

(c) If, in compliance with this clause, the Contractor identifies and promptly reports an organizational conflict of interest that cannot be resolved in a manner acceptable to the Government, the Contracting Officer may terminate this contract for convenience of the Government.

(d) *Breach.* Any nondisclosure or misrepresentation of any relevant facts regarding organizational conflicts of interests will constitute a breach and may result in—

(1) Termination of this contract for default; or

(2) Exercise of other remedies as may be available under law or regulation.

(e) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts where the work includes or may include tasks that may create a potential for an organizational conflict of interest. The terms “Contractor” and “Contracting Officer” shall be appropriately modified to reflect the change in parties and to preserve the Government’s rights.

(End of clause.)

[FR Doc. 2010-9210 Filed 4-21-10; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 580

[Docket No. NHTSA-2010-0046; Notice 1]

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

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

**ACTION:** Initial determination.

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

**DATES:** Comments are due no later than May 24, 2010.

**ADDRESSES:** You may submit comments [identified by DOT Docket ID Number NHTSA-2010-0046] 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., West Building W41-227, 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<sup>2</sup>, as amended (TIMA), contains a number of provisions to limit odometer fraud and assure that the purchaser of a motor vehicle knows the true mileage of the vehicle. The Cost Savings Act requires the Secretary of Transportation to promulgate regulations requiring the transferor (seller) of a motor vehicle to provide a written statement of the vehicle’s

mileage registered on the odometer to the transferee (buyer) in connection with the transfer of ownership. This written statement is generally referred to as the odometer disclosure statement. Further, under TIMA, vehicle titles themselves must have a space for the odometer disclosure statement and States are prohibited from licensing vehicles unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Titles must also be printed by a secure printing process or other secure process. With respect to leased vehicles, TIMA provides that the regulations promulgated by the Secretary require written mileage disclosures be made by lessees to lessors upon the lessor’s transfer of the ownership of the leased vehicle. Lessors must also provide written notice to lessees about odometer disclosure requirements and the penalties for not complying with them. Federal law also contains document retention requirements for odometer disclosure statements.

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

Seeking to implement an electronic vehicle title transfer system, the State of Wisconsin has petitioned for approval of alternate odometer disclosure requirements. The Wisconsin Department of Transportation proposes a paperless odometer disclosure program. Last year, NHTSA reviewed certain requirements for alternative State programs and approved the Commonwealth of Virginia’s alternate odometer disclosure program. 74 FR 643, 650 (January 7, 2009). Wisconsin’s program is similar to Virginia’s program in some respects and is broader in scope than Virginia’s in others. Like Virginia’s program, transactions involving an out-of-State party are not, in general, within the scope of Wisconsin’s program. Wisconsin Pet. p. 2. Unlike Virginia’s program, which did not apply to transactions for leased vehicles, Wisconsin’s proposal implicates provisions of Federal odometer law related to these vehicles. Wisconsin Pet. p. 4.

As discussed below, NHTSA’s initial assessment is that the Wisconsin program satisfies the requirements for approval under Federal odometer law, subject to resolution of certain concerns.

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

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

## 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, as they relate to odometer disclosure, other than in the transfer of leased vehicles and vehicles subject to liens where a power of attorney is used in the disclosure, 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, including odometer disclosure requirements for leased vehicles, follows.

In 1972, Congress enacted the Cost Savings Act to, among other things, prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers. *See* Public Law 92–513, § 401, 86 Stat. 947, 961–63 (1972). The Cost Savings Act required that, under regulations to be published by the Secretary, the transferor of a motor vehicle provide a written vehicle mileage disclosure to the transferee, prohibited odometer tampering and provided for enforcement. *See* Public Law 92–513, § 408, 86 Stat. 947 (1972).<sup>3</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 their failure to require that the odometer disclosure statement be on the vehicle's title. In a number of States, the disclosures were on separate documents that could be easily altered or discarded and did not travel with the title. *See* 74 FR 644. Consequently, the disclosure statements did not necessarily deter odometer fraud employing altered documents, discarded titles, and title washing. *Id.*

Another significant shortcoming involved leased vehicles. The lessor is considered the transferor of the vehicle in leased vehicle sales. Titles to leased

vehicles are often transferred without the lessor obtaining possession of the vehicle. Lessors without direct access to their vehicles had to rely solely on their lessees to provide accurate mileage information. However, lessees had no obligation to provide accurate mileage information to lessors upon vehicle transfer. This environment facilitated roll backs of odometers.

