

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 580**

[Docket No. NHTSA–2019–0089]

RIN 2127–AL39

Odometer Disclosure Requirements

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

ACTION: Final rule.

SUMMARY: This final rule is issued to fulfill a requirement in the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP–21) that NHTSA establish regulations permitting states to adopt schemes that allow electronic odometer disclosure statements in conjunction with electronic titling systems associated with the transfer of interests in motor vehicles. Amendments in this final rule allow odometer disclosures in an electronic medium while maintaining and protecting the existing system(s) ensuring accurate odometer disclosures and aid law enforcement in prosecuting odometer fraud. To accomplish this goal, the final rule amends prior regulations governing transactions made on paper titles and similar documents allowing odometer disclosures to be made in a purely electronic environment or through using paper documents that are scanned and converted into electronic form and stored in a state data system. This final rule also adds new sections containing specific additional requirements only applying to electronic disclosures to ensure the secure creation and maintenance of electronic records. NHTSA is also amending the mileage disclosure exemption to vehicles that are 20 years old or older.

DATES:

Effective date: This rule is effective December 31, 2019.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than November 18, 2019.

Incorporation by Reference: The incorporation by reference of certain publications listed in the standard is approved by the Director of the Federal Register as of December 31, 2019.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety

Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

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I. Executive Summary*A. Summary of Requirements of the Final Rule*

On Friday, March 25, 2016, NHTSA published a notice of proposed rulemaking (NPRM) specifying potential amendments to part 580 allowing states and other jurisdictions to establish electronic odometer disclosure schemes allowing odometer disclosures required by the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) to be made electronically (81 FR 16107). The odometer disclosure laws and regulations protect purchasers of motor vehicles from odometer fraud. See Public Law 92–513, 86 Stat. 947, 961–63 (1972).

The NPRM discussed the Moving Ahead for Progress in the 21st Century Act of 2012’s (MAP–21, or Pub. L. 112–141) direction that NHTSA promulgate regulations permitting written odometer disclosures and statements to be made electronically. To provide background and context for the proposed rules, the NPRM examined the history and development of existing odometer statutes and regulations from their inception in the Cost Savings Act of 1972 (Pub. L. 92–513, 86 Stat. 947, 961–63 (1972)) through the Truth in Mileage Act (TIMA) and subsequent amendments.¹ The NPRM also noted that § 24111 of the Fixing America’s Surface Transportation Act of 2015 (FAST Act, or Pub. L. 114–94), allows states to adopt electronic odometer disclosure systems without prior approval of the Secretary (“the Secretary”) of the Department of Transportation until the effective date of the final rule addressed by this notice. *Id.*

The salient provisions of the odometer disclosure regulations, 49 CFR 580.5, 580.7 and 580.13, were described in the NPRM, including the requirement that odometer disclosures must be made on the title (Section 580.5(c)), the attestation made when executing the

¹ Public Law 100–561 sec. 40, 102 Stat. 2805, 2817 (1988) added Section 408(d)(2)(C) allowing use of secure power of attorney. 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 a vehicle be titled in the state in which the power of attorney was issued. See Public Law 101–641 sec. 7(a), 104 Stat. 4654, 4657 (1990). The Cost Savings Act, as amended by TIMA, was repealed in 1994 and reenacted and recodified without substantive change. Public Law 103–272, 108 Stat. 745, 1048–1056, 1379, 1387 (1994).

disclosure (§ 580.5(e)), as well as security features incorporated into titles and other documents to guard against tampering and counterfeiting (Section 580.4). Recordkeeping requirements, which are critical for effective detection and prosecution of odometer fraud, were also addressed. As the NPRM proposed modifying exemptions from disclosure in § 580.17, the existing provisions of this section were also described.

Because of their instructive value, the NPRM examined the petition process by which states may seek approval of alternative odometer disclosure schemes (§ 580.11) and petitions from Virginia, Wisconsin, Florida, New York, and Texas seeking approval of electronic disclosure systems. The NPRM observed such systems must minimize or eliminate disclosures made on paper, provide adequate means for verifying identities, link or merge disclosures with the record title, and preclude duplicate electronic and paper titles. Additionally, the NPRM stated electronic odometer disclosure systems must meet special conditions involved in vehicle leasing, provide for adequate recordkeeping and record retrieval, and accommodate interstate transactions between electronic and paper title jurisdictions.

The NPRM observed the purpose of the odometer disclosure provisions of the Cost Savings Act, as amended, is to protect consumers by ensuring they receive valid representations of a vehicle's actual mileage at the time of transfer. The Agency noted an additional purpose of creating a system of records and a paper trail to facilitate detection and prosecution of odometer fraud. Proposals set forth in the NPRM sought to preserve these attributes while allowing jurisdictions maximum flexibility in developing and deploying electronic titling and odometer disclosure schemes. The NPRM proposed changing part 580 to recognize physical and electronic documents by amending § 580.1 to add the option of electronic disclosures; § 580.3 to add new definitions and amend existing definitions to accommodate physical and electronic filings; § 580.4 to clarify separate requirements for the security of physical disclosures and electronic disclosures; § 580.5 to clarify methods of disclosure for physical and electronic systems; § 580.7 to add provisions allowing for the option of electronic disclosures for leased motor vehicles; § 580.8 to include electronic copies among forms of disclosures that must be retained and general requirements for that retention; §§ 580.13 and 580.14 to allow use of a power of attorney to

address interstate transfers and added a new § 580.6 (previously reserved), which would contain unique requirements for electronic odometer disclosures. Other amendments proposed in the NPRM sought to correct a typographical error, update NHTSA's address, strike obsolete text in § 580.12 and extend the disclosure exemption in § 580.17 from 10 years to 25 years.

After careful consideration of all available information, including public comments submitted in response to the NPRM, the agency decided to adopt amendments proposed by the NPRM for §§ 580.1, 580.10, 580.11 and 580.12 without substantive change. Remaining amendments in this final rule differ from proposals in the NPRM. Some of these changes are minor. For example, the final rule replaces the word "his" with "their" and makes other modifications for gender neutrality. Similarly, to enhance clarity, the final rule establishes as definition of "jurisdiction" that encompasses states and territories and replaces "state" wherever formerly used in part 580 with "jurisdiction." This final rule also adopts additional amendments to enhance clarity and accuracy. Section 580.2 is amended to better describe the status of a vehicle upon termination of a lease, and the term "purchasers" has been replaced with the more accurate and less restrictive term "transferees." Consistent with the former amendment, the term "dealer" in § 508.13(g) has been changed to "transferee" to reflect that those receiving ownership may include persons or entities who are not dealers.

This final rule also implements significant changes to proposals contained in the NPRM. Broad definitions of physical documents and electronic documents NHTSA proposed have been discarded. Commenters rightly observed these proposed definitions were not apt. The final rule therefore contains new definitions for "Access," "Electronic Power of Attorney," "Electronic Title," "Jurisdiction," and "Printed Name," and revises "Original Power of Attorney," "Sign or Signature," and "Transferor." These more precise definitions are applied throughout part 580 to facilitate transactions with physical and electronic titles and powers of attorney. In contrast to the NPRM, which did not provide for an electronic power of attorney but allowed electronic reassignments, this final rule authorizes both under certain circumstances. The definition of "Sign or Signature" has been modified from our earlier proposal in that requirements for an electronic signature require a

National Institute of Standards (NIST) level 2 authentication system rather than NIST Level 3. The final rule's requirements for electronic titles and electronic powers of attorney also diverge from the NPRM in allowing authorized modifications to electronic records. In addition, the final rule more clearly recognizes electronic titles and odometer disclosures may take many forms, from scanned copies of paper documents to database entries. Recognizing technologies such as "pen pads" may be used in electronic titling and odometer disclosure systems and paper documents may, in some jurisdictions, be employed in an electronic odometer disclosure system, the final rule removes the NPRM's proposal to delete printed names from electronic transactions. The final rule also modifies requirements for scanning documents to allow document conversion in black and white at a resolution of 200 dot per inch (dpi). Recordkeeping requirements of §§ 580.8 and 580.9 are changed from our earlier proposal to allow more options for transferees and to streamline the proposed rules for auctions. NHTSA has now adopted provisions allowing electronic and paper powers of attorney when a title is unavailable to a transferor because the title is lost, physically held by a lienholder, electronically controlled by a lienholder, or when an electronic title is inaccessible. Our NPRM also proposed changing the exemption from mileage disclosure in § 580.17 for cars 10 years old or older to 25 years old or older. The final rule adopts an exemption for cars 20 years old or older and explicitly sets out how this modified exemption will be applied.

B. Costs and Benefits

As discussed in Section V of this notice, the agency only performed a detailed cost benefit analysis for the exemption amendments of this final rule. With the exception changing the exemption from mileage disclosure from 10 to 20 years this final rule imposes no mandatory requirements. Amendments to part 580 simply allow jurisdictions the option of adopting electronic title and odometer disclosure systems without seeking prior approval from NHTSA. To the extent provisions in this final rule may affect existing electronic title and odometer disclosure systems in the small number of jurisdictions with such schemes, the agency believes provisions of this final rule are sufficiently flexible requiring little or no change. Since the FAST Act's temporary suspension of the requirement that states must petition NHTSA for

approval of alternative electronic odometer disclosure schemes ends on the effective date of this final rule, states seeking to adopt such schemes after that date must either comply with the provisions of this final rule or petition the agency for approval of alternative procedures.

To the limited extent this final rule impacts states and other jurisdictions with electronic titles systems, the agency believes that there is the potential for significant cost savings to be realized through issuance of this final rule. These savings would first be manifested through avoidance of legal and administrative costs to prepare and submit petitions to NHTSA seeking approval of electronic title systems. Moreover, by establishing uniform rules for electronic title systems, this final rule facilitates adoption of electronic disclosures and titles and the use of these mechanisms in vehicle transactions. Currently, NHTSA estimates that there are at least 40 million odometer disclosures made every year in the United States. Since the agency believes that electronic disclosure will be less costly than paper disclosures, even a minor cost savings per disclosure could lead to large societal savings. However, the agency does not have any data on the extent to which this rule will incentivize their existing practices. Certainly, this rule will make it far easier to adopt electronic disclosures as states will no longer need to petition NHTSA if the requirements of this final rule are met. It is reasonable, then, to expect that more states will adopt this practice, but the agency does not now have sufficient data to determine how this general expectation will translate into quantifiable cost savings.

The final rule's modification of the vehicle age-based exemption from odometer disclosure will impose costs and produce benefits. The total cost of the change to the exemption in this final rule is estimated to be from the minimum of \$0.7 million in 2020 to the maximum of \$5.4 million in 2029 and later. If the rule can deter 5 percent of rollbacks from affected vehicles the rule would eliminate \$1.5 million in annual consumer losses in 2020 and \$7.5 million in such losses from 2029 forward.

II. Background and Summary of Final Rule

A. MAP-21

This document is being issued pursuant to the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21, or Pub. L. 112-141), which

amended Section 32705 of Title 49, United States Code. The amendments required the Secretary to prescribe regulations permitting any written disclosures or notices and related matters to be provided electronically not later than 18 months after the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012. Section 31205, 126 Stat. 761 (2012).

B. FAST Act Amendments

Section 24111 of the Fixing America's Surface Transportation Act of 2015 (FAST Act, or Pub. L. 114-94), signed into law December 4, 2015, allows states to adopt electronic odometer disclosure systems without prior approval of the Secretary. Any such system must comply with applicable state and federal laws regarding electronic signatures under 15 U.S.C. 7001 *et seq.*, meet requirements of 49 U.S.C. 32705 and provide for "appropriate authentication and security measures," Public Law 114-94 section 24111. States may only adopt electronic odometer systems without prior approval of the Secretary until the effective date of rules proposed in this notice. *Id.*

In providing states with the opportunity to implement electronic odometer disclosure systems until the effective date of this final rule, FAST Act amendments do not alter existing statutory odometer disclosure requirements or their intent. Effective odometer disclosure systems are essential to protecting consumers from odometer fraud and must reduce or eliminate opportunities for such fraud to the greatest practicable extent. Federal and state governments have an interest in preventing such fraud.

This final rule and NHTSA's prior responses to state petitions for approval of alternative disclosure schemes (discussed below) contain guidance on potential strengths and weaknesses of electronic odometer disclosure schemes.

C. The Cost Savings Act, the Truth in Mileage Act and Subsequent Amendments

1. The Cost Savings Act

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

To assist purchasers in knowing the true mileage of a motor vehicle, Section 408 of the Cost Savings Act required the transferor of a motor vehicle to provide written disclosure to the transferee at

the time of the transfer of ownership of the vehicle. *See* Public Law 92-513, 408, 86 Stat. 947 (1972). Section 408 required the Secretary to issue rules requiring the transferor to provide a written disclosure to the transferee in connection with the transfer of the vehicle. 86 Stat. 962-63. The written disclosure was to include the cumulative mileage registered on the odometer, or disclose 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 traveled. The rules were to prescribe the way information is disclosed under this section and in which such information is retained. *Id.* Section 408 further stated if any transferor violated any rules under this section or knowingly gave a false statement to a transferee in making any disclosure required by such rules is a violation. *Id.* The Cost Savings Act also prohibited disconnecting, resetting, or altering motor vehicle odometers. *Id.* The statute subjected violators to civil and criminal penalties and provided for federal injunctive relief, state enforcement, and a private right of action.

Despite these protections, there were shortcomings in odometer provisions of the Cost Savings Act. In some states, the odometer disclosure statement was not on the title; instead, it was a separate document that could easily be altered or discarded and did not travel with the title. Titles were not on tamper-proof paper, and mileage disclosures could be easily altered. Problems were compounded by title washing through jurisdictions with ineffective controls. In addition, there were considerable misstatements of mileage on vehicles that had formerly been leased vehicles, as well as on used vehicles sold at wholesale auctions.

2. The Truth in Mileage Act

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

Among other requirements, TIMA precluded the licensing of vehicles unless several requirements were met by the transferee and transferor. Titles must be printed by a secure printing process or other secure process and must indicate the mileage and contain space for the transferee to disclose the mileage in a subsequent transfer. The transferee, when applying for a title, is required to provide the transferor's (seller's) title, and if that title contains a space for the

transferor to disclose the vehicle's mileage, that information must be included, and the statement must be signed and dated by the transferor.

As to lease vehicles, TIMA stated NHTSA must publish rules requiring the lessor of vehicles to advise its lessee(s) that the lessee is required by law to disclose the vehicle's mileage to the lessor upon the lessor's transfer of ownership of the vehicle. Additionally, TIMA required auction companies establish and maintain records on vehicles sold at the auction, including the name of the most recent owner of the vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auction took possession of the vehicle.

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

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

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

Because of the 1994 recodification of various laws pertaining to the DOT, the Cost Savings Act, as amended by TIMA, was repealed, reenacted, and recodified without substantive change. See Public Law 103-272, 108 Stat. 745, 1048-1056, 1379, 1387 (1994). The statute is now codified at 49 U.S.C. 32705 *et seq.* In particular, section 408(a) of the Cost Savings Act was recodified at 49 U.S.C. 32705(a). Sections 408(d) and (e), which

were added by TIMA (and later amended), were recodified at 49 U.S.C. 32705(b) and (c). Provisions pertaining to approval of state alternate motor vehicle mileage disclosure requirements were recodified at 49 U.S.C. 32705(d).

D. Overview of NHTSA's Odometer Disclosure Regulations

The implementing regulations for the odometer provisions of the Cost Savings Act, as amended, are found in part 580 of title 49 of the Code of Federal Regulations (CFR). These regulations establish minimum requirements for odometer disclosure, the form of certain documents employed in disclosures, and the security of title documents and power of attorney forms. The regulations also set rules for transactions involving leased vehicles, set recordkeeping requirements including those for auctions, and authorize the use of powers of attorney in limited circumstances. Additionally, part 580 contains provisions exempting certain classes of vehicles from disclosure regulations and provides a petition process by which a state may obtain approval of alternate disclosure requirements. The following paragraphs summarize important aspects of the regulations.

Odometer disclosures must be made on a secure title, reassignment document, or power of attorney when a vehicle is transferred to a new owner. Section 580.5(c) requires a transferor to sign, and to print his/her name on an odometer disclosure statement with the following information: (1) The odometer reading at the time of transfer (not to include tenths of miles); (2) the date of transfer; (3) the transferor's name and current address; (4) the transferee's name and current address; and (5) the identity of the vehicle, including its make, model, year, body type, and VIN. The transferor must also, under § 580.5(e), certify whether the odometer reading reflects the vehicle's actual mileage, disclose whether the odometer reading reflects mileage in excess of the odometer's mechanical limit or, if the odometer does not reflect the actual mileage, must state the odometer reading should not be relied on. The transferee must acknowledge the reading by signing the statement. Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor.

To ensure vehicles subject to leases of four months or more have accurate odometer readings executed on titles at the time of transfer, § 580.7(a) requires lessors to provide written notice to the lessee of the lessee's obligation to disclose the mileage of the leased

vehicle and penalties for failure to disclose the information. Before a change in ownership of a leased vehicle, lessees are required by § 580.7(b) to provide disclosures comparable to those required by § 580.5(c) and (e), noted above, to the lessor along with the date the lessor notified the lessee of disclosure requirements. Additionally, the lessor must state the date the lessor received the lessee's completed disclosure statement and must sign it. Under § 580.7(d) a lessor transferring ownership of a vehicle (without obtaining possession) may indicate the mileage disclosed by the lessee on the vehicle's title unless the lessor has reason to believe the lessee's disclosure is inaccurate.

