at 49 U.S.C. 32705(b).

<sup>15</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.

that grant were to indicate that, in operation, Texas alternate requirements do not satisfy applicable standards.

#### Request for Comments

#### How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (*see* 49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at <http://dms.dot.gov>. Click on "Help & Information," or "Help/Info" to obtain instructions for filing the document electronically.

#### How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

#### Will The Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we also will consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing the final rule, we will consider that comment as an informal suggestion for future rulemaking action.

#### How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You also may see the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov>, and follow the instructions for accessing the Docket.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: November 6, 2009.

**O. Kevin Vincent,**  
Chief Counsel.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 222

[Docket No. 0906181067-91356-01]

RIN 0648-XP96

#### 2010 Annual Determination for Sea Turtle Observer Requirement

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

**ACTION:** Proposed rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) publishes its proposed Annual Determination (AD) for 2010, pursuant to its authority under the Endangered Species Act (ESA). Through this proposed AD, NMFS would identify commercial fisheries

operating in state and Federal waters in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that would be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate existing measures to reduce or prevent sea turtle takes, and to determine whether additional measures to address prohibited sea turtle takes may be necessary. Fisheries identified through this process would remain on the AD, and therefore required to carry observers upon NMFS' request, for 5 years.

**DATES:** Comments must be received by December 18, 2009.

**ADDRESSES:** Send comments on the proposed rule by any one of the following methods.

(1) Electronic Submissions: Submit all electronic comments through the Federal eRulemaking portal: <http://www.regulations.gov> (follow instructions for submitting comments).

(2) Facsimile: (301) 713-0376, Attention: 2010 Sea Turtle Annual Determination.

(3) Mail: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Send comments on the information collection requirements or any other aspects of the collection of information to the Chief of the Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, at the **ADDRESSES** above, and e-mail to [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or fax to (202) 395-7285.

See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

**FOR FURTHER INFORMATION CONTACT:** Kristy Long, Office of Protected Resources, 301-713-2322; Ellen Keane, Northeast Region, 978-282-8476; Dennis Klemm, Southeast Region, 727-824-5312; Elizabeth Petras, Southwest