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 unless the new owner (transferee) submitted a title from the seller (transferor) containing the seller's signed and dated vehicle mileage statement. *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.*

TIMA also required the Secretary to issue regulations regarding odometer disclosures for leased vehicles.<sup>4</sup> The regulations promulgated by the Secretary were to require written mileage disclosures by lessees to lessors upon the lessor's transfer of the ownership of the leased vehicle. Lessors must also provide written notice to lessees about the odometer disclosure requirements and the penalties for not complying with them. Federal law also contains document retention requirements for odometer disclosure statements. TIMA required lessors to retain disclosures made by lessees for at least four years following the date that the lessor transfers that vehicle.<sup>5</sup> *Id.*

TIMA added a provision to the Cost Savings Act allowing States to have alternate odometer disclosure requirements with the approval of the Secretary of Transportation. Section 408(f) of the Cost Savings Act states that the odometer disclosure requirements of subsections (d) and (e)(1) shall apply in a State unless the State has alternate motor vehicle mileage disclosure requirements approved by the Secretary

in effect. Section 408(f) further states that the Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

In 1988, Congress amended section 408(d)(1) 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. Public Law 100–561 § 40, 102 Stat. 2805, 2817 (1988). Congress required that the odometer disclosures be made on the power of attorney document at the time of transfer and that the mileage be restated by the person exercising power of attorney on the title. *Id.* In addition, the power of attorney document was to be issued by means of a secure printing process or other secure process. *Id.*

In 1990, Congress amended section 408(d)(1)(C) of the Cost Savings Act.<sup>6</sup> The amendment addressed retention of powers of attorneys by States and provided that the rule adopted by the Secretary not require that a vehicle be titled in the State in which the power of attorney was issued. *See* Public Law 101–641 § 7(a), 104 Stat. 4654, 4657 (1990).

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

## III. Statutory Purposes

As discussed above, the Cost Savings Act, as amended by TIMA in 1986, states that NHTSA “shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the [NHTSA] determines that such requirements are not consistent with the purpose of the

<sup>3</sup>In general, section 408 states that the Secretary shall prescribe rules requiring any transferor of a motor vehicle to provide a written disclosure to the transferee that includes the cumulative mileage on the odometer and if the odometer reading is known to be different than the miles the vehicle has actually traveled, a statement that the actual mileage is unknown.

<sup>4</sup>TIMA amended the Cost Savings Act by adding section 408(e) requiring the Secretary to prescribe rules related to leased vehicles to ensure written disclosure of the mileage by the lessee to the lessor upon the lessor's transfer of ownership of the vehicle. Under these rules, the lessor must provide written notice of the mileage disclosure requirements and the penalties for failure to comply with the rules to the lessee.

<sup>5</sup>Federal regulations require lessors to retain odometer disclosure statements received from lessees for a period of five years. 49 CFR 580.8(b).

<sup>6</sup>Section 7(a) of Public Law 101–641 directed that the third sentence of subsection (d)(2)(C) be amended. However, there was no subsection (d)(2)(C) in section 408. The amendment was executed to the third sentence of subsection (d)(1)(C) as the probable intent of Congress.

disclosure required by subsection (d) or (e) as the case may be.” (Subsections 408(d), (e) of the Cost Savings Act were recodified to 49 U.S.C. 32705(b) and (c)). In light of this provision, we now turn to our interpretation of the purposes of these subsections, as germane to Wisconsin’s petition.

Our Final Determination granting Virginia’s petition for alternate odometer disclosure requirements identified the purposes of TIMA germane to petitions for approval of odometer disclosure requirements that did not include disclosures involving leased vehicles or disclosures by power of attorney.<sup>7</sup> 74 FR 643, 647–48 (January 7, 2009). A brief summary of the purposes identified in the Virginia Final Determination follows. In addition, because the Wisconsin proposal encompasses transfers of leased vehicles, we identify the purposes of TIMA relevant to odometer disclosures for those vehicles.

#### A. TIMA’s Purposes Relevant to Vehicle Transfers in the Absence of a Lease Agreement

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

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

Third, TIMA sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. 74 FR 648. In furtherance of these purposes, paper titles (incorporating the disclosure statement) must be produced using a

secure printing process or protected by “other secure process.”<sup>8</sup> *Id.*

A fourth purpose is to create a record of vehicle mileage and a paper trail. 74 FR 648. The underlying purposes of this record and paper trail were to better inform consumers and provide mechanisms for tracing odometer tampering and prosecuting violators. TIMA’s requirement that new applications for titles include signed mileage disclosure statements on the titles from the prior owners creates a permanent record that is easily checked by subsequent owners or law enforcement officials. This record provides critical snapshots of vehicle mileage at every transfer, which are the fundamental links of this paper trail.

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

#### B. TIMA’s Purposes Relevant To Leased Vehicles

TIMA recognized that additional mechanisms were needed to assure accurate odometer disclosures for leased vehicles. In vehicle leases, the lessor typically retains ownership of the vehicle, but does not possess it. The lessor, as a transferor, must comply with Federal odometer disclosure requirements when it subsequently transfers title to a leased vehicle. However, prior to TIMA, lessees were not obligated by Federal odometer law to provide lessors with accurate odometer disclosure statements. TIMA addressed this issue, as discussed above. A number of purposes can be derived from TIMA’s provisions, discussed above, relating to the transfer of ownership of leased vehicles.

One purpose of TIMA’s leased vehicle provisions is to assure that lessors have the vehicle’s proper odometer mileage at the time of transfer.

A second purpose of TIMA’s leased vehicle provisions is to assure that lessees provide lessors with an odometer disclosure statement.