When a title is physically held by a lienholder or has been lost, § 580.13(a) allows a transferor to give the transferee a power of attorney to execute the mileage disclosure on the title once it is obtained by the transferee. Section 580.13(b) and (d) provide that the transferor must disclose information identical to that required by § 580.5(c) and (e) on part A of the secure power of attorney form. The transferee is required to sign the power of attorney form part A and print his/her name. *Id.* In turn, § 580.13(f) requires the transferee, upon receipt of the transferor's title, to make on the title exactly the mileage disclosure as disclosed by the transferor on the power of attorney.

After part A of the power of attorney form has been used, part B may be executed when a vehicle addressed on part A is resold. Part B of the secure power of attorney form allows a subsequent transferee to give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the title, while maintaining the integrity of the first seller's disclosure. The disclosure required to be made by the transferor to the transferee for this transaction on part B of the power of attorney form tracks information required to be made by the transferor to the transferee on the title when ownership of a vehicle is transferred on a title under 49 CFR 580.5. Among other things, the power of attorney must contain a space for the transferor to disclose the mileage to the transferee and sign and date the form, and a space for the transferee to sign and date the form.

To ensure disclosures made through a power of attorney are accurate, § 580.15 requires the person exercising the power of attorney to certify, on part C of the form, that disclosures made on a title or

reassignment document on behalf of the original seller are identical to those found on part A of the power of attorney. This section also requires a certification, when part B is used, that the mileage disclosed and acknowledged under part B is greater than the mileage disclosed in part A.

Titles, reassignment documents, and the power of attorney form must be protected against counterfeiting and tampering by a secure printing process or other secure process (§ 580.4). These titles, reassignment documents, and powers of attorney must contain a statement referring to federal odometer law and a warning that failure to complete the form or providing false information may result in fines or imprisonment. See § 580.5(d). For a leased vehicle, the lessor is obligated to provide the lessee with written notice of the obligation to make a mileage disclosure, and that notice must contain the same warnings (§ 580.7(a)). Except in the limited context of the proper use of the power of attorney forms, no person shall sign an odometer disclosure statement as the transferor and transferee in the same transaction (§ 580.5(h)).

Part 580 establishes minimum requirements for record retention, ensuring a paper trail sufficient to support detection and prosecution of odometer fraud. Section 580.8(a) requires motor vehicle dealers and distributors, who are required to issue an odometer disclosure, to retain copies of each odometer statement they issue and receive for five years. Lessors of leased vehicles must retain the odometer statement they receive from their lessee for five years from the date they transfer ownership of the leased vehicle (§ 580.8(b)). If a power of attorney authorized by §§ 580.13 and/or 580.14 has been used, dealers must retain copies of the document for five years (§ 580.8(c)). Section 580.9 requires auction companies to retain the name of the most recent owner on the date the auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auction company took possession of the motor vehicle for five years from the date of sale. States are required, under § 580.13(f) to retain the original copy of the power of attorney authorized by § 580.13(a) or (b) and the title for a period of three years or a time period equal to the state's titling record retention period, whichever is shorter.

Other sections of part 580 establish a petition process by which states may seek assistance in revising their odometer laws (§ 580.10), may seek

approval of alternative odometer disclosure schemes (§ 580.11), and establish exemptions from the disclosure requirements of §§ 580.5 and 580.7 (§ 580.17). Exemptions in 580.17 apply to transfers or leases for: (1) Vehicles with a Gross Vehicle Weight Rating (GVWR) over 16,000 pounds; (2) vehicles that are not self-propelled; (3) vehicles manufactured in a model year beginning 10 years before January 1 of the calendar year in which the transfer occurs; (4) certain vehicles sold by the manufacturer to any agency of the United States; and (5) a new vehicle prior to its first transfer for purposes other than resale.

E. Previous State Petitions for Approval of Electronic Odometer Disclosure Schemes

The Cost Savings Act, as amended by TIMA in 1986, contains a specific provision on approval of state alternative odometer disclosure programs. Subsection 408(f)(2) of the Cost Savings Act (now recodified at 49 U.S.C. 32705(d)) provides NHTSA shall approve alternate motor vehicle mileage disclosure requirements submitted by a state unless NHTSA determines such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be. (Subsections 408(d), (e) of the Costs Savings Act were recodified to 49 U.S.C. 32705(b) and (c).)

Virginia, Wisconsin, Florida, New York, Texas, and Arizona filed petitions with NHTSA seeking approval of electronic alternative odometer programs under 49 U.S.C. 32705(d). NHTSA has approved, in whole or in part, five of these six petitions and not taken final action on the Arizona petition, which was made moot by the passage of section 24111 of the FAST Act and Arizona's adoption of a disclosure system under that provision. Review of the systems proposed in these petitions and the terms of NHTSA's actions in response to them, illustrates the variations in schemes between jurisdictions and the concerns raised by electronic odometer disclosure.

Petitions filed by three states, Virginia, Texas, and Wisconsin, shared certain characteristics. In each case, the proposed alternative odometer disclosure schemes applied only to intrastate transactions. Each of the three proposals also relied on multi-factor authentication to ensure the identity of persons executing the odometer disclosures. All three proposals relied on substituting electronic versions of the paper odometer disclosure form by maintaining the electronic form on state-controlled systems. These systems

also held data elements comprising the electronic title.

Virginia petitioned NHTSA in December 2006 seeking approval of electronic odometer disclosure for intrastate transfers of vehicles not subject to liens. Virginia proposed using a paperless system where users would enter the information and attestations found on paper odometer disclosures into a state electronic system. The petition stated unique personal identification numbers (PIN) and unique customer numbers sent by conventional U.S. mail would be used with the customer's date of birth (DOB) to create a verified account and signature. Dealer users would provide lists of employees authorized to make disclosures, and these individuals would get PINs by conventional mail to verify their identity. In dealer sales, the employee PIN and a dealer number would be used. Disclosures would be made in the same way a paper disclosure would be made. The seller or transferor would fill out an electronic form identical to the paper form and sign it electronically. The buyer or transferee would examine the disclosure and either accept it or reject it. Once accepted, the disclosure would be linked to the electronic title, and the transferor would be instructed to mail any paper title to the state.

A June 2008 petition by Texas sought approval of alternative odometer disclosure requirements for intrastate transactions between residents transferring vehicles not subject to liens. Texas proposed to eliminate paper titles (except as requested), create electronic titles and require in-state vehicle transfers to be made electronically. Users, who would have to be Texas residents holding a valid state identification credential, would be verified by matching four personal data elements and two forms of identification against a state database. Odometer mileage disclosures would be made by requiring both parties to separately log into a secure website, make required disclosures and verification of the mileage, and accept or reject the transaction. The seller or transferor would then mail the paper title to the state for destruction. The title and odometer disclosure would remain as an electronic record, and the transferee could receive a secure paper title on request.

Wisconsin filed a petition in September 2009 proposing an electronic odometer disclosure scheme limited to intrastate transactions where at least one party would be a motor vehicle dealer. Identity verification would be based on customers entering a minimum of three personal identifiers—name, address,

date of birth, product number, Driver License/ID number, and a Federal Employer Identification Number or partial Social Security Number—in the state system. Once verified, the user could begin the title transaction. As with the Virginia and Texas petitions, Wisconsin's proposal linked electronic odometer disclosures to the title record in the state's database. Similarly, a title could not be transferred unless the electronic odometer disclosure had been properly completed. Again, if a paper title was needed, the Wisconsin DMV would print it on secure paper with the odometer disclosure statement in the proper location and format under existing rules.

Finding that the Virginia scheme would properly verify user identities, provide security equivalent to the paper system, and create an adequate system of records, NHTSA granted Virginia's request on January 7, 2009 (74 FR 643). NHTSA granted the Texas petition on April 22, 2010 (75 FR 20925) after that state clarified the Texas system allowed transferees to obtain a paper copy of the title meeting TIMA, required dealers to retain copies of odometer disclosures, and required disclosure of the brand (the brand states whether the odometer reflects the actual mileage, reflects mileage in excess of the designated odometer limit or differs from the actual mileage and is not reliable.) *Id.* at 20928. NHTSA also noted since Texas would require persons with an electronic title to submit any paper titles to Texas for destruction, the proposal would prevent potential mischief caused by duplicate titles. *Id.* at 20929. In a final determination published on January 10, 2011, 76 FR 1367, the agency approved the Wisconsin proposal based on its user verification scheme, the linkage of a properly executed odometer disclosure to the electronic title, and the existence of safeguards preventing the simultaneous existence of an electronic and paper title.

Petitions filed by two other states, Florida and New York, differed from other petitions as systems proposed relied, to differing degrees, on the use of paper forms for executing the odometer disclosures. These paper forms, which were not titles, reassignment documents or a power of attorney specified under part 580, were employed to transmit information either before entry into an electronic system or to facilitate interstate transactions. Because paper documents are employed in conjunction with an electronic system, these odometer disclosure schemes can be referred to as "hybrid" systems because of their reliance on paper and electronic information storage.

In December 2009, Florida proposed a hybrid electronic disclosure system in December 2009 wherein the actual data entry into the state system would be made by authorized tag agents using data terminals. For private sales, authorized tag agents required transferors and transferees to fill out odometer disclosures on paper forms. These paper forms would be executed by both parties at the tag agent's facility after each had verified their identity to the tag agent. The tag agent would enter the data into Florida's system and create an electronic title for the transferee, or upon request, provide the transferee with a paper title. For dealer transactions, Florida proposed transferors with e-title would complete a secure reassignment form with odometer disclosure. When the dealer transferred that vehicle to another transferee, both parties would complete another secure reassignment form with an odometer disclosure. The dealer would take both secure reassignment forms to a tag agency. The tag agent would enter the disclosures, and the data needed to create an electronic title or provide the transferor with the option of obtaining a paper title. Similarly, a lessee of a leased vehicle with an e-title would bring the vehicle to a dealership and make the odometer disclosure on a secure physical document. The lessor would then sign a secure physical power of attorney to the dealer authorizing the dealer to execute the odometer disclosure on its behalf. The dealer would then sign a physical secure reassignment form agreeing with the odometer disclosure. When the dealer sold the vehicle to another buyer, the dealer would take the various physical documents (bill of sale, reassignment document, and power of attorney) to the tag agency, where the tag agent would enter the required data and either create an electronic title in Florida's system or have a paper title provided for the buyer.

New York filed a petition with NHTSA in November 2010, seeking conversion of the existing paper process for dealer transactions to an electronic one. A transferor's odometer disclosure would be made on the title and then recorded in New York's system by a specific dealer employee whose identity had been verified. If that dealer sold a vehicle to another licensed New York dealer, the selling dealer would enter the current odometer reading, vehicle and seller and purchaser information. The purchasing dealer would subsequently sign on, review the selling dealer's odometer disclosure, and other data and accept or reject the transaction.

Subsequent New York dealer transfers would be recorded in the same manner.

New York proposed that when a vehicle owned by a New York dealer is sold to a retail purchaser, salvage dealer, out-of-state buyer, or other non-New York dealer purchaser, the selling dealer would access its system, enter odometer and other information, including the seller and purchaser. A two-part sales receipt/odometer statement would be created, and if correct, would be accepted by the buyer. The dealer would then print a two-part sales receipt with a disclosure statement on each part. The dealer would retain one part, and the purchaser would be given the other, along with the original title acquired by the dealer upon vehicle purchase.

NHTSA granted the Florida petition in part and denied it in part, approving provisions for private party transactions but denying proposed terms for dealer and leased vehicle transactions. 77 FR 36935 (June 20, 2012). Among other things, NHTSA observed dealer transactions relied on odometer disclosures being made on documents other than the title itself. This, in the agency's view, is inconsistent with TIMA's command that disclosures be made on the title and not on a separate document. Further, the Florida dealer transaction scheme allowed issuance of new registrations after submission of a disclosure statement on a physical reassignment document rather than on the title itself, thereby violating the statutory requirement that a title with an odometer statement must be submitted prior to registering the vehicle. Florida's proposed requirements for leased vehicles were denied on similar grounds because of the numerous times disclosures had to be made on documents other than the title that did not meet security and content thresholds. Finally, the use of a power of attorney, where the lessor had access to the title, was inconsistent with TIMA.

NHTSA's initial determination denied New York's petition because it used a non-secure receipt for odometer disclosure in transfers between New York dealers and out-of-state buyers and was, therefore, inconsistent with federal odometer law. 76 FR 65487, 65491 (Oct. 21, 2011). New York subsequently amended its proposal by replacing the non-secure document with a secure state-issued paper, New York State MV-50 (Retail Certificate of Sale) form. The result of this change was a consumer purchasing a vehicle from a dealer would then receive the original title and odometer statement executed by the owner, who sold the vehicle to the dealer, and the secure MV-50 form with

an odometer disclosure. Additionally, the mileage disclosed at the time of the sale to the dealer and the mileage disclosed at the time the dealer sold the vehicle to the subsequent retail purchaser would be recorded in New York's system and available for viewing through a web portal. The agency's final determination, 77 FR 50381 (Aug. 12, 2012), granted the New York petition as amended. NHTSA found the employment of the secure state-issued and numbered MV-50 form, in conjunction with the odometer disclosure on the original seller's title and the recording of these disclosures in New York's electronic system, met the purposes of TIMA.

Processing foregoing petitions illuminated concerns relevant to this final rule. Any electronic odometer disclosure system must follow TIMA's command that odometer disclosures must be made on the title itself, the electronic equivalent of that title, or a selectively narrow set of tightly controlled secure documents. While jurisdictions should be accorded a degree of flexibility in designing and executing electronic titling and odometer disclosure schemes, an electronic odometer disclosure system should minimize or eliminate odometer disclosures on documents other than the title. Other concerns include methods of transmitting secure paper documents, the means for verifying the identity of transferors and transferees, the potential for the simultaneous existence of paper and electronic titles and the problems posed by interstate transactions between states with traditional and electric systems.

NHTSA's experience with petitions filed by Virginia, Texas, Florida, New York, and others demonstrates states choose to create a paperless system where all parties to a transaction make direct entries into the system or may employ a "hybrid" scheme where paper forms are employed as part of the process. As discussed below, some commenters responding to the NPRM believed amendments proposed by NHTSA did not adequately address the characteristics of such hybrid systems. An additional concern raised by commenters, particularly states that had previously had alternative odometer disclosure systems approved through the petition process, was the applicability of provisions in the final rule to those systems. The agency believes provisions of this final rule are sufficiently flexible to minimize potential conflicts with terms of our prior approvals of alternative odometer disclosure schemes.

F. Notice of Proposed Rulemaking

The NPRM was published in the **Federal Register** on March 25, 2016 (81 FR 16107). This notice explained the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21, or Pub. L. 112-141) directed NHTSA to prescribe regulations permitting any written odometer disclosures or notices to be provided electronically. See section 31205, 126 Stat. 761 (2012). The proposed amendments sought to allow odometer disclosures in an electronic medium while maintaining accurate odometer disclosures and aiding law enforcement in prosecuting odometer fraud. To accomplish this end, the proposal addressed electronic signatures and identity verification, security concerns, record retention, leased vehicle transfers, and interstate transactions between jurisdictions with electronic and paper titles. The NPRM proposed modifying odometer disclosure exemptions for transfers of ten year old vehicles to transactions involving 25 year old vehicles. Other proposed amendments addressed restructuring of part 580, corrections to typographical errors and updating NHTSA's address.

Although Congress had directed that NHTSA promulgate regulations allowing electronic odometer disclosures and, through the FAST Act amendment discussed above, facilitated state adoption of electronic odometer disclosure systems until the effective date of this final rule, few jurisdictions have implemented schemes for electronic titles and electronic odometer disclosure, either in whole or in part. Given the nascent state of electronic titling and odometer disclosures, as well as variations in existing title systems in states and territories, the NPRM asked for comments on how prescriptive NHTSA's approach should be. While more prescriptive requirements might better protect vehicle buyers and force a degree of uniformity in future electronic systems, such an approach by NHTSA could limit or hinder adoption of electronic titling and odometer disclosure system. Additionally, a highly prescriptive approach could be interpreted to be inconsistent with the direction in MAP-21 to promulgate regulations that simply permit electronic disclosures. The foregoing concerns prompted NHTSA to specifically request comments in the NPRM on whether it should adopt a minimalist approach or a more prescriptive set of rules.

NHTSA chose to propose modifications to the existing structure of part 580 to accommodate electronic

odometer disclosure schemes. Accordingly, the NPRM sought to add new definitions in part 580.3 for the terms "Electronic Document," "Physical Document," and "Sign or Signature." As proposed, "Electronic Document" would mean "a title, reassignment document or power of attorney that is maintained in electronic form by a state, territory or possession that meets all the requirements of this part." The NPRM proposed defining a "Physical Document" as "a title, reassignment document or power of attorney printed on paper that meets all the requirements of this part." The proposed definition of "Sign or Signature" encompassed both hand written and electronic signatures and, for the electronic signature, also specified that a valid electronic signature must incorporate an identity authentication scheme equivalent to or greater than a NIST Level 3 system. This definition also specified a valid electronic signature must be made by the specific individual whose identity had been verified, regardless of whether the person was signing as in individual or as a representative of a business. The NPRM specifically requested comments on the propriety and appropriateness of these proposed definitions. In addition, the NPRM asked for comments on implementation of identity verification for transferors and transferees in electronic transactions, including what level of NIST verification should be appropriate, whether car dealers should provide secure computing services, and what security measures should be mandatory for such services.