A related purpose is to assure that lessees are formally notified of their odometer disclosure obligations and the

penalties for failing to comply by not providing complete and truthful information.

A fourth purpose is to set the ground rules for the lessors, allowing them to indicate on the title the mileage provided by the lessee, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

A fifth purpose of TIMA’s leased vehicle provisions is to create records and a paper trail. This is an expansion of the fourth general purpose of TIMA stated above. The paper trail includes the written, dated and signed odometer disclosure statement by the lessee. Unlike odometer disclosure statements on vehicle titles that are filed with the State, a lessee’s odometer disclosure statement is separate from the title and not filed with the State. Instead, the disclosure statement is sent to the lessor, who must retain a copy for at least four years. The retention of lessee odometer disclosure statements by lessors permits law enforcement officials to trace fraudulent disclosure statements back to lessees, if necessary.

Last, the overall purpose of TIMA’s leased vehicle provisions, consistent with the general purposes of TIMA, is to ensure that there are valid representations of the vehicle’s actual mileage at the time of transfer. *See* H.R. Rep. No. 99–833, at 33 (1986).

#### IV. The Wisconsin Petition

Wisconsin, which is in the process of implementing an electronic title transfer system, petitions for approval of alternate odometer disclosure requirements. Wisconsin requests alternate disclosure requirements for transfers of motor vehicles in transactions between private parties (including motor vehicle dealers), transactions involving leased vehicles, transactions between parties involving a lienholder,<sup>9</sup> and transactions involving private parties without any lienholder.

Recent Wisconsin legislation established that the title, title application, and other specified information maintained by the DMV in its database are the original and controlling title record for a vehicle. *See* Wis. Stat. Ann. § 342.01(2)(ac) and § 342.09(4) (2009). Wisconsin proposes to create an electronic odometer

<sup>7</sup> Since Virginia’s program did not cover disclosures involving leased vehicles or disclosures by power of attorney, the purposes of Sections 408(d)(2)(C) and 408(e) of the Cost Savings Act, as amended, were not germane and were not addressed in the notice approving the Virginia program. *See* 74 FR 647 n. 12.

<sup>8</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).

<sup>9</sup> Under Wisconsin law, a lienholder does not physically possess the title to the vehicle; the title remains with the vehicle owner. Thus, Wisconsin does not permit odometer disclosure by power of attorney when title is held by a lienholder and does not petition for alternate requirements regarding odometer disclosure by power of attorney. Wisconsin does accept a written odometer disclosure by power of attorney from an out-of-State party that registers the vehicle in Wisconsin.

statement (e-Odometer) as the official odometer statement to reside in the Wisconsin Department of Transportation (WisDOT), Department of Motor Vehicles (DMV) database. Under the proposal, a distinct e-Odometer system would be created for accepting and maintaining e-Odometer statements as stand-alone electronic records, separate from an electronic title. E-Odometer statements would be linked to, and become part of the title record in the DMV database. The DMV's titling system would automatically link the e-Odometer records to a vehicle's title whenever an electronic title transaction occurs and a title transfer could not be completed unless a proper odometer disclosure is made in the e-Odometer entry. According to Wisconsin's petition, if a paper title is needed, DMV would print it on secure paper with the odometer disclosure statement in the proper location and format.

#### A. Overview of Wisconsin's Electronic Titling System

Wisconsin has implemented a titling system that permits individuals, organizations and businesses (collectively, DMV Customers) to process vehicle title transactions electronically through its automated processing partnership system (APPS) program. See Wis. Admin. Code § Trans 1565.01. Under APPS, a vendor<sup>10</sup> approved by the DMV<sup>11</sup> creates a computer system to link or interface DMV customers with the DMV database. The link permits the DMV customer to access to the DMV database and conduct authorized title transactions.

In order to become eligible for direct access to the DMV's database under the vendor system, a DMV customer must enter into an agreement with an approved vendor, obtain DMV approval to process title transactions, and enter into a contract with the DMV. To maintain system security and integrity, employees of DMV customers using the interface would have to submit a signed affidavit to the DMV before accessing the system. Once the DMV customer

complies with these requirements, the DMV customer would be able to perform authorized title transactions directly within DMV's system.

Currently, Wisconsin requires motor vehicle dealers to electronically process title transactions for vehicles that they sell. See Wis. Stat. Ann. § 342.16(1)a and (am) (2009); Wis. Admin. Code § Trans 141.01. Motor vehicle dealers can perform electronic titling transactions through APPS or through an Internet-based interface with DMV, known as e-MV11. In order to process title transactions using the e-MV11, a DMV customer must apply to the DMV by submitting an application setting forth the name, address and contact of the entity and providing the names and access authority of employees performing title transactions. After setting up the required security protocols, the DMV customer can enter the appropriate title transaction.<sup>12</sup> Also, under Wisconsin's electronic titling program, motor vehicle dealers are required to maintain and keep their title transactions records, including odometer disclosure statements, for five years. See Wis. Admin. Code § Trans 141.08(2).