In contrast to a written signature, which through handwriting analysis can be used to identify an individual even in the event of forgery, an electronic signature is, without sufficient verification and other safeguards, anonymous. Because of this, NHTSA proposed that a valid electronic signature must be made by an individual. The NPRM also asked for comments on whether any other requirements are necessary to ensure investigators can back trace an electronic "signature" to identify the individual and/or computer used in the electronic equivalent of a paper trail or whether the proposed requirements could be used to identify individuals making unauthorized alterations to disclosure statements.

Consistent with its approach of modifying existing provisions of part 580 to allow electronic odometer disclosures, NHTSA also proposed amending § 580.4, which governed security features of printed forms, by creating a new paragraph (a) for paper documents and new paragraph (b) for

electronic records. The requirements for paper documents remained unchanged while the proposed paragraph (b) requirements set forth that electronic titles, power of attorney forms, and reassignment documents must be maintained in a secure environment and protected from unauthorized modification, alteration, or disclosure. Paragraph (b) also proposed that the system storing title and odometer disclosure information must record dates and times when documents are created, when odometer disclosures contained are signed, when documents are accessed, and when any attempt is made to alter or modify documents. The NPRM asked for comment on these proposals, including the degree to which the security and authenticity requirements for electronic documents appropriately matched those for paper documents.

The NPRM also addressed a bedrock concern of any electronic system creating and maintaining records having financial import—system security. Rather than attempt to specify security requirements, the NPRM explained the agency made a tentative determination that such an effort would be inappropriate given the comparatively slow pace of rulemaking in comparison to the rapidly evolving and changing landscape of cyber security. Just as software and hardware are constantly evolving and improving, cyber-attacks and efforts to undermine the security of electronic data systems are also changing rapidly and frequently. Moreover, the NPRM noted potential risks to property interests and commerce presented by insecure vehicle titling and odometer disclosure systems would be addressed by the jurisdictions creating these systems. The jurisdictions doing so would be better positioned to assess security risks and craft appropriate responses. The NPRM nonetheless requested comments on whether NHTSA should establish minimum security requirements, including hardware and natural disaster specifications, and if such security requirements should be modeled on the Federal Information Security Management Act (FISMA) framework.

Section 580.5 of part 580 dictates the content and manner of odometer disclosure. The NPRM proposed adding the phrase “whether a physical or electronic document” in § 580.5(a) so the disclosure requirements specified in § 580.5 would apply to paper and electronic transactions. Similarly, the NPRM also proposed amending § 580.5(c), governing the specific disclosures that must be made when transferring title, by adding the phrase

“physical document” in instances of paper title transfers and “electronic form incorporated into the electronic title.” to § 580.5(c) for instances of electronic title transfers. The agency also added a requirement that disclosures in the case of electronic titles must be on an electronic form incorporated into that title, that the electronic disclosure must be incorporated into the electronic title, and, in jurisdictions with electronic titles, reassignment documents could not be used in lieu of making the odometer disclosure electronically. The agency also asked for comments on the proposal that disclosures be made on an electronic form incorporated into the electronic title.

Under § 580.5(d), paper forms used to make odometer disclosures must contain certain legal notices and warnings intended to ensure those executing the forms are aware of their responsibilities and potential liability when doing so. The NPRM proposed extending these requirements to electronic disclosures transfers by amending § 580.5(d), specifying that in instances of electronic transfer, the required information must be displayed on the screen, and acknowledged as understood by that party, before any signature can be applied to the transaction. NHTSA also proposed amending § 580.5(f), requiring transferees to print their name on the disclosure and return a copy to the transferor, to restrict its application to paper transactions only. Because § 580.5(f) also requires transferees to provide transferors with a copy of the executed disclosure statement, the agency also proposed electronic disclosure systems provide a means for parties involved with the transaction to access copies of the disclosure. Although this proposal expanded the paper requirement from making a copy available to one party to both parties, NHTSA believed the burden of making an electronic copy of the disclosure statement to both parties rather than one would be minimally burdensome. The NPRM sought specific comments on these proposed amendments.

Section 580.5(g) of part 580 addresses the situation in which a vehicle has not been titled or where the existing paper title does not have sufficient space for making an odometer disclosure. As explained in the NPRM, NHTSA tentatively believed this provision should only apply in jurisdictions where paper titles and odometer disclosures are used. The agency thought any electronic titling system would have the capability to accept disclosures for multiple transactions

and could be configured to accept an odometer disclosure immediately prior to creation of the first electronic title. Accordingly, the NPRM proposed limiting application of § 580.5(g) to transactions employing paper documents in jurisdictions without electronic title systems. The NPRM asked for comments specifically addressing this proposal.

The NPRM also proposed adding a new § 580.6 to part 580 to create requirements resolving unique concerns posed by electronic odometer disclosures. To ensure systems creating and maintaining records provided a minimum level of security and certainty, the NPRM sought to add § 580.6(a)(1) requiring electronic records to be retained in a format that cannot be altered and, further, that indicates any attempts to alter it. As it is critical that parties to a transaction are who they claim to be for ownership and law enforcement purposes, the NPRM proposed in § 580.6(a)(2), a requirement that any electronic signature identify an individual. The section also proposed if an individual is acting in a business capacity or otherwise on behalf of any other individual or entity, that the business or entity also be identified as part of that unique electronic signature. Because the requirement to maintain or provide copies of paper documents exists in various places within part 580, the NPRM proposed accommodating these requirements in electronic disclosure systems by establishing, in § 580.6(a)(3), that any requirement in part 580 to disclose, issue, execute, return, notify, or otherwise provide information to another person is satisfied when a copy of the electronic disclosure or statement is electronically transmitted or otherwise electronically accessible to the party required to receive the disclosure. Although the NPRM noted NHTSA discouraged the continued use of paper documents in electronic disclosure jurisdictions, the agency proposed accommodating “hybrid” systems such as those seen in the Florida and New York petitions by creating § 580.6(a)(7) requiring that any physical documents used to make electronic disclosures comply with the security and other requirements applicable to paper documents in part 580.

The advent of electronic titles would not eliminate the demand for paper titles, particularly because paper titles are likely to be essential to completing interstate transactions between electronic and paper jurisdictions. Moreover, paper titles will need to be accounted for when electronic title systems are created. Since the

simultaneous existence of an electronic and a paper title would provide fertile ground for odometer fraud, the NPRM proposed, in § 580.6(a)(4) that any physical title replaced by an electronic title must be destroyed after creation of the electronic title. The proposed text of this section further provided that an electronic copy of the physical title be recorded and maintained for five years and that the electronic copy be retained in a format that cannot be altered and that indicates any attempts to alter it. If a paper title needed to be created from an electronic record, the NPRM proposed, in § 580.6(a)(6), that only states or their authorized surrogates could produce a secure paper title from an electronic record and that this paper title must meet the security requirements applicable to paper titles. Additionally, the proposed § 580.6(a)(6) stated that issuance of a paper title in an electronic title state must be memorialized by a record stating the electronic title has been superseded by a paper document that is the official title. As suggested by the Texas petition seeking approval of alternative odometer regulations, NHTSA also believed electronic title systems might have a means of making a paper document available to vehicle owners who would attest to the existence of an electronic title maintained by their jurisdiction. The NPRM proposed adding a provision in § 580.6(a)(5) permitting jurisdictions to issue such a document if they chose to do so. Because NHTSA anticipated electronic title and odometer disclosure systems would rely on scanned documents at various times and under various conditions, including interstate transactions from paper jurisdictions to electronic jurisdictions, the NPRM proposed adding § 580.6(a)(7) specifying that any conversion of physical documents to electronic documents must preserve the security features of the physical document and be scanned at a resolution of not less than 600 dots per inch (dpi). Again, the NPRM sought specific comments on the foregoing proposals.

The agency also proposed several amendments to § 580.7, which governs odometer disclosures for leased vehicles. Leased vehicles present challenges to the ordinary scheme for odometer disclosures because lessors usually hold the title to the vehicle but seldom have physical control over it. When a vehicle lease is terminated, the lessee typically surrenders the vehicle to a dealer while the lessor is responsible for making the required odometer disclosures on the title. To

facilitate transactions associated with terminating the lease, § 580.7(a) required lessors to provide lessee with a written notice explaining that the lessee must provide the lessor with an odometer disclosure statement and that failure to do so, or to do so in conformance with federal law, exposes them to criminal liability. Section 580.7(b) and (c) state lessees must execute an odometer disclosure statement with any transfer of ownership and provide this disclosure statement to the lessor. In turn, the lessor is required by § 580.7(d) to execute the disclosure statement on the vehicle title in conformance with the lessee's disclosure unless the lessor has reason to believe the lessee's disclosure is inaccurate. The NPRM proposed amending § 580.7(a) to allow lessors to provide notices to lessee electronically, proposed deletion of a printed name requirement for electronic odometer disclosures by lessees in § 580.7(b) and proposed adding a new § 580.7(e) stating an electronic system maintained by a lessor must meet the proposed security requirements in § 580.4(b). The NPRM also requested comments on whether leased vehicle electronic disclosures should be a required part of the electronic system established by a jurisdiction or are best developed by individual leasing companies.

Sections 580.8 and 580.9 include requirements for odometer disclosure record retention by motor vehicle dealers and distributors and by auction companies, respectively. Section 580.8(a) specifies dealers and distributors must retain a "Photostat, carbon copy or other facsimile copy of each odometer mileage statement which they issue and receive." Under both sections, records must be stored for five years in a manner and method so they are accessible to NHTSA investigators and other law enforcement personnel. The records must also be stored so they are difficult or impossible to modify. The NPRM proposed adding requirements in a new § 580.8(d) and § 580.9 that electronic odometer disclosure records kept by motor vehicle dealers, distributors, and auction companies must be stored in a format that cannot be altered and that indicates any attempts to alter the document, consistent with the standards set forth in proposed § 580.4(b). NHTSA requested comment on whether this requirement would be sufficient to allow law enforcement to detect altered documents.

The agency also proposed modifications to the power of attorney provisions in § 580.13(a) and (b), to allow an individual with a vehicle titled

in an electronic title state to use a power of attorney to sell a vehicle in a paper title state. This proposed expansion of the use of a power of attorney, in conjunction with the agency's view that the power of attorney provisions applicable to lost titles or titles held by lienholders would no longer be needed in electronic title jurisdictions, led the agency to propose adding the word "physical" in multiple places in §§ 580.13(f), 580.14(a), (e), and (f), and in 580.15(a) to restrict application of various provisions to paper title jurisdictions. The NPRM asked commenters to specifically address the need for the proposed power of attorney and if an electronic power of attorney would also be needed or feasible.

Because § 580.17(a)(3) exempts any vehicle, which is more than 10 years old from the odometer disclosure requirements and the average age of the United States vehicle fleet has been trending upward to 11.5 years, the NPRM proposed raising the exemption to 25 years. The NPRM also requested comments on whether the exemption should be eliminated.

Another group of amendments in the NPRM were proposed to correct address changes and typographical errors as well as removing obsolete provisions and providing redesignations needed to complete the final rule.

G. Summary of Comments to the NPRM

NHTSA received 28 comments in response to the NPRM. Six comments were filed by state motor vehicle departments: The Motor Vehicle Division of the Arizona Department of Transportation (Arizona), the California Department of Motor Vehicles (California), the Florida Department of Highway Safety and Motor Vehicles (Florida), the Oregon Driver and Motor Vehicle Services (Oregon), the Texas Department of Motor Vehicles (Texas), and the Virginia Department of Transportation (Virginia). State concerns were also addressed in comments from the American Association of Motor Vehicle Administrators (AAMVA). Dealer and auctioneer concerns were voiced by comments from the National Automobile Dealers Association (NADA), the National Independent Automobile Dealers Association (NIADA), the National Auto Auction Association (NAAA), the Ohio Automobile Dealers Association (OADA), Copart Inc. (Copart), Dealertrack Inc. (Dealertrack), and Insurance Auto Auctions Inc. (IAA). Several trade associations acting on behalf of lenders also submitted comments, including the National

Association of Federal Credit Unions (NAFCU), National Title Solutions Forum of the American Financial Services Association (NTSF), the Credit Union National Association (CUNA), the Credit Union Coalition of Texas (CUCTX), and the Heartland Credit Union Association (HCUA).

Comments were also filed by insurance companies and insurance trade associations: Allstate Corporation (Allstate), the Property Casualty Insurers Association of America (PCIA), the American Insurance Association (AIA), Liberty Mutual (Liberty), and the National Association of Mutual Insurance Companies (NAMI). Other organizations, such as the Electronic Signature and Records Association (ESRA), the National Odometer and Title Fraud Enforcement Association (NOTFEA), and the National Salvage Vehicle Reporting Program (NSVRP) also filed comments. An individual, Thaddeus Lopatka, filed comments as well.

The commenters all favored regulatory changes that would allow states to implement electronic odometer disclosures as part of an electronic title system. The comments, however, differed in how this goal should be achieved. While some comments did not address the specifics of NHTSA's proposed amendments, others provided detailed analyses of the regulatory text contained in the NPRM. The comments also diverged on the extent to which NHTSA should exercise its regulatory authority. While some commenters urged NHTSA to leave as much as possible to the discretion of individual states, others felt the agency should compel creation of a national electronic title and odometer disclosure system by a specified date and impose penalties for non-compliance. The agency's proposed modification of the ten-year exemption was supported by most commenters and vociferously opposed by others. For commenters who specifically addressed the agency's proposed requirement that individual identities be established by NIST level 3 authentication, opposition was universal. Some commenters also voiced reservations about the structure of the proposed amendments, which, in their view, appeared to adopt an unduly narrow vision of how electronic odometer disclosure and electronic titling systems would function. For these commenters, NHTSA's proposal did not adequately address the potential adoption of hybrid systems employing a mixture of paper documents and electronic processes.

Two commenters, NADA and NAAA, suggested NHTSA issue an SNPRM

prior to issuing a final rule while two, NAMI and Texas, suggested NHTSA delay issuance of a final rule. NADA stated an SNPRM might be needed because of the complex array of potential motor vehicle transfers and potential variations between state systems that NHTSA needs to explore. NAAA stated an SNPRM might be required to explore the effect of any delays inherent in producing paper titles on exporting vehicles. Texas stated the proposals put forward in the NPRM indicated an apparent misunderstanding of current title processes and urged the agency to work with stakeholders to draft clearer, more meaningful language. NAMI suggested delay so NHTSA could convene an assembly of state officials with the goal of forging a national electronic titling and odometer disclosure system.

1. Scope of the Final Rule

NHTSA's March 25, 2016, NPRM stated the agency's view that the directive in MAP-21 to promulgate rules allowing electronic odometer disclosure was intended only to facilitate this change without imposing additional requirements on stakeholders (81 FR 16114). Nonetheless, the NPRM requested comments on whether the proposals therein should be extended to prevent, or limit, variation among the various state systems.

Comments submitted in response to this solicitation were generally split into two opposing positions. Several commenters urged creation of a uniform national electronic title and disclosure system while others urged the agency take a minimalist approach. Insurers favored the former approach while most states embraced the latter. The AIA contended allowing both paper and electronic disclosures complicated an already cumbersome process. AIA urged NHTSA to require electronic titling and odometer disclosure and warned the co-existence of electronic and paper title and disclosure systems will inevitably lead to fraud, title washing, errors, the inability to find the owner for recalls, and a lack of consumer understanding of the process.

The organization further urged NHTSA to establish a date certain by which all states must move to an electronic title and disclosure system and establish penalties for jurisdictions not meeting this deadline. NAMI offered similar concerns about the potential complexity of co-existing paper and electronic systems as well as potential issues caused by incompatible state databases. As noted, NAMI urged NHTSA to convene meetings with states and other stakeholders to formulate a

plan for a more uniform electronic system. Although Texas adopted a position that NHTSA's rulemaking should not be prescriptive and should grant states as much leeway as possible in developing electronic title and odometer disclosure systems and encouraged NHTSA to explore the use of the U.S. Department of Justice's National Motor Vehicle Title Information System (NMVTIS) as a national system to facilitate the transfer of electronic titles. According to Texas, leveraging this existing system would assist with mitigating any costs associated with implementing a national electronic title transfer system and aid the rate of adoption while easing the implementation process.

Among state commenters, Virginia stood alone in supporting an expanded scope for the final rule. Virginia's concerns included the possibility of broad variations among state systems that would hinder interoperability and preclude the consistency required to allow consumers to conduct interstate transactions. While Virginia advocated rules to enforce consistency in security standards, its comments also decried the proposed NIST authentication and minimum dot per inch standards as well as the inability of traditional rulemaking to keep pace with rapidly changing technologies. Texas, California, and Florida offered comments stating the scope of the NPRM proposals should not be expanded. Texas stated each jurisdiction should be able to facilitate the electronic process for signatures as it determines appropriate. California contended that initially, each state must be able to implement an electronic odometer scheme within its own environment. Florida echoed this sentiment while opining that flexibility is needed as states first implement intrastate systems. AAMVA stated few states had developed electronic title systems, and even fewer could support fully electronic transactions or odometer disclosures. In AAMVA's view, imposing restrictive requirements before all states have had the opportunity to evaluate their existing systems and determine what such a transition could look like would be premature. ESRA's comments also endorsed a less restrictive regulatory approach stating the NPRM proposals were sufficiently broad to enhance the adoption of e-odometer and e-titling systems, and some level of variation would be acceptable if state systems are technologically neutral and promote interoperability.

2. Definitions

NHTSA proposed several changes to definitions found within § 580.3 to accommodate electronic odometer disclosures within the existing framework of part 580. The NPRM proposed new definitions for the terms “Electronic Document,” “Physical Document,” and “Sign or Signature,” where an electronic document is a title, reassignment document, or power of attorney maintained in an electronic form; a physical document is a paper document as used prior to the advent of electronic disclosures, and sign or signature may either be a hand written signature or an electronic sound, symbol, or process using an authentication system to verify the signer’s identity. As noted, the NPRM sought comments on the appropriateness of the proposed definitions.

One insurer, Liberty Mutual, four associations, AAMVA, NADA, CUCTX, and HCUA, and three states, California, Virginia, and Texas, offered comments in response to the definitions contained in the NPRM. California voiced concerns the definition of electronic document inappropriately inferred that electronic titles exist only as an electronic image of a paper document when an electronic title may only be a set of data elements maintained in a state database and not necessarily a form. AAMVA also stated “Electronic Record” would be more appropriate than “Electronic Document” and opined the proposed definition of “Electronic Document,” and “Physical Document,” should both refer to lease disclosures required by § 580.7. HCUA stated the proposed definition should clarify that a database record could serve as the title, disclosure, and audit trail. California further noted the proposed definition included “reassignment document” and “power of attorney,” which appears to conflict with proposed language for § 580.15, limiting powers of attorney to paper transactions, which California also opposed. California suggested Electronic Document should include or be restated as “titling record” and “paperless or electronic title.”

Virginia believed the definition of “sign or signature” is insufficient to address handwritten signatures on paper, handwritten signatures captioned electronically on a pen pad, electronic signatures for individuals, and electronic signatures for organizations verified through authentication measures. NADA offered similar comment, stating many of its dealer members used “pen pads” to capture signatures electronically. CUCTX noted

the proposed definition of “Sign or Signature” applied only to electronic disclosure statements and should be expanded to include other electronic documents to capture powers of attorney as well.

Texas, which provided a “redline” version of part 580 along with its written comments, suggested the definitions proposed in the NPRM be expanded by adding a definition of “Access” encompassing the means of entering, displaying and modifying previously stored data, “Agent” as person appointed by a power of attorney or authorized to act for an entity, “Electronic title” for electronic titles incorporating an electronic reassignment format or process, “Jurisdiction” meaning a state, territory, or possession of the United States of America, “Mileage” meaning the actual distance a vehicle has traveled, “Printed Name” meaning either the clear and legible name on a physical document or an equivalent electronic record and “Sign or Signature” meaning either a traditional hand-written signature on a paper disclosure or an electronic sound symbol or process either incorporating an authentication process or performed before an authorized employee or agent of the jurisdiction. Liberty Mutual suggested adding a definition for an electronically signed document used specifically for title transfers for total loss vehicles.

NADA offered a similar comment to that provided by Texas and urged NHTSA to add a clarifying definition of the term “State” to read “any jurisdiction of the United States that issues motor vehicle titles, and the authorized agent(s) for any such jurisdiction.”

3. Identity of Parties to a Motor Vehicle Transfer and Security of Signatures

The definition of “Sign or Signature” proposed in the NPRM specified a valid electronic signature must identify a specific individual. This requirement stems from NHTSA’s concern the comparative anonymity of an electronic signature to a written signature could frustrate identification of perpetrators of odometer fraud. This proposed requirement also appeared in § 580.6(a)(2) of the proposed amendments. The agency received many comments in response to this proposed requirement, and these comments are discussed below.

As proposed in the NPRM, the definition of “sign or signature” for an electronic document included an electronic sound, symbol, or process using an authentication system equivalent to or greater than Level 3 as

described in NIST Special Publication 800–63–2, *Electronic Authentication Guideline*, which identifies a specific individual. NHTSA proposed incorporating the NIST Level 3 requirement into the definition of an electronic signature because of agency concerns that electronic odometer disclosures could easily be made by someone other than the actual transferor or transferee involved in the transaction. The NPRM requested comments on the appropriate NIST level as well as other forms of verification and security, including whether dealers should be required to provide secure computing services to transferors and transferees.

Commenters addressing the issue uniformly opposed the proposed requirement that identity verification for electronic odometer disclosures must meet NIST Level 3. California noted NIST Level 3 authentication went beyond what is required for current paper transactions. In California’s view, prescribing a NIST Level 3 identity authentication, which, among other things, could entail verification of a government ID, such as a driver license, and a financial or utility account, is unnecessary. California argued a Level 3 process would be burdensome and impractical, if not impossible, to implement. California contended the manner of identity verification be left to states at a level strong enough to reasonably identify the signing party and should not be set above NIST Level 2. Florida contended the cost and complexity of implementing a Level 3 system may prohibit many states from being able to provide electronic titles and odometer disclosures. Further, Florida argued a Level 2 solution would still provide greater security than the existing paper process. Virginia asked if use of pen pad for electronic transactions done in person before a state employee or agent—essentially replicating the present paper process—met NIST Level 2 requirements.

Texas, like California, argued against any NIST level requirement because jurisdictions should be responsible for the secure electronic process just as they are for the existing security provisions for paper documents. According to Texas, states have an interest in the security of vehicle and odometer transactions equal to that of the federal government and are more familiar with their jurisdiction’s business needs and those of its customers. Should NHTSA specify a NIST level, Texas urged that it not be set above NIST Level 2. AAMVA noted the NPRM proposal did not distinguish between electronic signatures being made in the presence of a state employee or agent and remote

transactions. The association also urged the agency to not require NIST Level 3 authentication and observed attaining this level of security would be very difficult because of the requirement that all elements of the system meet NIST Level 3. Further, AAMVA argued an attempt to force all potential participating parties to comply with a standard set at NIST Level 3 would ultimately lead to a common inability to do so. Compared to the existing paper signature process, AAMVA stated NIST Level 2 would be achievable and provide suitable assurance of identity.

Other stakeholders also argued against NIST Level 3 authentication. Dealer groups OADA, NAAA, NIADA, and NADA stated obtaining and maintaining a NIST Level 3 system would require significant investment by states and dealers. This burden is not, in the view of these commenters, necessary when compared to the benefits achievable with a Level 2 system. These organizations also believe costs of Level 3 authentication would prevent states from attempting to employ electronic title and odometer disclosure systems. Lender associations and other entities also opposed the proposal to require Level 3 authentication. HCUA stated Level 2 authentication should be sufficient while the NTSF argued Level 3 authentication was not required. In NTSF's view, as supported by the ANSI X9.117-2012 "*Secure Remote Access Mutual Authentication*" authentication framework, vehicle transfers are relatively low risk transactions that do not require the security provided by NIST Level 3. Further, NTSF observed the NIST Standards are applicable to federal government computer systems and should not be applied in this context. Finally, given the costs of Level 3 for states and others, NTSF recommended the final rule replace Level 3 with Level 2. ESRA observed the threat of financial loss presented by fraudulent odometer disclosures is commensurate with Level 2 authentication and this level is adequate for odometer disclosures.

The NPRM also requested specific comments on whether dealers should be required to provide secure computing services to transferors and transferees. NIADA and IAA responded, noting NHTSA should be mindful vehicle transfers are processed by many entities with different resources and are not limited to dealers. In the view of these commenters, imposing the foregoing requirement on a wide range of potential parties to a transfer would be unduly burdensome.

NHTSA also asked for comments on whether any requirements beyond those

proposed in the NPRM would be needed or desired given the need for an odometer disclosure system to provide an adequate paper trail to identify the signer of an electronic odometer disclosure. Florida stated electronic odometer disclosure systems provide more security than the paper process. According to Florida, paper transactions do not involve verifying signatures and titles or other reassignment documents are often given to the transferee without being filled out so the incomplete forms are filled out by the transferee. Because electronic systems would require completeness and allow more frequent and accurate mileage reporting, Florida argued NHTSA should not adopt more stringent requirements in the Final Rule.

4. Document or Record Security and System Security

Prior to the issuance of this final rule, § 580.4 set forth the requirements for security features incorporated into paper documents employed to perform odometer disclosures. These security features are intended to prevent modification of existing disclosures and deter the use of counterfeit documents. The NPRM proposed amending this section through addition of new requirements for electronic documents or titles intended to provide the same level of security for electronic records as exists in secure paper documents. The proposed language would require electronic titles, powers of attorney, and reassignment documents to be maintained in a secure environment protecting the record for unauthorized modification. This environment would be part of a system that records when the document or record is created, when the odometer disclosures within are signed, when documents are accessed, and the date and time any attempt is made to alter the documents as well as any alterations made in the document.

The NPRM first sought comment on whether the proposal appropriately matched the security and authenticity requirement for electronic documents to the existing requirements, which apply to paper documents. While the NPRM contained a discussion outlining why the agency was not proposing specific security standards for these storage systems, NHTSA also asked for comment on whether the final rule should incorporate more specific security requirements for systems used to create and maintain electronic titles and odometer disclosures.

With the caveat that many commenters noted that the proposed language referred to an electronic "document" when reference to an electronic "record" would be more

appropriate, this portion of the proposed rule enjoyed general support with many commenters strongly endorsing the agency's decision not to impose specific security standards for electronic title and odometer disclosure systems. NAAA and IAA noted the proposal required protection against unauthorized changes but did not address how entry errors are to be corrected. NTSF stated the requirement to track when records are accessed seemed to be unduly burdensome given the nature of the records involved. ESRA recommended NHTSA take an "agnostic" approach to electronic records storage by allowing states to store electronic data and documents in their secure data systems and to employ reasonable efforts to prevent such records from being altered.

Some commenters believed the proposal was too prescriptive. California noted paper documents should not be compared to an electronic process and that it would be unnecessary to prescribe anything more than maintaining electronic titling and odometer disclosure information in a secure system or environment. Texas stated the proposed requirements are more cumbersome than those for physical documents, and jurisdictions should be given the same latitude for electronic and physical documents. Virginia objected to the requirement that attempts to alter or modify records be tracked. Virginia noted the proposal did not distinguish between authorized and unauthorized modification and that any unauthorized attempt at access should result in denial of access and not creation of a record. AAMVA stated most systems track dates and times on who accessed certain records and asked NHTSA to exercise caution so requirements do not interrupt titling agency business.

Comments supporting NHTSA's decision to not adopt specific system security requirements were submitted by insurers, dealer associations, lender groups, states, and others. Allstate stated that states should have the flexibility to assess systems requirements that ensure information security. Dealer groups NADA, OADA, and NIADA agreed with NHTSA's approach, as did Dealertrack, stating that technology moved too rapidly for effective regulation by rules. NADA and NTSF opined that specific system security requirements would be counterproductive for the same reason. ESRA recommended only general security standards and safeguards be adopted to prevent obsolescence and to empower states adopt systems they determine are most appropriate. CUCTX

also noted states have been, and should be, responsible for maintaining secure electronic title records. Arizona stated specific security standards would be too inflexible. Virginia urged any security requirements be technology neutral to keep pace with changing threats. Texas questioned the need for any security requirements given the strong interest any jurisdiction would have in maintaining the security and integrity of public records. AAMVA also questioned the need for systems security requirements based on the history of states securely maintaining data for many years. In AAMVA's view, specific system security requirements would hinder states in their ability to protect this data rather than enhance it.

5. Odometer Disclosures

NHTSA proposed several changes to § 580.5, *Disclosure of odometer information*, to accommodate electronic odometer disclosures. The proposed amendments sought to ensure the content required in the paper-based disclosure system would be carried forward into an electronic environment. Therefore, where information was required to be entered on the title under the paper system, the NPRM proposed, in 580.5(c), that the same information be entered in "an electronic form incorporated into the electronic title." Similarly, where notices of potential liability for failing to meet certain requirements are required on paper documents, 580.5(d) of the NPRM proposed the same warnings be provided electronically for electronic transactions. At the same time, differences between an electronic and a paper-based transaction led the agency to propose differing requirements for the two regimes. A requirement that a printed name be affixed to the disclosure on a paper title in § 580.5(f) was not carried forward into the agency proposal for electronic transactions as sufficient means independent of a handwritten signature should be available to identify individuals executing electronic disclosures. Where the paper based system requires the transferee to sign the executed disclosure statement and return a copy to the transferor, § 580.5(f) of the NPRM proposed an electronic system make copies of the executed documents available to the parties.

Comments addressing this portion of the agency's proposal supported the proposed changes. These commenters nonetheless offered observations and corrections, which they believed would better reflect the characteristics of electronic odometer disclosure and electronic title systems and clarify the

proposals made in the NPRM. The proposal's directive in 580.5(c) that an odometer disclosure be made on an "electronic form incorporated into the electronic title" led some commenters to observe this nomenclature was inconsistent with any form of electronic disclosure and electronic title system save those that relied on scanning images of documents and storing these documents electronically.

AAMVA observed NHTSA's approach seemed to transform a paper-based disclosure process into an electronic disclosure by simply scanning current documentation—the title, the reassignment, or the power of attorney. The organization stated any reliance on a physical document, whether scanned or not, does not constitute an electronic disclosure system and should not provide the basis for an electronic disclosure system. Instead, AAMVA noted, an electronic disclosure and title record would be data fields making up an electronic record. HCUA offered similar views, urging NHTSA to clarify that database records can be substituted for scanned images of paper titles by state DMVs. NTSF also stated it is important to note states maintain electronic title records as database records and not scanned images of paper titles. The organization contended the proposed rules wrongly indicated title and disclosure documents must exist as embedded replicas of the corresponding paper documents when the actual electronic record would be an actual secure electronic database record of the transaction, including the metadata supporting the authentication of the individual executing the signature, as well as a full audit trail of transactional data. ESRA offered similar comments about the nature of electronic titles and recommended replacing the term "form" with the term "statement" when referring to electronic disclosure documents, and using the term "record" instead of "form" when referring to electronic titles. Texas argued it is paramount that NHTSA recognizes what an electronic process is and allow latitude in their development.

Other comments focused more narrowly. California stated electronic and paper titles will only resemble each other to the extent they contain the same information. Florida and Virginia simply stated they supported the agency proposal to incorporate the odometer disclosure into the electronic title. Texas strongly supported requiring odometer disclosures to be made "on" the electronic title while noting it did not support allowing a separate "electronic" or physical reassignment apart from the electronic title. Because

there would be unlimited "space" for mileage disclosure entries in an electronic title system, Texas contended a reassignment process that is not specifically attached to an electronic title should be prohibited. Arizona stated requirements in §§ 580.5(c) and 580.6(a)(7) regarding the use of physical documents for a transfer being conducted electronically appear to conflict and suggested the provisions in § 580.6(a)(7) take precedence with § 580.5(c) being reworded to eliminate the conflict.

The NPRM proposed amending § 580.5(d) to provide the same warnings and notices present on paper odometer disclosure forms also be presented to parties executing an electronic disclosure. As presented in the NPRM, the amendment stated, "the information specified in this paragraph shall be displayed, and acknowledged as understood by the party, prior to the execution of any electronic signatures." Texas supported including the proposed statements and warnings but contended the electronic signature should be sufficient acknowledgement that statements were read and understood. Therefore, Texas argued against any additional acknowledgement such as a checkbox. IAA observed this language did not provide adequate guidance on the sequence in which the odometer disclosures would be executed and that if neither transferor nor transferee may sign until the acknowledgement by both, it would be difficult to envision the proper sequence of execution.

NHTSA also proposed amending § 580.5(f), which specified transferees receiving a paper odometer disclosure from a transferor must sign the disclosure statement, print their name, and return the signed copy to the transferor. The proposed amendment eliminated the requirement for a printed name in electronic transactions and stated electronic disclosure systems must provide a copy to the parties. With one exception, all commenters responding to this proposal supported elimination of the printed name requirement. California, Florida, Virginia, NADA, NTSF, and AAMVA all supported eliminating the printed name requirement in electronic disclosures, with most also stating identity authentication employed in these systems would make the printed name requirement superfluous. Texas, however, strongly opposed elimination of the printed name requirement, explaining a printed name would still be needed in electronic disclosures when an individual employee of a business executed the disclosure on behalf of their employer. California

opposed the proposal that electronic disclosure systems provide a copy of the executed disclosure statement to the parties. In California's view, states should have the option of choosing whether to make copies available. NADA supported the proposal that systems make copies available as did Texas. Texas also recommended more generic language to require the jurisdiction to make it available.

An additional modification proposed in the NPRM sought to expand the provisions of § 580.5(g) to electronic systems. Section 580.5(g) addresses issues that may arise in sales when a brand-new vehicle has not yet been titled or when an existing title for a used vehicle does not have sufficient space to accommodate multiple disclosures. In such an instance, the section provided that a separate document could be used for the disclosure. To extend this section to electronic disclosures, the NPRM proposed that in jurisdictions with electronic title and odometer disclosure, the system shall provide a means for making the disclosure electronically and incorporating it into the electronic title when the title is created.

Commenters supported this proposal but noted potential difficulties in implementing it. Some commenters suggested states have the option of employing either a paper or an electronic system for these transactions, even where the jurisdiction provided an electronic title and odometer disclosure system. California and Virginia stated they agreed with the proposal. Florida generally supported the concept but observed the ability to use only an electronic means depended on whether the Manufacturer's Certificate of Origin (MCO) is available electronically or only on paper. According to Florida, if a jurisdiction maintains electronic title and odometer disclosure systems but the manufacturer has a paper MCO, the jurisdiction must have a way to capture signatures from this paper document into the electronic system. NADA voiced similar concerns and noted the uncertainty of electronic versions of required documents being available until electronic systems became universal. Texas did not support the requirement for a secure electronic process for these transactions since the paper system does not require use of a secure document, manufacturers control the form of the MCO, and NHTSA did not propose imposing requirements on manufacturers for the MCO.