According to Wisconsin's petition, the electronic titling program will be expanded to include other persons, businesses and organizations. These businesses and organizations, such as lienholders or auction companies, would conduct electronic title transactions through APPS. Individuals conducting private sales of unencumbered vehicles would eventually have the ability to perform title transfer and odometer disclosure through an Internet-based application called e-MVPublic.

#### B. Wisconsin's E-Odometer Program

Wisconsin asserts that e-Odometer entries would provide a virtual replacement of existing secure paper

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

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

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

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

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

The publicly available information includes:

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

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

<sup>10</sup> According to Wisconsin's petition, a "vendor" is a person, business or organization that contracts with the DMV to provide a host computer system by which agents may obtain access to specified information services. Wis. Admin. Code § Trans 156.02(8). An approved vendor must work with Wisconsin's DMV to develop an automated interface software application that meets the automated interface specifications prescribed by DMV. Wis. Admin. Code § Trans 156.03(4).

<sup>11</sup> In order to become an approved vendor, an entity must submit an application with certain information to DMV, submit an approved implementation plan, work with DMV to meet the automated interface specifications prescribed by DMV and execute a contract with DMV.

<sup>12</sup> According to Wisconsin's petition, authorized transactions for amending an electronic odometer record are or will be:

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

### C. Wisconsin E-Odometer Implementation Schedule

Wisconsin proposes to implement its e-Odometer program in three phases. Because motor vehicle dealers are already required to complete title transactions electronically, Wisconsin intends to begin the e-Odometer program with these dealers. See Wis. Stat. Ann. § 342.16(1)a and (am) (2009); Wis. Admin. Code § Trans 141.01. The second phase would implement e-Odometer in title transfers involving lienholders, motor vehicle auctions, vehicle repossessions, and leases. The proposal's final phase would implement e-Odometer in transfers of unencumbered motor vehicles between private individuals. Phase two and three are still under development and Wisconsin has not provided an estimated implementation schedule. According to the petition, as e-Odometer is phased in, Wisconsin will still issue odometer disclosures on secure printed titles.

#### 1. Phase One: E-Odometer in Dealer Transactions

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

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

#### 2. Phase 2: E-Odometer in Title Transactions Between Private Parties Involving Lienholders and Other Commercial Entities

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

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

#### 3. Phase 3: E-Odometer in Private Sales

The last phase of Wisconsin's program would incorporate e-Odometer entries into private sales of unencumbered vehicles. The title transfer would be conducted through an on-line application called e-MVPublic.<sup>13</sup> For private transfers of motor vehicles, odometer disclosure and acceptance would be accomplished by the seller and buyer through e-MVPublic once their identities are verified by DMV processes.

#### D. Identity Verification Under Wisconsin E-Odometer

Wisconsin's petition describes two verification processes whose operation differs depending on whether the user is a DMV partner or regular customer (such as a dealer or financial institution) or an intermittent user. For a DMV partner or regular customer, the first step is being approved by DMV to access its database. As part of the

approval process, the entity must provide the legal business name and address of the location of the business. After approval, identity verification procedures would require these users to enter into an agreement with the DMV that includes security procedures—including establishing an account and secure logon ID. The users are identified and authenticated through a unique "user ID" and password that are traced to a particular person on the account.

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

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

For individuals who are not DMV partners or regular customers, Wisconsin would require individuals to establish an electronic signature that can uniquely identify the person. Identity verification begins with the customer entering a minimum of three personal identifiers for the correct customer record in the DMV database. Personal identifiers include name, address, date of birth, product number, Driver License/ID number, a Federal Employer Identification Number, or

<sup>13</sup> For individuals without Internet access, Wisconsin is considering providing access to e-MVPublic at its DMV service centers. At a minimum, Wisconsin states that public libraries offer public access to computers and the Internet, which would enable individuals without Internet to use e-Odometer.

partial Social Security Number (possibly the last four or five digits).<sup>14</sup> After the user inputs the personal identifiers into the system, the system will check DMV customer records and verify that the user is the correct individual or business and will authorize the customer to update the odometer statement. Once the user is verified, the user can begin the title transaction.

#### *E. Odometer Disclosure Under Wisconsin E-Odometer*

Wisconsin's petition states that two parties must engage in an authorized e-Odometer transaction to effectuate the odometer disclosure. In order to conduct the e-Odometer disclosure, each party will access the DMV database by providing information to satisfy the identity verification requirements of the system and the VIN of the vehicle. Under Wisconsin's proposal, a transferor must disclose the odometer reading and brand (actual/not actual/exceeding odometer limits) and the transferee must accept the odometer reading to allow the transaction to go forward.<sup>15</sup> The e-Odometer transaction will remain in a pending status between the transferor and transferee until each party completes the required actions, e.g., disclosure by the seller and acceptance by the buyer. Once both actions have been accomplished, the e-Odometer record will be secured within DMV's database and become part of the electronic title through the VIN.