Texas also suggested clarification to paragraph (g). Texas noted the words "or if the physical title does not contain a space for the information required"

are no longer relevant because part 580 requires all issued titles to contain space for the required information.

Additionally, Texas recommended the text specify when use of a separate reassignment document is permitted. However, Texas would support allowing (but not requiring) jurisdictions to employ an electronic process.

6. Requirements for Electronic Transactions

Section 580.6, previously reserved for future use, was employed by the NPRM as the vehicle for proposed new regulations establishing requirements for electronic odometer disclosures. These proposals sought to establish fundamental requirements for electronic odometer disclosure systems that would protect against odometer fraud while facilitating smooth and efficient transactions. The proposed regulations address recordkeeping requirements, access to electronic documents, identification of participants, conversion of paper records to electronic records, the potential for simultaneous electronic and paper titles, and the character of any paper documents employed as part of an electronic title system.

The NPRM proposed adding § 580.6(a)(1) requiring any electronic record be retained in a format that cannot be altered and, further, that indicates any attempts to alter it. Commenters addressing this proposal supported it, providing the ban on alterations was limited to unauthorized alterations. AAMVA supported NHTSA's intent to provide a mechanism to track *unauthorized* access and alteration but warned against language that would limit titling agency authority or impede titling agency business. NAAA similarly urged the agency to ensure any final rule include language allowing jurisdictions to employ an error correction mechanism. ESRA again urged the agency to take an "agnostic" approach and allow states to employ reasonable efforts to protect records. NADA similarly cautioned requirements protecting record integrity be practical and appropriate for states, their agents, and all other parties involved. California agreed protections were needed to prevent unauthorized attempts to access and alter information but urged caution against imposing disruptive requirements. Florida requested NHTSA distinguish between authorized and unauthorized alterations while Texas stated jurisdictions be allowed the latitude to maintain electronic records in the fashion they feel is the most secure. Virginia noted the proposal did not separate legitimate corrections from

unauthorized alterations but supported security measures, record retention requirements, and audit and review.

Subsection 580.6(a)(2) of the agency's proposal creates a requirement that any electronic signature identify an individual and, further, that if the individual is acting in a business capacity or otherwise on behalf of any other individual or entity, that the business or entity also be identified as part of that unique electronic signature. As explained in the NPRM, the agency believed this requirement is needed both to facilitate identity authentication and to create a record of the individual executing an electronic signature. Commenters voiced opposing views on this proposal. While states and some associations supported it, dealers and vehicle auction organizations were strongly against it. Lender groups, NTSF and HCUA, supported the proposal. AAMVA also supported the proposal, and ESRA stated the requirement represented a best practice. California and Florida offered support without elaboration while Virginia stated it supports signatures applying to an individual and not to an organization. Texas supported the requirement with the proviso that there be no specific requirements on how this is to be accomplished.

NADA stated it had concerns about the proposal for several reasons. The association noted transfers for odometer disclosure purposes do not involve transferees taking title to the vehicle when that transferee is a dealership, wholesaler, insurance company, auction, or a lessee. Therefore, NADA argues the rules must accommodate a process by which odometer disclosures are made on electronic documents without title transferring (reassignments). NADA also questioned why agents acting on behalf of licensed entities should have to sign as individuals if they use the unique identifiers issued to their licensed employer. NADA urged NHTSA to consider adopting two sets of electronic transaction requirements, one for licensed entities such as dealers, distributors, auctions, lessors, lenders, and their agents, and one for private individuals. IAA, a vehicle auction company, stated the proposed rule would, in its case, result in a single employee signing on behalf of a host of vehicle owners bringing their vehicles for sale.

According to IAA, adoption of this requirement would necessitate many thousands of unique electronic signatures, posing a huge burden on the auction company and states processing the signatures. As NADA did, IAA

observed auction houses were state-licensed and subject to state regulation. As such, IAA argued states and licensees should be given the latitude to fashion workable methods for identification. Copart, another auction provider, offered the same observations about the effect of this proposal on businesses that provide a venue for selling large volumes of vehicles for many different owners. The company urged NHTSA to seek a solution allowing various industry stakeholders to develop reasonable methods for signing odometer disclosures. NAAA, a group representing auctioneers, stated the proposal was not workable for bulk processors like their members. In NAAA's view, creating thousands of unique signature credentials for each auction would be both a logistical nightmare and an opportunity for increased fraud. To address these problems, NAAA suggested NHTSA issue a second notice of proposed rulemaking incorporating comments from both industry stakeholders and states before proceeding to a final rule.

The process of executing an odometer disclosure requires notices, warnings, and instructions to be read, information to be supplied by the transferor, acknowledgement and acceptance of the disclosure by the transferee, and, in paper transactions, a copy of the signed disclosure statement must be given to the transferor by the transferee. To enable the needed access to text and other information in electronic disclosure schemes, NHTSA proposed adding § 580.6(a)(3), stating any requirement in the regulations to disclose, issue, execute, return, notify, or otherwise provide information to another person is satisfied when a copy of the electronic disclosure or statement is electronically transmitted or otherwise electronically accessible to the party required to receive the disclosure. Two associations, AAMVA and ESRA, and two states, California and Virginia, commented on this specific proposal. AAMVA opposed the proposal, arguing the responsibility to provide odometer disclosure information resides with the transferee and transferor and should remain there. AAMVA also contended any notification requirements should be transaction-based rather than the process-based individual account method proposed by NHTSA. In AAMVA's view, the NHTSA proposal would impose additional technology requirements on states.

ESRA noted the federal Electronic Signatures in Global National Commerce Act ("ESIGN") establishes how a consumer may request a paper

copy of an electronic record. Arguably, therefore, precedence has been set for permitting vehicle owners to obtain paper copies of e-titling documents, including odometer disclosures, in any state e-titling system. California argued states should not be required to provide the access described, and Virginia stated it had no objections.

NHTSA explained in the NPRM that it expected implementation of electronic titling and odometer disclosure systems would occur slowly, and, for the foreseeable future, both paper and electronic title and disclosure systems would coexist. As evidenced by the petitions for approval filed with the agency, individual states are not likely to shift their entire titling and odometer disclosure systems from paper to electronic systems at one time, and it is inevitable that interstate vehicle sales will involve vehicles moving from one type of jurisdiction to another. The NRPM proposed adding two sections to 580.6 to address the issues posed by the co-existence of paper and electronic systems. Section 580.6(a)(4) proposed requiring that a prior paper title and odometer disclosure be copied electronically for retention by the electronic system state and that the paper document(s) be destroyed at the time they are converted to electronic documents. Further, the electronic copy of the paper title would be retained in a system allowing its retrieval for five years. Section 580.6(a)(6) proposed that states maintaining an electronic title and odometer disclosure system shall retain the capacity to issue physical titles meeting all the requirements of this part. Once a physical title is created by a state with an electronic title and odometer disclosure statement system, the electronic record must indicate a physical title has been issued and the electronic title and disclosure statement have been superseded by the physical title as the official title.

The proposal further provided that electronic title and odometer disclosure systems shall record the date on which the physical title was issued and record the identity of the recipient of the physical title as well as the owner(s) named on the physical title. Two commenters, PCI and ESRA, supported these proposals without substantive comment. AAMVA noted that use of physical documents should be strongly discouraged in an electronic disclosure jurisdiction, but exchanging electronic and paper title records will be necessary. According to AAMVA, an active electronic title record and an active paper title cannot coexist. However, AAMVA noted jurisdictions cannot reliably ensure the destruction of

existing physical documents. These paper titles can be invalidated and the record superseded (as is current practice), but the new jurisdiction of record has no control over whether a transferor or transferee destroys the document. AAMVA also stated that because states are currently required to perform a title check prior to title transactions to determine if they have the most current title issued, states already have a process in place to validate that they are not dealing with an out-of-date or superseding title.

NADA concurred in the need for a process to convert "official" e-odometer records to "official" paper records and that only state or their authorized agents should be allowed to do so. In NADA's view, records of such conversions should be retained. Florida stated the proposed rules mirror its current practices as it scans and stores paper titles electronically and converts e-titles to paper for various reasons. According to Florida, it presently stores the history of title conversions from one form to another and invalidates the inactive title while paper titles are printed by Florida or an authorized entity. Florida, nonetheless, requested NHTSA not dictate that only states can print titles in the event future developments allow for other means of producing these secure documents. Florida also noted it would be difficult for states to ensure paper titles are destroyed after conversion to electronic titles and suggested that the rule provide that a prior physical title be destroyed or otherwise rendered void. California noted its procedure for converting paper titles to electronic calls for the paper title to be scanned and stored, and the original is destroyed. However, California felt the five-year storage requirement proposed in § 580.6(a)(4) is burdensome and suggested a four-year requirement. Virginia supported the proposals without substantive comment while Texas also stated the proposals mirrored its current practice. However, Texas also noted jurisdictions cannot control the submission of physical documents and would have to prevent issuance of title until such time the documents were surrendered to comply with the proposals.

An individual providing comments, Lopatka, stated NHTSA should alternatively consider adopting a system by which individual titleholders may create official physical copies of their own records from the electronic system. Mr. Lopatka conceded that allowing individuals to print their own records from the electronic system might reduce the level of security associated with the transaction to some degree but that

allowing them to do so would lessen burdens on states implementing electronic title and disclosure systems.

Based in part on its experience in processing petitions for approval of alternative disclosure schemes, NHTSA also proposed a new § 580.6(a)(5) giving jurisdictions with electronic title and odometer disclosure systems the option of providing vehicle owners with a paper record of ownership, including odometer disclosure information, so long as the document clearly indicates it is not an official title or odometer disclosure for that vehicle. Almost all commenters supported this proposal provided the document issued could not be employed as a counterfeit title. ESRA noted providing a non-negotiable copy of a paper title is a standard practice in some states supporting electronic titling programs today. NADA concurred with the proposal, recognizing that some dealership customers may wish to be provided with paper printouts. NTSF supported the proposal as this practice is currently used in some states with electronic lien and title programs but stated it should not be required. California and Florida also agreed with the proposal if it remains permissive. Virginia opposed using the language “paper record of ownership” because of potential fraud and suggested the term “title receipt.” Texas also supported states having this option provided issuing such a document was discretionary. Lopatka argued against allowing states to provide an unofficial ownership document, stating that merely requiring clear disclosure that the physical copy is an unofficial record may be insufficient to prevent this fraud and abuse.

The agency’s NPRM observed electronic title and odometer disclosure systems have the potential to reduce opportunities for odometer fraud by eliminating or reducing the use of paper documents in vehicle transfers. Nonetheless, the agency’s experience in processing petitions seeking approval of alternative odometer disclosure schemes demonstrated states may choose to implement electronic title and odometer disclosure systems in ways that will still require the limited use of paper documents. To ensure the security of transactions employing such documents, the NPRM proposed a new section, § 580.6(a)(7), requiring any physical documents used to make odometer disclosures for entry into and electronic title and odometer disclosure system to comply with the existing requirements of part 580. AAMVA agreed to the extent that continued use of physical documents is necessary in an electronic system, any physical

documents used must comply with regulatory requirements. NADA did not object to the proposal while California supported it without substantive comment. Arizona observed the requirements in the proposed §§ 580.5(c) and 580.6(a)(7) appeared to conflict and suggested that § 580.6(a)(7) take precedence and § 580.5(c) be reworded to eliminate the conflict. Texas stated that it fully supported this proposal, particularly as it would apply to powers of attorney but encouraged NHTSA to review other sections of its proposed rules because the agency believes other sections may imply such a scenario is not permissible.

Another issue addressed in the NPRM is the need to ensure odometer disclosure records converted from paper to an electronic form do not lose their value in that process. The NPRM therefore proposed such a conversion must maintain and preserve the security features in the document so alterations or modifications can be detected in the electronic version. The proposal, found in § 580.6(a)(8), also required that scanning be made in color at a resolution of 600 dpi.

Comments received in response to this proposal were unanimously opposed to the requirement that scanning be conducted at 600 dpi, and some commenters noted that scanning or imaging need not be in color. Dealertrack stated that a 600 dpi and color scanning requirement are well beyond current industry standards and should be reconsidered. NADA opposed the proposal as unduly burdensome on states and their agents. In NADA’s view, NHTSA should adopt a standard that requires no more than a black and white scan of 300 dpi PDF, TIFF, or equivalent. OADA recommended NHTSA not impose any minimum technological standards and instead leave that to the discretion of the individual state motor vehicle administrators. AAMVA contended a 600-dpi scan is excessive, and the NPRM provides no clear evidence or case study to support a high-resolution standard. According to AAMVA, a 600-dpi resolution unnecessarily increases the file size to the point that storage and transmission of title histories sent via email become overly expensive and burdensome. This burden, AAMVA’s view, provides no meaningful benefit as documents are but one part of establishing an odometer fraud case.

ESRA stated NHTSA should take a technology and standard-neutral position and allow states to choose reasonable standards. NTSF recommended NHTSA abandon scanning and resolution requirements

because of variations in document and font sizes among states. In NTSF’s view, states already have appropriate scanning resolution requirements, and NHTSA should leave this issue to state regulation. Arizona stated scanning documents at the NHTSA proposed resolution would adversely affect system performance and impose data storage costs and recommended states retain the ability to balance between system performance and scanned image quality. In Arizona’s view, any requirement should be limited to requiring detail sufficient to preserve the features of the original document. California also strongly disagreed with the proposal, contending the standard be left to states and not set above 200 dpi in black and white. Florida echoed the comments of Arizona and California, citing greatly increased storage, transmission, and scanning costs.

According to Florida, color scans are not optimal, and NHTSA should allow states to set their own scanning standards. Texas observed jurisdictions have a strong interest in the accuracy of title records and bear the responsibility for assuring their validity. According to Texas, scanning at the proposed resolution in color produced a loss of visibility to security features, such as the “VOID” watermarks, which are apparent at lower dpi black and white scans. Texas also noted NHTSA did not impose a dpi requirement when approving its petition for alternative disclosure, and Texas had been employing a minimum 200 dpi standard with good results. Texas urged striking any dpi requirement and allowing jurisdictions to ensure the security of their process, particularly as the cost of scanning at the NHTSA-proposed resolution would be prohibitive. Virginia also opposed requiring 600 dpi color scans for cost and feasibility reasons. In Virginia’s view, the regulation should not set a dpi standard but noted 300 dpi is reasonable. Lopatka urged the agency to more fully consider if states must scan physical titles with sufficient resolution to preserve security features or if preserving details such as the clarity of the titleholder’s signature is sufficient.

The comments submitted by Texas also suggested adding two more subsections to 580.8. One of the subsections would provide an electronic means for completing a transaction where the transferor holds a physical title that has been lost. According to Texas, adding this paragraph, which would authorize the transferor to execute an electronic or physical power of attorney, would save costs and reduce fraud because it would eliminate the

need for the transferee to obtain a physical title, only to transfer it electronically and make disclosure electronically. The second addition put forward by Texas would explicitly state that separate reassignment documents may not be used with an electronic title. Texas explained that because electronic titles have no physical limitation on the number of reassignments that can be incorporated into an electronic title, a separate reassignment document is not needed and should not be allowed. Texas also argued allowing physical reassignment documents with electronic titles could result in increased odometer fraud.

7. Leased Vehicles

Section 580.7 of part 580, *Disclosure of odometer information for leased motor vehicles*, establishes requirements for odometer disclosure for vehicles which, because of their leased status, are physically controlled by a lessee while the lessor holds the title. Because these vehicles are frequently transferred by the lessee to a transferor, this section establishes special procedures to ensure mileage information is provided by the lessee to the lessor. The lessor then executes the odometer disclosure on the title using the information provided by the lessee unless the lessor believes the lessee's mileage information is inaccurate. As NHTSA explained in the NPRM, NHTSA is not aware of any reason why electronic disclosures could not be made for leased vehicles, and the NPRM proposed revisions which would allow lease disclosures to be made on paper documents or electronically. Although the proposal did not require any action on the part of states or other jurisdictions to accommodate electronic disclosures for leased vehicles, the NPRM asked for comments on whether such a requirement should be implemented.

Commenters submitting responses to this portion of the NPRM rejected any suggestion that states or other jurisdictions be required to make any accommodation for leased vehicle disclosures. NTSF recommended this requirement be left up to states implementing electronic odometer system. According to NTSF, specific regulations to be implemented by states may be needed for electronic processing of the practice by which a lessor can obtain an odometer disclosure from the lessee. NIADA also stated electronic disclosures for leased vehicles should be left to states to develop in conjunction with the leasing companies operating in their jurisdiction. NADA did not address the role of states but supported the NHTSA proposal to

enable electronic lessor-lessee notices and electronic lessee-lessor disclosures. NADA also stated minimum requirements for these end-of-lease situations should be established because leasing companies have been a significant source of odometer fraud. AAMVA opposed involving states in transactions made between the lessee and the lessor and that a state's only involvement should be to accept completed documents. AAMVA also noted the term "physical document" used in the proposed amendments could create confusion as the proposed definition of this term included a title, reassignment document, or power of attorney. California also indicated leased vehicle transactions should only involve lessors and lessees. Florida noted states were not involved in the leased vehicle disclosure process and should not be compelled to participate now.

As observed by AAMVA, Florida also questioned the use of term "physical document" in the proposed amendments. Texas found the proposal to be particularly concerning. Texas rejected any role for states in this process but observed the use of term "physical document" and language stating leased vehicle disclosure be made within an "electronic document" implicated states (and other title issuing jurisdictions) because of the specific definitions NHTSA proposed for these terms in the proposal. In addition, Texas recommended allowing the lessors to comply with this section without imposing the security requirements proposed by NHTSA as doing so would provide a disincentive to adopting an electronic process. Virginia, unlike any other commenter, supported including electronic disclosures of leased vehicles as part of the electronic system established by a jurisdiction but did not elaborate further.