To clarify the e-Odometer procedure, Wisconsin provides an exemplar title

<sup>14</sup> Wisconsin prohibits nonresidents from applying for a Wisconsin title, except in certain limited exceptions. See Wis. Admin. Code § Trans 154.13(2). A nonresident who is eligible to apply for a Wisconsin title will not be considered a DMV partner or regular customer. These nonresidents will be subject to the e-Odometer requirements as long as the vehicle is titled and transferred within Wisconsin.

<sup>15</sup> Wisconsin states that there are a limited number of exceptions under Wisconsin law and e-Odometer to the requirement for two parties to engage in a transaction to update a title. One exception is involuntary transfer of the vehicle through repossession by a financial institution in which the title is issued to the financial institution. This exception is permissible under Federal odometer law because repossession is not a transfer of ownership and does not require an odometer disclosure statement. See 49 CFR 580.3. Another exception is when the seller is not available. If the seller is not available, the DMV database permits the transferee to state the odometer reading with a brand of "not actual." If the transferor becomes available to make the disclosure, DMV would change the recorded status to "actual." This exception does not conform to Federal odometer law, which requires an odometer disclosure statement, including the brand, at the time of transfer of ownership. 49 U.S.C. 32705(a)(1); 49 CFR 580.5(a). Federal odometer law does not permit subsequent alterations to the brand as contemplated by Wisconsin. NHTSA believes that permitting such an exception could create a loophole that would be abused.

transaction involving a dealer trade-in. In a vehicle trade-in transaction, the customer (transferor) must bring the paper title to the dealer (transferee) at the time of the transferor. After entering all the required data in the Wisconsin electronic title system and initiating the e-Odometer process, the dealer would then destroy the paper title.<sup>16</sup> Under the e-Odometer process, the customer discloses the odometer reading (and brand) and the dealer accepts the odometer reading. The vehicle's odometer reading is then stored in the DMV database and linked virtually to the vehicle's title through the VIN. Upon later sale of the trade-in vehicle, the dealer (as the transferor) must disclose the odometer reading (and brand) and the vehicle buyer (as the transferee) must accept the odometer reading. The dealer and buyer will access e-Odometer at the time of the sale to complete the disclosure and acceptance of the odometer statement, which upon acceptance by the buyer secures the odometer statement in the DMV's database. After the sale of the vehicle is completed, the dealer completes title processing in APPS or e-MV11 by titling the vehicle in the consumer's name, verifying that secure odometer disclosure has been completed. After titling is complete, the updated e-Odometer entry becomes part of the title record. For in-State transactions, a paper title is issued only upon request.

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

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

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

<sup>16</sup> According to Wisconsin, the dealer's failure to destroy the title subjects the dealer to civil penalties and other sanctions, such as license suspension or removal.

According to the petition, other system requirements provide a significant level of security for the e-Odometer system. First, title transfer cannot occur unless the authorized persons update e-Odometer entries. Second, only those persons authorized to make title transfer transactions (e.g. authorized dealer personnel or authenticated private owners) are able to make e-Odometer statements. Third, odometer disclosure under the e-Odometer system is only permitted when a title is transferred.<sup>17</sup> If a title is required to be printed on a secure title paper, the DMV system will automatically include the odometer disclosure information on the printed title. If a title on secure title paper is used in a vehicle transfer, the odometer information shown on the secure paper title will be entered into the e-Odometer electronic record during the title transfer transaction process and the paper title will be destroyed.

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

Wisconsin's petition asserts that e-Odometer provides an equivalent level of security against altering, tampering, and counterfeiting as the odometer statement on a secure paper title. According to Wisconsin, the e-Odometer statement is secured in the DMV database, as soon as the transferor electronically discloses and the transferee accepts the odometer reading. After the transferee accepts the odometer disclosure, e-Odometer stores that mileage disclosure, the date, the names and addresses of the transferor and transferee, and will not allow any changes to that entry.

Finally, Wisconsin's petition contends that the authentication and verification of the transferor's and transferee's electronic signatures are readily detectable and reliably traced to the particular individual. Wisconsin states that the DMV has established extensive security procedures for vendors who process vehicle transactions on behalf of DMV and

<sup>17</sup> As noted above, there are some exceptions under Wisconsin law.

regularly interact with DMV, and for individuals and intermittent business customers who wish to make entries in DMV records. Wisconsin's security procedures are governed under Wisconsin statutes, administrative rules, contracts, DMV policy and procedure, and electronic security protocols. DMV Partners and regular business customers will access the e-Odometer system through secure applications that are already in use for vehicle title transactions. Individuals and intermittent business customers will access the e-Odometer system through a secure Internet application. Both applications require information, such as electronic signatures, that can authenticate and verify the users' identity.