8. Document Retention

Sections 580.8 and 580.9 include requirements for odometer disclosure record retention by motor vehicle dealers and distributors and by auction companies, respectively. The NPRM proposed to amend these requirements to include electronic copies or electronic documents as an acceptable form of record. The proposal also added a requirement in 580.8 that dealer electronic records must be retained in a format which cannot be altered and which indicates any attempts to alter it.

The comments addressing this proposal questioned whether extending the paper record requirements for dealers and auction houses would be necessary in jurisdictions with

electronic title and odometer disclosure systems because these jurisdictions would be required to securely store electronic title and odometer disclosure data. Some commenters also questioned the accuracy of some of the terms proposed in the amendments. California stated the proposals are not needed because it maintains the titling record of a vehicle, to which only authorized access is permitted. Florida supported the proposed amendments but asked NHTSA to reconsider the storage or retention of paper records altogether given state recordkeeping. Texas argued that where jurisdictions facilitated the electronic odometer disclosures needed to create a new title, it would be burdensome for dealers to retain this information. According to Texas, dealers would have to extract the information or require the jurisdiction to provide it, and Texas perceived no benefit from this burden. Texas also contended the requirements for auctioneers proposed by NHTSA were overbroad, particularly in requiring secure storage as auctions only need to log transactions and not store odometer disclosures. Texas also observed that use of the term "physical document" in the proposal was inappropriate as that term is defined by the NPRM. In contrast to other states, Virginia stated records kept by motor vehicle dealers and distributors and by auction companies should be held to the same standard as records maintained by state vehicle administrators. As did California, Florida, and Texas, AAMVA stated the proposed requirements were unnecessary as states systems would provide the required security protocols and data. NADA noted the proposed language changes to § 508.8(a) should similarly be made to paragraphs (b) and (c). In NADA's view, NHTSA should clarify that where electronic records are kept in a centralized state system, the dealer record retention requirements are satisfied to the extent those records are reasonably accessible from their primary place of business. Allstate's comments stated record retention requirements are needed to support the detection and prosecution of odometer fraud but did not elaborate further.

9. Power of Attorney

Prior to this final rule, part 580 contained secure paper power of attorney provisions in §§ 508.13, 508.14, and 508.15 facilitating transactions in cases where the title was lost or physically held by the lienholder. These power of attorney provisions provide an exception to the rule that a single person cannot execute an odometer disclosure as both transferor and

transferee by allowing appointment of that individual to execute odometer disclosures on behalf of the transferor when acquiring the vehicle under § 508.13, and, if transferring the vehicle, on behalf of the new transferee under § 508.14.

The NPRM proposed amending § 580.13(a) and (b), to allow an individual with a vehicle titled in an electronic title state to use a power of attorney to sell a vehicle in a paper title state. Further, because the agency believed a power of attorney or reassignment documents would not be needed in electronic title jurisdictions, the NPRM proposed adding the word “physical” to certain phrases in § 580.13(f), § 580.14(a), (e), and (f), and in § 580.15(a). Along with proposing use of a power of attorney for interstate transfers from electronic to paper jurisdictions, NHTSA specifically requested comments on whether this power of attorney would be necessary in an electronic odometer system for intra-state transfers. The NPRM also sought comment on the feasibility of an electronic power of attorney as well as the implications of variations among states in implementing the power of attorney.

The comments submitted in response to this section in the NPRM identified several issues related to the proposed amendments. Several commenters observed the NPRM’s view that a power of attorney would be useful in interstate transactions from an electronic title state to a paper state was flawed. Commenters also offered varying degrees of support for the continued use of the power of attorney in electronic title jurisdictions while others advocated both electronic and paper versions of the power of attorney in jurisdictions with electronic title and odometer systems. Other comments addressed the restriction that the power of attorney could be used only when a title is lost or physically held by a lienholder in the context of contemporary electronic title and lien schemes. Similarly, the status of an electronic title made unavailable because of technical failures led others to advocate expansion of the power of attorney provision in such an instance. Others advocated expanding the power of attorney provisions to facilitate vehicle financing.

States generally argued against restricting power of attorney use to jurisdictions without electronic title systems, advocated electronic and paper power of attorney use and observed that a power of attorney, without more, would not allow completion of an interstate vehicle transfer from an

electronic title jurisdiction to a paper title jurisdiction. California agreed electronic disclosure would generally eliminate the need for the power of attorney but urged that the rule should not restrict its use only to a physical document. In California’s view, a power of attorney, by itself, is not sufficient to sell a vehicle or otherwise convey ownership and that completing an interstate sale from an electronic to paper jurisdiction would also require a secure title printed on secure paper, with an application for a duplicate title on which the disposition of the original paper title is attested. Florida also agreed the secure power of attorney should not be needed in an electronic title environment but that paper titles will continue to be in use for some time, and the secure power of attorney should remain available to states with e-title systems. According to Florida, electronic powers of attorney would also be needed, even if not used frequently. Oregon noted there is still an issue with state-to-state transactions and will continue to be until all states implement an electronic process and asked if the proposal eliminated the use of the power of attorney with electronic titles. Virginia’s comments voiced the same concerns and observations raised by California and Florida while also noting the NPRM does not address how states deny accepting documents from other states.

Texas strongly advocated allowing use of the power of attorney with any electronic title, whether within the same jurisdiction or not. Further, Texas observed electronic lien systems and electronic titles raise the question of whether the power of attorney can be used under the existing restriction that the power of attorney can be used only when a title is lost or physically held by the lienholder. As the title is neither lost or held by the lienholder but resides within state electronic title systems, a transferor must either pay off the loan to release the title prior to the transfer or must use the power of attorney to allow the transferee to complete the odometer disclosure. Texas also urged the power of attorney be permitted in jurisdictions with electronic titles and that electronic powers of attorney be allowed as well and requested there be no limitation to whom a jurisdiction can provide a secure power of attorney. Texas strongly encouraged NHTSA to amend § 580.13(f), which specifies a power of attorney is void if the odometer reading on the power of attorney is lower than on the title. According to Texas, this rule does not address situations where the power of

attorney contains a statement from the transferor that the odometer reading is known to be in excess of mechanical limits or is not actual. The preceding circumstances, where the odometer reading on the power of attorney may be lower than that on the title should not, in the view of Texas, void the power of attorney. Texas also asked that this section allow for electronic submission of an original power of attorney by scanning or imaging. As the power of attorney is useful only for a single transfer, Texas requested this change not be accompanied by a requirement that the jurisdiction confirm destruction or invalidation of the document. Finally, Texas requested § 580.16 be amended to specify that a copy of a power of attorney be made available upon request rather than returned and that NHTSA replace the term “purchaser” with “transferee” for consistency.

California, Texas, and AAMVA observed the current language in § 580.13(f) states “. . . [i]f the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the *dealer* shall not complete the mileage disclosure on the title.” (emphasis added). These three commenters all observed that because the dealer does not complete the disclosure, the reference to “dealer” in § 580.13(f) should be changed to “transferee” for consistency.

AAMVA also noted the power of attorney process described in the NPRM would not allow completion of a transfer of a vehicle from an electronic title state to a paper title state without the corresponding title. In AAMVA’s view, a power of attorney is or would be the appropriate document to transfer ownership. These transactions should be performed on a secure physical title like they are today. AAMVA also urged a secure power of attorney, whether physical or electronic, is needed when the title is electronic because a power of attorney may still be necessary in intrastate transactions within an electronic titling state in instances where the buyer or seller does not have the ability to complete the transaction electronically. As did Texas, AAMVA observed the power of attorney regulations did not provide relief when an electronic title cannot be physically held, and there is no title available for the seller to sign.

Comments provided by the dealer and auctioneer communities supported the continued use of the power of attorney in electronic title and odometer disclosure jurisdictions as well as the availability of both electronic and

secure paper versions of these documents. Additionally, support was also expressed for expanded application of the power of attorney beyond situations where the title is lost or physically held by a lienholder.

NADA noted the power of attorney should be unnecessary for electronic transfers but stated that there will be situations where a power of attorney will continue to be necessary. Therefore, NADA fully supported the use of a power of attorney in situations involving electronic state to physical state transactions when it is impractical for sellers to obtain physical copies of their electronic titles. In addition, NADA stated NHTSA should recognize that physical state to electronic state transfers may also involve lost paper titles or paper titles held by lienholders, and electronic disclosure states should have to provide for a power of attorney. The organization gave the example of a paper state trade-in customer transferring to an electronic state dealership needing to use the power of attorney if the title is lost or held by a lienholder. NADA urged amending §§ 580.13 and 580.14 to accommodate both physical and electronic powers of attorney or, at the least, NHTSA allow “electronic states” to issue physical powers of attorney.

NIADA offered similar comments and supported continued availability of the power of attorney as well as electronic versions of the document. Dealertrack asked the agency to recognize paper and electronic titles and odometer disclosures will both be used for many years and the availability of the power of attorney is essential for commerce. The company also advocated allowing an electronic power of attorney. Copart stated powers of attorney will continue to be necessary for intra-state transfers, particularly if the electronic system is not available during a catastrophic event. IAA asked if NHTSA intended for power of attorney forms only to be submitted to paper title states if their use was not allowed in electronic title and odometer disclosure states. NAAA requested NHTSA consider expanding the availability of the power of attorney to situations where technical problems in an e-title state made electronic titles unavailable. In NAAA’s view, a power of attorney should be available to allow transfers to occur during the interval when the e-title is inaccessible.

Lenders and their affiliates also supported broad availability of the power of attorney. NTSF supported the continued use of the power of attorney, including electronic systems allowing for electronic power of attorney forms. CUCTX requested § 580.13 be amended

to permit the use of an electronic power of attorney, even when the title is still a physical document. According to CUCTX, if parties to a transaction execute a power of attorney electronically refinancing a vehicle would be expedited. Similarly, CUCTX encouraged NHTSA to amend § 580.13 to expressly provide that financial institutions may be appointed as an agent of either the transferee or transferor to execute documents in these transactions. HCUA also urged the agency to allow that a lienholder may serve as agent of both transferor and transferee and execute the statements on their behalf. In HCUA’s view, this is necessary for credit unions involved in the financing of private sales of automobiles. NAFCU also noted the agency should look for areas within part 580, especially § 580.13, to identify how the regulation can be amended to enable the efficient performance of a financial institution’s essential duties when facilitating a vehicle sale.

Therefore, NAFCU recommended the regulation be amended to clearly specify that a financial institution can serve as an “agent” for the parties in the transaction.

ESRA’s comments acknowledged that an electronic odometer disclosure system would allow most e-titling transactions to occur without a power of attorney. ESRA further stated an odometer disclosure by power of attorney can be made electronically. According to ESRA, if a state requires notarization of such a power of attorney, electronic notarization could be applied, and the form signed electronically, as allowed by ESIGN or the Uniform Electronic Transactions Act (“UETA”).

10. Exemptions

Section 580.17(3) exempts any vehicle which is more than 10 years old from the odometer disclosure requirements. Because the average age of the United States vehicle fleet has been trending upward, the NPRM proposed raising this exemption to 25 years. NHTSA also requested comments on whether this exemption should be eliminated.

The comments responding to this proposal were mixed, with most states supporting the proposal or remaining neutral with some concerns about increased costs. Lenders, insurers, and dealer-related organizations generally opposed the proposal while other groups aligned with consumer protection strongly supported it. Many of the commenters also exhibited concerns about the practicalities of how disclosures would be made and mileage reported when the exemption is changed given the large numbers of

vehicles whose titles may already have had their odometer disclosures marked as “exempt” instead of having their mileage reported as set forth in § 580.5(e).

Among the states providing comments to this proposal, California supported raising the exemption to 25 years but not eliminating it. California suggested implementing the change incrementally at one year intervals until the 25-year threshold it attained. Florida noted the NPRM did not discuss why 25 years was proposed and questioned how this could be implemented. Oregon stated changing the exemption from 10 years to 25 years would require computer system reprogramming and result in a higher rejection rate of transactions, which would increase costs. Texas strongly supported proposed change to 25 years or eliminating the exemption. According to Texas, eliminating the exemption would simplify processing and technological requirements. Texas observed NHTSA would have to address the issues raised by currently “exempt” vehicles having no mileage recorded.

According to Texas, a solution to the problems raised by implementation would be to make the change effective when the regulation becomes effective and then phase in the applicability year-by-year over the next 15 years. Alternatively, Texas suggested vehicles exempt at the time of promulgation be grandfathered unless other evidence of false mileage exists. Virginia simply stated it does not oppose raising the exemption to 25 years or eliminating the exemption. AAMVA supported the extension of the exemption beyond 10 years, noting 25 years is consistent an antique vehicle classification in many jurisdictions. AAMVA also noted some states discontinue the issuance of titles at a certain age, such as 15 years. This, AAMVA noted, would leave no title available to carry the odometer disclosure. AAMVA expressed concern on how the change in the exemption would be implemented. At the least, AAMVA recommended any vehicle that does not reflect “actual” mileage in the title record be precluded from obtaining an “actual” mileage brand on the title even if this mileage is disclosed later. Beyond that, AAMVA recommended the rule change phase-in the 25-year exemption, by first applying the requirement to vehicles under 25 years old that are currently subject to odometer reporting.

NADA opposed the proposed change as it would greatly increase disclosure and recordkeeping burdens for transferors, transferees, and states, with no demonstration by NHTSA that vehicles 11 to 25 years-old have become

a “hot bed” for odometer fraud. The organization argued NHTSA could revisit the issue in the future after electronic titling and odometer disclosures provide data on older vehicle odometer fraud but should not act until NHTSA can show changing the exemption will significantly reduce odometer fraud. In NADA’s view, this proposal runs contrary to NHTSA’s time-honored and well-deserved reputation for being a data driven agency. Moreover, NADA noted the proposal fails to provide for any transition period to account for currently exempt vehicles. In contrast to NADA, dealer association NIADA supported the increase of the exemption to 25 years but urged NHTSA to “grandfather” currently exempt vehicles.

Copart opposed the proposal as an unreasonably high threshold given the average vehicle age is 11 years. Copart also questioned the benefit to be realized in relation to costs imposed by the change on state title systems. Auctioneer IAA argued that mileage as an indicator of condition and value do not apply to older cars or factor into the decisions of those who buy them. According to IAA, the proposed change is not warranted, and the costs of the expansion far outweigh any benefit.

Insurer representative AIA opposed the proposed change arguing the vehicles subject to theft and/or cloning are most often late model high-value vehicles. In AIA’s view, the age of vehicles is simply not reason enough to change the existing exemption without a thoughtful discussion of the underlying need to do so. PCI argued against the proposed change stating the value of older vehicles is driven primarily by the appearance and condition of the vehicle, not its mileage. Further, PCI noted the odometers on older vehicles may not be functional, further complicating the process and providing little if any benefit to a purchaser of an older vehicle. PCI suggested if NHTSA believes that a change is necessary, the threshold for the exemption should not be higher than 15 years.

Lender affiliated organization NTSF supported changing the exempt vehicle age from 10 years to 25 years. The NSVRP, a non-profit consumer organization, stated there is no justification to retaining the 10-year recording limit. In NSVRP’s view, the older the vehicle, the more likely it is there will be risks to the public from non-disclosure of odometer discrepancies. The organization noted it is likely that most vehicles now on the road are exempt and therefore not

covered because of the 10 model years of age cut-off for required reporting. NOTFEA urged NHTSA to adopt the proposal. NOTFEA observed the average vehicle age is now 11.5 years and that operation of vehicles older than 12 years old is expected to increase 15% by 2020. Further, NOTFEA cited a survey indicating drivers were keeping and driving their vehicles more than 100,000 miles and planned on continuing to drive them until 200,000 miles and/or until they stopped running. Participants planned on keeping their vehicles more than 12 years.

According to NOTFEA, a recent odometer fraud investigation revealed a dealer rolled back the odometers on 547 vehicles, and only 134 were not exempt. NOTFEA stated the exempt status of vehicles gave the dealer an opportunity to reduce the mileage and that this dealer removed approximately 26 million miles from the odometers of all the exempt vehicles he sold. According to NOTFEA, this accounted for an approximate fraud loss of \$1.2 million and approximately 26 million miles rolled back on 300 vehicles. NOTFEA also offered examples of similar cases involving exempt vehicles. To address the mechanics of implementing the change to the exemption threshold, NOTFEA suggested when the change becomes effective, NHTSA should make it apply only to vehicles less than 10 years old on the effective date.

11. Miscellaneous Amendments

The NPRM proposed various amendments updating the agency’s address, removing obsolete text, and conforming the petition for alternative disclosure schemes requirements to the other proposed amendments. These included inserting a new address in §§ 580.10(b)(2) and 580.11(b)(2), deleting the text in § 580.12, and amending § 580.11(a). One commenter, NADA, indicated they supported these proposed amendments.

12. Other Comments

Several commenters addressed issues unrelated to specific proposals in the NPRM as well as other odometer disclosure concerns and issues. Some of these comments related to terms used within part 580. Texas suggested the term “purchasers” in § 580.2 be changed to “transferees” because not all transfers of ownership requiring an odometer disclosure are the result of a purchase and “purchaser” is not defined in part 580. Texas also recommended changing the language “at the time the lessors transfer the vehicle” in § 580.2 to “at the time the lessees return possession of the vehicle to the lessors” to more

accurately fix the time when a lessee must make disclosure. AAMVA recommended NHTSA remove references to the term “form” as it relates to electronic odometer disclosure and electronic titles because such disclosures are not made on a paper-based “form.”