#### IV. Analysis

Under TIMA, NHTSA "shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the [NHTSA] determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be." The purposes are discussed above, as is the Wisconsin alternative. We now provide our initial assessment whether Wisconsin's proposal satisfies TIMA's purposes as relevant to its petition.<sup>18</sup>

##### *A. Wisconsin's Proposal in Light of TIMA's Purposes Regarding Vehicle Transfers Other Than Those Involving a Lease Agreement*

One purpose is to assure that the form of the odometer disclosure precludes odometer fraud. In this regard, NHTSA has initially determined that Wisconsin's proposed alternate disclosure requirements satisfy this purpose. Under Wisconsin's proposal, a required part of the data to be entered in the transfer of title is the vehicle's odometer reading. The reading is disclosed by the transferor and accepted by the transferee. Thereafter the odometer disclosure statement will reside as an electronic record within the DMV database that will be linked to the vehicle's title, also an electronic record, by the VIN. Thus, the odometer disclosure is a required element pertaining to and part of the title record in the DMV database. If a hard copy of the title is needed, Wisconsin can generate a title with the odometer disclosure statement on the title using a secure printing process. Wisconsin's

proposed system would, therefore, have the odometer disclosure as part of the vehicle title as required by TIMA. As to TIMA's requirement that the title contain a space for the transferor to disclose the vehicle's mileage, NHTSA believes the proposed Wisconsin electronic title and odometer system would provide an electronic equivalent to these requirements for use in a subsequent sale of the vehicle. The agency expects that hard copies of electronic titles will continue to provide a separate space for owners to execute a proper odometer disclosure in keeping with TIMA and current practice.<sup>19</sup>

Another purpose of TIMA is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer mileage on the title a condition for the application for a title and a requirement for the title issued by the State. With one exception, NHTSA has initially determined that Wisconsin's proposed process satisfies this purpose. Wisconsin's proposed on-line title transfer process requires disclosure and acceptance of odometer information before the transaction can be completed. If the transaction is successful, DMV's system will create or amend an electronic title and store the linked electronic odometer statement. A new title will not be issued without entry of the odometer disclosure and acceptance of it.

The exception concerns Wisconsin's proposal to permit the alteration of the brand on an electronic odometer statement when the seller of the vehicle is unavailable at the time of the transfer of ownership. According to Wisconsin's petition, if the seller is not available, the DMV database permits the transferee to state the odometer reading with a brand of "not actual." If the transferor becomes available to make the disclosure and does so, DMV would change the recorded status to "actual." As noted above, such a subsequent change to the title does not conform to Federal odometer law, which requires an odometer disclosure statement, including the brand, to be made at the time of transfer. 49 U.S.C. 32705(a)(1); 49 CFR 580.5(a). The requirement to state the actual mileage and brand at the time of transfer is not based on section 408(d) and (e) of the Cost Savings Act as amended, recodified at 49 U.S.C. 32705(b) and (c).<sup>20</sup> Accordingly, we

have decided to grant Wisconsin's petition on the condition that Wisconsin conforms its program to the requirements of Federal odometer law or fully explains how exceptions, such as the one for the unavailable seller, complies with the law and its purposes.

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 Wisconsin's alternate disclosure requirements appear to be as secure as current paper titles. As we understand Wisconsin's proposal, the odometer statement is disclosed by the transferor and accepted by the transferee, and thereafter the DMV database system stores an electronic version of the odometer statement. Assuming that the e-Odometer database is maintained with appropriate levels of security, electronic recording of odometer readings and disclosures would be maintained in a way in which alteration is unlikely. The odometer reading, which would be linked to the electronic title record by the VIN, cannot be altered except when it is updated during the title transfer process by authorized users. On subsequent title transfers, the transferor and transferee would have to complete the odometer disclosure and acceptance for the transaction to be completed.

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

Another purpose of TIMA is to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record trail are to enable consumers to be better informed and provide a mechanism through which

<sup>18</sup> Wisconsin would continue to be subject to all Federal requirements that are not based on Section 408(d) and (e) of the Cost Savings Act as amended, recodified at 49 U.S.C. 32705(b) and (c).

<sup>19</sup> Wisconsin notes that paper titles will be produced for title transfer transactions that involve out-of-State parties, such as a vehicle sale to an out-of-State dealer or retail purchaser, an auction sale to an out-of-State dealer or a retail consumer in Wisconsin that requests a paper title.

<sup>20</sup> The requirement to provide a brand at the time of vehicle transfer is based upon section 408(a) of

the Cost Savings Act as amended, recodified at 49 U.S.C. 32705(a).

odometer tampering can be traced and violators prosecuted. In NHTSA's preliminary view, the proposed Wisconsin's electronic title transfer system will create a scheme of records, equivalent to the current "paper trail," that assists law enforcement in identifying and prosecuting odometer fraud. Under the Wisconsin proposal, creation of a paper trail starts with the requirement for certain DMV customers to process title transactions through the APPS program. Under APPS, a DMV customer must sign a written agreement with DMV that includes security procedures, an account and a secure logon ID. DMV customers also must provide DMV with the names of the individuals authorized to conduct transactions in APPS. These individuals are issued a secure logon ID and password that can be traced by DMV to their transactions. In addition, APPS vendors must create security protocols that include an audit journal that can identify each person responsible for each title transaction. Vendors must also provide DMV with a daily report detailing all security violations. Furthermore, Wisconsin requires motor vehicle dealers to retain copies of electronic titles for motor vehicles owned and offered for sale and odometer statements received and given for a period of 5 years.<sup>21</sup>