AAMVA also asked for clarification on when a power of attorney may be used in conjunction with odometer disclosure. Specifically, AAMVA wanted to know if use by third parties such as lienholders, title services, and auctions signing a non-secure power of attorney permissible. ESRA noted none of the proposed rulemaking provisions address “end of life” of vehicle title processing. In ESRA’s view, NHTSA should consider if an odometer disclosure is needed once a vehicle is declared a total loss, and, if so, create an electronic disclosure process for such vehicles.

The NSVRP urged NHTSA to make whatever changes were needed to ensure odometer readings were reported to the correct jurisdiction at every transfer, including dealer-to-dealer transfers. According to NSVRP, gaps in reported mileage occurring when reassignment documents or a power of attorney are used create opportunities for title skipping and false odometer disclosure statement.

Auctioneer representative NAAA argued the proposed rule does not adequately address U.S. and international export rules. According to NAAA, U.S. Customs and Border Protection regulations require vehicles titled domestically be exported with the original certificate of title or a certified copy and destination countries may require original titles for importation. Because the proposed rule requires destruction of paper titles when those titles are converted to electronic titles, NAAA is concerned domestic and foreign customs officials may not be prepared to work with electronic titles and disclosures and that delays in processing requests to create official paper titles may harm vehicle exporters.

Two commenters, Texas and AAMVA, addressed the petition process for establishing alternative odometer disclosure schemes. AAMVA asked that the final rule ensure the petition process remains available while Texas requested § 580.12, which the NPRM proposed to remove and reserve, be used to provide the parameters for rescinding a grant of approval.

Finally, two lender organizations, NTSF and HCUA, recommended electronic odometer systems provide the means for lienholders to electronically

receive the mileage reading for vehicles they intend to finance.

III. Final Rule and Response to Comments

A. Summary of the Final Rule

This final rule adopts the amendments proposed by the NPRM for §§ 580.1, 580.10, 580.11, and 580.12 without substantive change. Minor changes from NPRM proposals include replacing “his” with “their” to achieve gender neutrality throughout part 580 and establishing a definition of “jurisdiction” that encompasses states and territories to replace the term “state” wherever formerly used in part 580. Also for clarity and accuracy, § 580.2 is amended to better describe the status of a vehicle upon termination of a lease, and the term “purchasers” has been replaced with the more accurate and less restrictive term “transferees.” Consistent with the former amendment, the term “dealer” in § 580.13(g) has been changed to “transferee” to reflect that those receiving ownership are not just dealers.

The NPRM proposed facilitating adoption of electronic title and odometer disclosure systems by adapting the existing physical document requirements of part 580 to a broadly defined class of electronic documents. In response to comments criticizing this approach, the final rule contains new definitions for “Access,” “Electronic Power of Attorney,” “Electronic Title,” “Jurisdiction,” and “Printed Name,” and revises the definitions of “Original Power of Attorney,” “Sign or Signature,” and “Transferor.” These more precise definitions are applied throughout part 580 to allow odometer disclosures with both physical and electronic titles and powers of attorney. This final rule also authorizes use of an electronic power of attorney and, provides for electronic reassignments when a transferee is given a paper title by the transferor but does not take title to the vehicle. The definition of “Sign or Signature” includes an electronic signature employing NIST level 2 authentication system or its equivalent, instead of NIST Level 3. The regulations now also more clearly allow authorized modifications to electronic records and recognize that electronic titles and odometer disclosures may be held in a variety of formats. The final rule retains our proposal that an individual signing a disclosure on behalf of a business must identify himself and the business. Also, because technologies such as “pen pads” may be used in electronic titling and odometer disclosure systems and that paper documents may, in some

jurisdictions, be employed in an electronic odometer disclosure system, the final rule abandons the NPRM’s proposal to delete printed names from electronic transactions. This final rule also substantially relaxes the proposed requirements for scanning documents to allow document conversion in black and white at a resolution of 200 dot per inch (dpi) and recordkeeping requirements in §§ 580.8 and 580.9 provide more options for dealers and relax the rules for auctions. NHTSA now promulgates provisions allowing both electronic and paper powers of attorney if a title is unavailable to a transferor because the title is lost, physically held by a lienholder, electronically controlled by a lienholder or when an electronic title is inaccessible. The exemption rules in § 580.17 are now set so vehicles that are 20 years old or older are exempt from mileage reporting. The final rule also now explicitly establishes how this exemption will be applied to different model years.

B. Supplemental Notice of Proposed Rulemaking (SNPRM)

As noted above, NADA and NAAA, suggested NHTSA issue an SNPRM prior to issuing a final rule while NAMIC and Texas stated NHTSA might consider delaying this final rule. NADA felt that an SNPRM would help to provide more comments and information about interstate transfers. NAAA asked for an SNPRM to explore the effect of any delays inherent in producing paper titles on exporting vehicles. Texas urged delay in issuance so the agency could craft clearer language. NAMIC thought delay would give a greater opportunity for NHTSA and state officials to forge a national electronic titling and odometer disclosure system.

Given the amount of time that has passed since the issuance of the NPRM and the extensive changes made to the agency’s original proposal as detailed elsewhere in this notice, NHTSA does not believe that an SNPRM is needed or would provide any added value in addressing the concerns voiced by these commenters. NHTSA shares NADA’s concerns about the challenges posed by interstate transactions and has drafted the final rule to provide solutions. Additionally, the agency’s approach is to provide as much flexibility as possible while protecting the integrity of mileage disclosures. This approach will allow states to adopt and develop means for addressing different transactions in what will certainly be an evolutionary process. Similarly, the agency believes NAAA’s concerns would not be

addressed by issuing an SNPRM. States have an interest in meeting the needs of citizens and resident businesses and will likely develop methods for providing paper titles efficiently. The commenters urging delay, Texas and NAMIC, raised entirely different issues. Texas urged delay so better language could be developed. The extensive revisions made to our original proposal signal NHTSA’s strenuous effort to do just that. NAMIC’s loftier goal, to delay issuance until a national titling system could be developed, would require significant and unacceptable delay in issuing this final rule.

C. Scope of the Final Rule

In considering the breadth of the proposals in the NPRM and the amendments promulgated in this final rule, NHTSA remained mindful of the direction given by Congress in directing that the agency “prescribe regulations permitting any written disclosures or notices and related matters to be provided electronically.” (Section 31205, 126 Stat. 761, Pub. L. 112–141 (2012)). NHTSA notes this direction was unaccompanied by any suggestion that a national electronic title system be created, however laudable that goal may be. Moreover, in enacting section 24111 of the FAST Act authorizing states to create electronic odometer disclosure systems without NHTSA’s approval until the effective date of this final rule, Congress also did not offer any indication it supported the creation of a national title system by expansion of NMVTIS or other means. (Section 24111, Pub. L. 114–94 (2015)). However desirable a national electronic title or odometer disclosure infrastructure might be, the agency concluded it has not been tasked with creating such a system. Accordingly, this final rule does not answer to the sentiments expressed by AIA, NAMIC, and Texas that this rulemaking action create such a system.

A secondary scope issue exists to the extent the NPRM contemplated that NHTSA take two approaches to regulating electronic odometer disclosures. As reflected in the NPRM’s request for comments, one approach would be to draft a set of detailed and comprehensive regulations creating rules governing technical aspects of system security, identity authentication, interstate communications, and the mechanics of executing transfers. Alternatively, the NPRM posited the agency take a less prescriptive approach aimed at preserving the essential characteristics of odometer disclosure and providing states with the latitude needed to develop electronic systems consistent with their environment. On

the whole, commenters strongly favored NHTSA adopt this less prescriptive approach, noting that rapidly changing technologies and traditional rulemaking are incompatible, that overly restrictive rules would preclude development of electronic systems, and that states have a deeply rooted fundamental interest in erecting and maintaining electronic titling and odometer disclosure systems that are secure, functional, and efficient. The agency concurs in these assessments and believes this less restrictive approach is consistent with the brevity exhibited by Congress in directing the promulgation of this final rule.

D. Definitions

The definitions in this final rule differ significantly from those proposed in the NPRM and remedy some significant shortcomings in our earlier proposal. Commenters identified many issues created by the proposed definitions. In posing the terms “Electronic Document” and “Physical Document” our proposal apparently created an impression that NHTSA’s vision of permissible electronic odometer disclosure schemes was limited to instances where the electronic record was nothing more than a scanned or imaged conversion of a paper document. Although it was not NHTSA’s intent to erect such a limitation, many commenters noted these terms were inconsistent with many existing systems where electronic titles and odometer disclosures are entries in a database. Commenters also correctly observed the types of documents encompassed by the respective definitions suffered from real or apparent conflicts with other sections of the proposed rules. Some comments addressed the proposed definition of “Sign or Signature” and noted it did not appear to encompass signatures made on “pen pads” or similar devices on which an individual’s physical signature is captured electronically. Two commenters, NADA and Texas, also suggested NHTSA modify the definitions section to ensure no doubt exists that the proposed rules apply to any jurisdiction that issues titles, including territories.

As noted, Texas included a “redline” version of the regulatory text proposed in the NPRM along with its substantive comments. Noting first that Texas has already implemented an electronic title and odometer disclosure system known as webDEALER consistent with NHTSA’s approval of its petition to implement alternative electronic disclosure requirements and thereby gained valuable experience in a new field, NHTSA examined the changes to

the regulatory language proposed by that state. After consideration of the proffered language and the comments addressing concerns about our proposals in this, and other, sections, the agency is incorporating many of the changes suggested by Texas into this Final Rule.

To distinguish between the ability to view an electronic title, power of attorney, and the electronic odometer disclosures incorporated into those records and the ability to modify those records, the final rule adds the definition of “Access” to § 580.3. This definition states “Access” is the authorized display and entry of information into an electronic title or power of attorney in a manner allowing modification of previously stored data. The definition further differentiates “Access” from the mere ability to view information without being able to modify it and distinguishes “Access” from the modification of a record resulting in creation of a new title. Adding this definition, in our view, also assists in alleviating concerns voiced by commenters that different rules proposed in the NPRM failed to adequately provide opportunities for legitimate error correction in secure records by authorized persons.

This final rule also disposes of the definition of “Electronic Document” by replacing the latter with new definitions of “Electronic Power of Attorney” and “Electronic Title.” The definition of “Physical Document” has been retained in modified form to establish the meaning of the term “Physical” as it applies to documents. The term is inserted where appropriate throughout part 580 to identify paper documents. Although the NPRM did not provide for an electronic power of attorney or propose to define one on the basis that such a document should not be necessary where electronic titles exist, NHTSA has reconsidered this position in response to the observations of some commenters that this tool will be needed as the transition from paper titles to electronic titles moves forward. The final rule definition simply states an electronic power of attorney is simply a power of attorney created and maintained in an electronic format that meets all the requirements of part 580. Our definition of “Original Power of Attorney” is amended in the final rule by adding the word “physical” for clarity. Similarly, the final rule definition for the electronic version excludes a scanned copy of a paper power of attorney. The final rule adopts a similar definition of “Electronic Title,” by specifying this record as created and maintained in an electronic

format and incorporating and odometer disclosure and reassignment process. For clarity, a scanned copy of a paper title is specifically excluded from the definition. Responding to other comments that the applicability of proposed rules should be clarified, the final rule also includes a definition of “Jurisdiction” as a state, territory, or possession of the United States. To ensure all governmental entities with the power to title vehicles are clearly encompassed by part 580, the final rule replaces the term “state” with “jurisdiction” wherever it appears. The agency also notes that the definition of “Jurisdiction” is singular and signals NHTSA’s decision not to establish security standards or similar regulations governing the exchange of electronic title information between jurisdictions. While it is most certainly the agency’s intent to ensure that odometer disclosures be properly executed in interstate and intrastate transfers, the manner in which jurisdictions may share electronic title information is beyond the purview of this final rule.

For electronic documents, the NPRM proposed eliminating the requirement found § 580.5(f) for a person completing an odometer disclosure to provide their printed name when transferring a vehicle. The agency viewed this requirement as superfluous when identity authentication requirements should ensure the information would be available. While NHTSA still believes this to be the case where a party would have to log on to a state website to conduct a transaction, electronic title and odometer disclosure schemes may involve other procedures. For example, our approval of Florida’s petition for alternative odometer disclosure requirements involved a system where individuals presented secure documents to a tag agent who entered the information into a state system. A variant of such a system might involve parties employing a pen pad to sign documents and enter information at a state or state-authorized facility after presenting identification. In such an instance, providing a printed name would be necessary to ensure identification in the future. Accordingly, the final rule is adding a definition of “Printed Name” to § 580.3 specifying what constitutes a printed name in both an electronic record and a physical document.

NHTSA’s proposed changes to the definition of “Sign or Signature” generated many comments. These comments were directed at the NIST authentication level proposed in the definition as well as more prosaic concerns about the definition not

adequately encompassing the full range of potential means for making an electronic signature. NHTSA's response to the NIST authentication issues is discussed below, and the agency now addresses the remaining issues.

The final rule leaves the language pertaining to physical signatures unchanged and adopts a two-part definition of electronic signature. In the first part of this definition, the language remains essentially the same as that in the NPRM aside from the NIST level requirement. The second part of the definition, which states that an electronic signature may include an electronic sign or process made before an employee or statutory employee of the jurisdiction, encompasses situations where an electronic title and odometer disclosure system may involve entering information and executing signatures at a state office or a state-authorized facility. NHTSA added this language to accommodate electronic title systems that may rely on physical signatures as part of the titling and odometer disclosure process.

E. Identity of Parties to a Motor Vehicle Transfer and Security of Signatures

As NHTSA observed in the NPRM, a physical signature is a unique mark linked to the person who made it. That unique mark may be tied to its maker even in the event a false name is used when the signature is given. In contrast, an electronic signature is anonymous. Confirming the identity of a person making an electronic signature is therefore dependent on factors other than the signature and requires a degree of corroboration. Because of concerns that the use of electronic signatures may impede the ability to identify persons making an odometer disclosure, NHTSA proposed the definition of "Sign or Signature" require that an electronic signature identify a specific individual. The NPRM also proposed this requirement be included in 580.6(a)(2), that proposed requirements for electronic transfers. This proposal was supported by those commenters choosing to address it, and NHTSA is adopting this requirement in this final rule.

The NPRM simultaneously proposed that in the context of an electronic odometer disclosure, the identity of the individual making or acknowledging the disclosure be verified using an identity authentication scheme meeting, or equivalent to, Level 3 as described in the NIST Special Publication 800-63-2, *Electronic Authentication Guideline*. This NIST guideline specified four different levels of identity assurance which are assigned according to the

level of risk posed by the potential failure to authenticate the identity of an individual using an electronic system for a transaction. These four levels of assurance (LOA)—with Level 1 being the lowest and Level 4 being the highest set out different authentication requirements. At Level 1 a user name and a password is sufficient verification and there is no identity proofing. The only assurance is the fact that the user can authenticate to the identity provider that some relationship exists between the two because the user provides a previously issued credential (username and password or cryptographic key). At Level 2, proof of identity requirements are introduced, requiring presentation of identifying materials or information. Both in-person and remote registration are permitted. For in-person registration the applicant must be in possession of a primary government photo ID (such as a driver's license or passport). For remote registration, the applicant submits the references of and attests to current possession of at least one primary government photo ID and a second form of identification. The applicant must provide to the registration authority at a minimum their name, date of birth, and current address or personal telephone number. At Level 3 proof of identity requires verification of identifying materials and information. Both in-person and remote registration are permitted. Level 3 requires the same evidence for issuing credentials as Level 2; however, at this level verification of the documents or references through record checks is required. The most stringent requirements, at Level 4, do not permit remote registration. Potential users must appear before a registration officer and provide two independent ID documents or accounts which must be verified. One of these must be a current primary government photo ID that contains applicant's picture, and either address of record or nationality (e.g. driver's license or passport).

Most of the commenters submitted views on this proposal, and all the commenters protested imposition of a NIST Level 3 requirement. As noted above, the comments in opposition stated the Level 3 standard was inapposite, costly, and overly restrictive. In specifying the NIST Level 3 standard, NHTSA intended to ensure the identities of those giving electronic signatures would be established to the extent necessary to ensure imposters did not execute or acknowledge mileage disclosures.

However, the agency has also re-examined the applicability of the Level 3 standard. The comments submitted in

response to the NPRM, directed toward this proposal and other proposed and potential security requirements, underscored the degree to which states are invested in providing secure electronic systems and, to a lesser but still sufficient degree, in verifying the identities of persons using those systems for vehicle transfers. The final rule, therefore, specifies the required level of authentication for confirming the identity of persons participating in electronic odometer disclosures shall meet the NIST Level 2 requirements or an alternative scheme providing an equivalent level of security.

Furthermore, since the June 2017 issuance of NIST Special Publication 800-63-3, *Digital Identity Guidelines* (including sub-parts 800-63-3A, 800-63-3B and 800-63-3C) superseded Special Publication 800-63-2, *Electronic Authentication Guideline*, the final rule has updated the reference to the new NIST guidance. While making this change, NHTSA is mindful the NIST guidelines, or similar guidance, will continue to evolve as technology advances. As discussed in the NPRM, advances in technology are likely to proceed at a faster pace than NHTSA's ability to revise and issue new rules. It is for this reason that the NPRM, as well as this final rule, specified that states need adopt a system meeting the specified NIST guideline or its equivalent. Moreover, in specifying that the NIST Level 2 standard or its equivalent must be met, NHTSA does not intend that states must update their systems to meet each new NIST guideline when it is issued. Instead, our expectation is that states will recognize the need to properly authenticate participants in odometer disclosure transactions and maintain a level of authentication security comparable to what the 2017 NIST Level 2 guideline establishes now. NIST guidelines can be met with currently available products on the market.