For individuals not using APPS, the identity verification procedures require the establishment of electronic signatures of the parties. Due to the system's procedures for validating and authenticating the electronic signature of each individual through DMV's database, the electronic signatures of the transferor and transferee are reliable, readily detectable and can easily be linked to particular individuals.<sup>22</sup> Because the electronic signature consists of data elements such as the name, address, date of birth, product number, driver license or identification card number, Federal Employer Identification Number, or the last four or five digits of the individual's Social Security number, Wisconsin's e-Odometer system can validate and

authenticate individual electronic signatures. This authentication process also allows Wisconsin to trace the individuals involved in the transaction. This capacity maintains the purposes of creating a paper trail since the Wisconsin system will have a history of each vehicle's title transfer and odometer disclosure. These electronic records will create the electronic equivalent to a paper based system that will be readily available to law enforcement.

Whether Wisconsin's program conforms to TIMA's overall purpose is discussed in subpart C below.

#### *B. Wisconsin's Proposal in Light of TIMA's Purposes Relevant to Leased Vehicles*

One purpose of TIMA's leased vehicle provisions is to assure that the lessor has the vehicle's odometer mileage at the time the lessor transfers ownership. The agency has initially determined that the Wisconsin alternate disclosure requirements satisfy this purpose. As we understand Wisconsin's proposal, the State proposes to require vehicle lessees to submit the electronic odometer statement to their lessors when relinquishing the leased vehicle. The lessee's odometer statement will be stored in the DMV database and linked to the leased vehicle by the VIN. Once stored in the DMV database, the odometer statement is secured and recorded and made available to the lessor. On subsequent transfer of the vehicle by the lessor, the odometer disclosure statement from the lessee would be available in the e-Odometer system for acceptance by the subsequent transferee. The subsequent transferee would have to accept the odometer disclosure reading in the e-Odometer entry before the transaction could be completed and for title to transfer.

A second purpose of TIMA's leased vehicle provisions is to assure that the lessee provides the lessor with an odometer disclosure statement regarding the mileage of the vehicle. As discussed above, the lessee would provide it via the DMV data base.

A related purpose is to assure that lessees are formally notified of their odometer disclosure obligations to the lessor and the penalties for failing to comply by not providing complete and truthful information. As described in the Petition, Wisconsin's alternate disclosure requirements do not address this purpose. However, we note that Wisconsin's leased vehicle odometer disclosure regulations parallel 49 U.S.C. 32705(c)(2) and 49 CFR 580.7 by requiring that lessors notify lessees of their odometer disclosure obligations.

See Wis. Admin. Code Trans 154.7 (2009). Lessors may meet this notification requirement without using the electronic system proposed by Wisconsin. The lessors' obligations should be clearly stated.

A fourth purpose is to set the ground rules for the lessors, allowing them to indicate on the title the mileage provided by the lessee, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle. We have initially determined that Wisconsin's proposal meets this purpose. As noted previously, a lessee will make the required odometer disclosure to the lessor in e-Odometer upon relinquishing the leased vehicle. The lessor may use this statement in a subsequent title transfer, unless the lessor has reason to believe that the lessee's statement does not reflect the vehicle's actual mileage, in which case, the lessor must brand the title accordingly. We believe that Wisconsin must provide for this branding information—that the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle—in its proposed system.

A fifth purpose of TIMA's leased vehicle provisions is to create records and a paper trail. The paper trail includes the written, dated and signed odometer disclosure statement by the lessee. The agency has initially determined that the Wisconsin alternate disclosure requirements satisfy this purpose. Under Wisconsin's proposal, as we understand it, both the lessee and the lessor are required to make the odometer disclosure electronically in e-Odometer.<sup>23</sup> The lessee will make the odometer disclosure in e-Odometer, which will be stored in the DMV database and linked to the leased vehicle by the VIN. The lessor will have to accept it to complete the transaction. On subsequent transfer of the vehicle by the lessor, the lessor can use the lessee's odometer disclosure statement, which is available in the e-Odometer system, to certify the actual mileage of the leased vehicle. The subsequent transferee would have to accept the odometer disclosure reading in the e-Odometer entry before the transaction could be completed and for title to transfer. It would then be stored. Wisconsin's electronic odometer disclosure system would create a scheme of records

<sup>21</sup> Wisconsin indicates that its e-Odometer system will permit motor vehicle dealers the ability to retain copies of all odometer disclosure statements received or given by the dealers.

<sup>22</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>23</sup> As we understand Wisconsin's program, a nonresident lessee who titles a vehicle in a different State, but leases the vehicle from a Wisconsin lessor, is outside the scope of the e-Odometer system. In such a scenario, the nonresident lessee is required to provide a written odometer disclosure statement to the lessor.



equivalent to the current “paper trail” now assisting consumers in reviewing mileages on used vehicles and law enforcement in identifying and prosecuting odometer fraud. A copy of the odometer disclosure statement could be retained by the lessor.<sup>24</sup> With the use of the APPS system to identify parties to the odometer disclosure and the use of electronic signatures to identify individuals not in the APPS system, the Wisconsin DMV will have the capacity to trace a particular lessee who makes a fraudulent odometer disclosure during the lessor/lessee transaction.

The overall purpose of TIMA’s leased vehicle provisions is to ensure that vehicles subject to long-term leases have adequate odometer disclosure statements executed on titles at the time of transfer. The agency has initially determined that Wisconsin’s proposal meets TIMA’s overall requirement. Upon the termination of the lease, a lessee will be required to make an odometer disclosure statement in e-Odometer. This electronic disclosure is equivalent to a paper odometer disclosure statement and provides the same assurances. The lessee’s odometer statement will be secured and stored in Wisconsin’s DMV database. Because the odometer statement is electronically stored in a secure environment, the statement, unlike a paper version, cannot be altered, changed or lost, further enhancing the validity of the statement. In addition, with the identity verification of the e-Odometer system, the lessee can be traced to the odometer statement for a particular vehicle. Last, upon transfer of the vehicle by the lessor, the transferee has the opportunity to review the odometer statement in the DMV’s database and accept it (or reject it) prior to the transfer of the vehicle’s title.

### C. Wisconsin’s Proposal in Light of TIMA’s Overall Purpose

TIMA’s overall purpose is to protect consumers by assuring that they receive valid odometer disclosures representing a vehicle’s actual mileage at the time of

<sup>24</sup> We note that, unlike retention requirements for motor vehicle dealers, Wisconsin’s petition does not address whether lessors are required to retain copies of odometer disclosure made through e-Odometer that they issue and receive. We have concluded that lessors will continue to be subject to the retention requirements as set forth in 49 CFR 580.8(b), which requires lessors to retain a copy of odometer disclosure statements that they issue and receive for five years. We note that Wisconsin’s odometer disclosure regulations require lessors to retain a copy of odometer disclosure statements for five years. See Wis. Admin. Code § Trans 15412(2). We have tentatively concluded that Wisconsin must create a mechanism for lessors to retain odometer disclosure statements from lessees in order for lessors to comply with TIMA.

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

### V. NHTSA’s Initial Determination

For the foregoing reasons, NHTSA preliminarily grants Wisconsin’s petition regarding proposed alternate disclosure requirements with respect to vehicle transfers, subject to resolution of certain issues. As noted above, an issue is how the proposed Wisconsin system would manage disclosure when the seller is unavailable. Second, as explained above, we have tentatively concluded that Wisconsin will need to amend its program to permit lessors to retain each odometer disclosure statement they give and receive. The Agency also asks that Wisconsin clarify the system’s ability to allow lessors to place a different brand on the disclosure statement in those instances where the lessor believes, or has reason to believe, that the statement provided by the lessee is inaccurate. During the comment period, we expect Wisconsin to submit additional information demonstrating how its program satisfies these concerns or that its program has been amended to satisfy these concerns.

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 Wisconsin’s petition, it would likely reserve the right to rescind that grant in the event that future information indicates that, in operation, Wisconsin’s alternate disclosure 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: April 7, 2010.

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

[FR Doc. 2010-8321 Filed 4-21-10; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R1-ES-2009-0043; MO 92210-0-0008 B2]

#### **Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, Idaho, as Endangered or Threatened; Correction**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding; correction.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announced in our 12-month finding on a petition to list the mountain whitefish (*Prosopium williamsoni*) in the Big Lost River, Idaho, under the Endangered Species Act of 1973, as amended (Act), that listing was not warranted. Our finding published in the **Federal Register** on April 6, 2010, but two figures were omitted from the document. We now provide those two figures.

**ADDRESSES:** Our finding is available on the Internet at <http://www.fws.gov/idaho>, and also at <http://www.regulations.gov> at Docket No. FWS-R1-ES-2009-0043. Supporting documentation we used in preparing the finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Idaho Fish and

Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709. We will accept any new information, materials, comments, or questions concerning this finding at any time at this address.

**FOR FURTHER INFORMATION CONTACT:** Acting State Supervisor, Idaho Fish and Wildlife Office (*see ADDRESSES*); by telephone at 208-378-5243; and by facsimile at 208-378-5262. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

Our announcement of a 12-month finding on a petition to list the mountain whitefish (*Prosopium williamsoni*) in the Big Lost River, Idaho, under the Act (16 U.S.C. 1531 *et seq.*) published in the **Federal Register** on April 6, 2010 (75 FR 17352), with minor errors we now correct in this document.

In the published notice, Figure 1 is mentioned two-thirds the way down the first column of page 17353, but the figure itself is omitted. Under the header *Species Distribution and Habitat*, the figure should be inserted at the end of the first paragraph.

In the published notice, Figure 2 is mentioned two-thirds the way down the second column of page 17353, but the figure itself is omitted. Under the header *Distribution and Habitat Within the Big Lost River Basin*, the figure should be inserted at the end of the paragraph.

Both figures are provided below.

**BILLING CODE 4310-55-P**