The final rule's definition of an electronic signature—"an electronic sound, symbol, or process"—is intended to encompass the full range of methods and technologies that may be employed to electronically sign a disclosure. Accordingly, a signature executed by writing on a pen pad or using a biometric such as a fingerprint, falls within an "electronic process" as described in the definition. While a biometric such as a fingerprint or retina scan might serve as a signature under the definition, NHTSA notes that employment of a biometric does not relieve a state or jurisdiction from having to meet the authentication

requirements in subsection (b)(i) of the definition.

F. Document or Record Security and System Security

The NPRM proposed amending § 580.4 to require electronic titles, powers of attorney, and reassignment documents to be maintained in a secure environment preventing unauthorized modification and recording when records are created, accessed, altered or unauthorized attempts to modify them are made as well as the date and time any attempt is made to alter the documents and any alterations are actually made in the records. The NPRM explained NHTSA might consider specifying security standards for these systems and requested comment on doing so. Commenters supported the proposed changes on the condition the final rule take adequate steps to ensure the final rule allowed authorized changes to electronic records to correct errors. One commenter, Virginia, objected to the requirement that unauthorized attempts to alter or modify records be tracked as the proper response in that event is to deny access and not create a record. Commenters overwhelmingly supported NHTSA's tentative decision to not issue security standards for overall system security.

The final rule adopts the language proposed in the NPRM with a small number of modifications. The heading for § 580.4 is changed to make it clear that it applies to physical documents, electronic titles, and electronic powers of attorney. As electronic reassignments are addressed in the definition of *Electronic Title* the final rule also removes the reference to an electronic reassignment document in § 580.4(b). In transactions where paper titles are used, separate reassignment documents become necessary when the title is reassigned multiple times and the existing title can no longer physically accommodate the required odometer disclosures. In the case of an electronic title, no such physical limitation exists, and, for all practical purposes, all the necessary reassignment disclosures will be incorporated into the electronic title. However, as there may be instances where a transferee is provided with a paper title by the transferor in a state with electronic titles, and the transferee may not wish to take title to the vehicle, an electronic reassignment option should be made available in those circumstances where a paper reassignment form would otherwise be used. Accordingly, § 580.5(g) of the final rule provides that an electronic reassignment shall be made before issuance of an electronic title where the

transferee receives a paper title and no room exists on that title for the desired reassignment. Other changes made in this section for the sake of clarity and consistency include deletion of the word "forms" when referring to electronic records, substitution of "jurisdiction" for "state," and expansion of the term "secure process" in § 580.4(a) to "secure printing process or other secure process."

G. Odometer Disclosures

NHTSA proposed changing § 580.5, Disclosure of odometer information, to accommodate electronic odometer disclosures by adding references to electronic systems, directing information required on a paper title be entered in an electronic form incorporated into the electronic title, requiring warnings be provided electronically for electronic transactions, and executed electronic disclosures be made available to the parties. Where paper transactions required participants to provide a printed name, the NPRM proposed the printed name was not needed in electronic transactions and sought to delete that requirement. NHTSA also proposed an existing requirement that transferees provide a copy of a completed paper disclosure form to transferors be expanded to electronic transactions by requiring that the completed electronic disclosure be made available to the parties. To address situations where a vehicle has not yet been titled, NHTSA proposed amendments for the use of disclosures separate from the title in both paper and electronic systems.

Commenters supported the proposed changes while offering modifications aimed at improving clarity and flexibility. The final rule addresses many of the concerns found in the comments. Because this final rule adopts a definition of an "electronic title" instead of the proposed "electronic document," changes consistent with that definition are now incorporated into § 580.5. Section 580.5(a) states the mileage and other information required for odometer disclosures must be incorporated into a physical title or an electronic title presented to a transferee. Because an electronic title has unlimited space available for disclosures, § 580.5(b) of the final rule provides physical titles must have space available for the required elements of the disclosure. Where NHTSA proposed in § 580.5(c) that an odometer disclosure be made an "electronic form incorporated into the electronic title," the final rule now provides disclosures be made on an

electronic title to clarify that electronic title systems are not, as many commenters noted, limited to systems where "forms" are scanned into an electronic format. The final rule also differs from our proposal by requiring that parties provide a printed name on both physical and electronic titles. As noted above, using "pen pads" or similar handwriting conversion technologies could result in an inability to identify individuals in "hybrid" electronic title and odometer disclosure systems. Section § 580.5(d) of this final rule specifies the warnings and notices present on paper odometer disclosures also be presented to parties executing an electronic disclosure. The NPRM proposed an additional requirement be added to this section in electronic transactions in the form of a check box or similar mechanism to ensure the notices were read and understood before the transaction can move forward. In response to comments that this requirement is superfluous, since the electronic or physical signature already constitutes acknowledgement of these warnings, the final rule does not require a separate acknowledgement or "check box" in electronic disclosures.

NHTSA is also adopting the language proposed in the NPRM for § 580.5(f), with some modifications. Because of comments that the proposal did not sufficiently specify the sequence in which odometer disclosure statements are signed, this final rule states a transferee must execute the disclosure statement "upon receipt" of the transferor's signed disclosure. While the concept of "receipt" is arguably more ephemeral in an electronic transaction when no physical document is present, the agency believes that "receipt" in that context occurs when a system provides a display confirming the transferor's signature and all the required elements of the disclosure itself. For electronic systems, this final rule also adapts the requirement in § 580.5(f) that a transferor provide a paper copy of the executed disclosure statement to the transferee by requiring that such systems must make the completed statement available to the parties. Although one commenter objected to states being required to provide this copy, the requirement is satisfied if the electronic system allows the parties to print or download a record of the odometer disclosure and the required elements of that disclosure.

The requirement that odometer disclosures be made on the title and not on a separate document is critical for preventing odometer fraud. Since the title is nearly indispensable when establishing ownership, making

disclosures on the title ensures that opportunities for counterfeiting odometer statements are kept to a minimum. Consistent with this theme, part 580 allows odometer disclosures to be made on a document other than the title only in very prescribed circumstances. One of these is when the title is lost or held by a lienholder and the power of attorney authorized by this part may be used. Another exists when a paper title, which is required to have space for an odometer disclosure and subsequent reassignments, no longer has space available for additional reassignments. A reassignment document may also be used when the vehicle at issue has never been titled. While preserving the foregoing provisions for physical documents in paper title states, our NPRM proposed amendments stating electronic title and odometer disclosure systems shall provide a means for making the disclosure electronically and incorporating it into the electronic title when the title is created. Commenters supported this proposal but requested states have the option of employing either a paper or an electronic system for these transactions, even where the jurisdiction provided an electronic title and odometer disclosure system. NHTSA agrees that states, whether they have an electronic or paper-based title and odometer disclosure system, must have the option of using either paper or electronic disclosure statements in instances when a vehicle has not yet been titled. The final rule now provides that option.

The final rule also allows the use of electronic or physical reassignments under specific conditions after a vehicle has been titled. These conditions stem from the nature of physical titles and the fact that transfers occurring in electronic title jurisdictions will inevitably involve transactions where a transferor has a paper title. Because physical titles can only accommodate a certain number of reassignments, separate secure reassignment documents can be employed to facilitate transfers between parties that do not take title to the vehicle. Where a transaction involves a vehicle with an electronic title, the electronic title system should accommodate any number of reassignments. Therefore, reassignment documents, either electronic or physical, would not be needed in electronic title jurisdictions. There will, however, be situations where an electronic title system must allow electronic reassignment before an electronic title has been created. The first will be instances where the vehicle

has never been titled and neither an electronic or a physical title is available for recording reassignments. Another circumstance requiring an electronic reassignment would arise when a transferor holding a paper title for a vehicle wishes to transfer that vehicle in a jurisdiction with an electronic title system. In that circumstance, a mechanism needs to exist to allow further reassignments prior to issuance of the electronic title. If the transferor holding the physical title makes the disclosure on that title, the final rule requires subsequent electronic reassignments in such an instance, even though the vehicle has a physical title.

Consistent with other provisions of this final rule, § 580.5(g) disposes of the use of separate physical odometer disclosure statements in states with electronic title and odometer disclosure systems. To make this limitation on the use of separate physical odometer disclosure statements after a title has been issued, the final rule now states a separate physical disclosure statement may only be used after the holder of a physical title has made a proper odometer disclosure, assigned the title to their transferee, the title no longer has space for a reassignment and the transaction's locale does not have an electronic title and odometer disclosure system. Finally, while states with electronic title and odometer disclosure systems may choose to employ separate physical disclosure statements in instances where a title has not been issued, the final rule establishes these states must provide a means for electronic odometer disclosures both before and after a title has been issued.

H. Requirements for Electronic Transactions

NHTSA proposed employing Section 580.6, previously reserved, to address issues specific to electronic transactions. These proposals included electronic storage in § 580.6(a)(1), electronic signatures in § 580.6(a)(2), availability of electronic records in § 580.6(a)(3), accounting for the potential for co-existing paper and electronic records in §§ 580.6(a)(4) and 580.6(a)(6), allowing a non-negotiable paper ownership record option in § 580.6(a)(5), NHTSA also proposed, requiring secure physical documents be used in electronic odometer disclosure systems in § 580.6(a)(7), and setting standards for converting secure paper documents to electronic formats in § 580.6(a)(8).

As set out in the NPRM, § 580.6(a)(1) stated electronic records shall be retained in a format which cannot be altered, and which indicates any

attempts to alter it. Commenters supported this proposal if the final rule allowed authorized alterations to the records to make corrections and other permissible changes. In response to these comments, the final rule makes several changes to this section. First, NHTSA has narrowed the applicability of this section from electronic "records" to electronic titles to remedy the overbreadth of our proposed language and for consistency with the remainder of the final rule. The final rule similarly changes the heading for § 580.6 to "Additional Requirements for Electronic Odometer Disclosures" to add clarity and precision. Proposed § 580.6(a)(1) is now redesignated as § 580.6(a) and, also for clarity, § 580.6(a)(2) through (8) are re-designated as § 580.6(b) through (h).

Section 580.6(a) of the final rule states electronic titles and power of attorney shall be retained in a format which cannot be altered unless such alterations are authorized and which indicates any unauthorized attempts to alter it (§ 580.6(a)(1)). This language allows authorized modifications in response to comments requesting this authority. To assist in detecting odometer fraud, these records must be stored in an order that permits systematic retrieval (§ 580.6(a)(2)) for a minimum of five years following conversion to a physical title, issuance of a subsequent title, or permanent destruction of the vehicle. Absent those events, the record shall be retained indefinitely. Final rule § 580.6(a)(2) and (3) mirror provisions for electronic record retrieval and storage that were found in § 580.6(a)(4) of the NPRM's regulatory text. These have been relocated as the focus of § 580.6, which has been narrowed to electronic odometer disclosures embedded in electronic titles and powers of attorney. The agency observes that two commenters, Texas and California, indicated the five-year retention period was unnecessarily burdensome and suggested three and four years respectively. Although NHTSA acknowledges that a shorter retention period would be less burdensome, the agency believes effective detection and prosecution of odometer fraud requires that states retain records, as dealers must, for not less than five years.

The agency also proposed requirements for signatures in electronic transactions. Section 580.6(a)(2), as set forth in the NPRM, stated any electronic signature identify an individual, and, further specified a business or entity be identified if the individual is acting on behalf of that business or entity. Comments submitted in response to this proposal were generally split—states,

AAMVA, and consumer or law enforcement-oriented groups supported it while dealers, auction firms, and their associations opposed it. Dealer groups believed the requirement to be unnecessary and inflexible as dealerships are entities regulated and licensed by their home states. Auction interests argued the requirement would impose a crippling burden on their ability to do business as they process hundreds or thousands of vehicles at a time. The final rule amends the language proposed in the NPRM to alleviate some of these concerns. Redesignated as § 580.6(b), this section is now restricted in application to electronic signatures made on odometer disclosures embedded in electronic titles or power of attorney. In contrast to our proposal, which was capable of being read as applying to all electronic transactions, the final rule requirement applies specifically to odometer disclosures.

In addition, the final rule also explains the requirement to identify both an individual and the entity that individual represents is, for auctions and dealers, limited to identifying the individual and the dealer or auction firm. NHTSA believes these modifications should relieve auctions from identifying multitudes of consignees that bring cars to them for sale, particularly since auctions typically do not take title or execute odometer disclosures. The agency does not, however, believe the requirement to identify both an individual and an entity when the individual represents an entity, should be eliminated. Identity verification schemes may rely heavily on personal information, not business information. Considering this, maintenance of what may be a rapidly changing list of “authorized” employees for a business would impose burdens on states and promote misidentification.

Executing odometer disclosures requires notices, warnings, and instructions to be read, information to be supplied by the transferor, acknowledgement and acceptance of the disclosure by the transferee, and, in paper transactions, a copy of the signed disclosure statement must be given to the transferor by the transferee. Transitioning from paper to electronic odometer disclosure requires parties have this information available. Then NPRM proposed any requirement in part 580 to disclose, issue, execute, return, notify, or otherwise provide information to another person is satisfied when the required information is electronically transmitted or otherwise electronically accessible to the party required to receive the

disclosure. One association and one state opposed this proposal as imposing a requirement on states that more properly lies with the parties. Objection was also made to this requirement as “process based” and not transaction based because of the proposed § 580.6 applying to electronic transactions.

The final rule adopts the language proposed in § 580.6(a)(3) in the redesignated § 580.6(c) with modifications responsive to commenter concerns. NHTSA observes first that § 580.6 has been recast to focus on electronic odometer disclosures instead of transactions to correct the impression it applies to processes. In addition, the final rule strikes the word “execute” from the proposed regulatory text and directs a requirement to disclose, issue, return, notify, or otherwise provide information to another person in the course of an electronic odometer disclosure is satisfied when the required information is electronically transmitted or otherwise electronically available to the party required to review or receive it. Therefore, the final rule clarifies the information at issue is that which is necessary for an odometer disclosure, and the duty to provide it is satisfied when it is made available to a party. As any electronic odometer disclosure must, at a minimum, provide an opportunity for parties to the transfer to view information, this requirement does not, for all practical purposes, impose an unnecessary burden.

Paper and electronic title and disclosure systems are likely to coexist for the foreseeable future. The NPRM proposed adding two sections to 580.6 to address the issues posed by the coexistence of paper and electronic systems. Section 580.6(a)(4) proposed requiring prior paper titles be copied electronically and then destroyed when a new electronic title is created. To preserve the paper title as a record, NHTSA also proposed the electronic copy of the paper title be retained for five years. Section 580.6(a)(6) proposed electronic title states must have an ability to issue secure paper titles and upon issuing such a title must invalidate any electronic title. Commenters supported these proposals but offered some concerns. One of these is that requiring destruction of physical titles by states is cumbersome, and the same purpose can be met by invalidating the paper title. Commenters also noted the requirement that only states can print paper titles might be too restrictive as technological advances might make it possible for secure paper titles to be produced by other entities. Indeed, one individual commenter

suggested individuals could print their own titles.

The agency is adopting the proposed sections with several modifications. Section 580.6(d), § 580.6(a)(4) in the NPRM, of the final rule requires states issuing electronic titles to obtain the prior physical title or proof that it was lost or invalidated before issuing a new title. These states must retain a physical or electronic copy of the physical title for five years, a period NHTSA believes is required for effective enforcement. As noted, the storage requirements for these records have been incorporated into the general requirements for storing electronic odometer disclosures in § 580.6(a) of this final rule. The final rule further adopts the language proposed in § 580.6(a)(6) of the NPRM without substantive change as § 580.6(f). NHTSA does not presently believe entities other than states should have the capability to issue titles.

NHTSA’s NPRM proposed, in § 580.6(a)(5), that states with electronic title systems have the option of providing vehicle owners with a paper record of ownership, including odometer disclosure information, if that document clearly indicates it is not an official title or odometer disclosure for that vehicle. The comments received in response to this proposal were very supportive, with some commenters expressing reservations such a document could be used fraudulently if not clearly marked. The final rule adopts the proposal in § 580.6(e), allowing issuance of such a document if it clearly indicates it is not an official title for the vehicle and may not be used to transfer ownership.

States may implement electronic title and odometer disclosure schemes by employing physical documents at some stage of the process. NHTSA’s approval of alternative odometer disclosure schemes presented by the Florida and New York petitions, was conditioned on the use of secure documents for portions of the odometer disclosure process. Section 580.6(a)(7) of the NPRM proposed any physical documents used make odometer disclosures for entry into an electronic title and odometer disclosure system to comply with the existing requirements of part 580. Comments directed toward this portion of the NPRM supported it, but two commenters, Arizona and Texas, respectively noted the proposed language conflicted or may conflict with other portions of the proposed rule.

The final rule adopts the regulatory text of § 580.6(a)(7) of the NPRM as § 580.6(g) and modifies the requirement that such a document meet the existing requirements of part 580. For clarity and

to eliminate conflicts with other provisions, the final rule paragraph states any document used to make odometer disclosures into an electronic system must be set forth by means of a secure printing process or other secure process. In addition, the final rule specifies the foregoing requirement does not apply to a lessee's odometer disclosure made in conformance with § 580.7.

The simultaneous existence of both paper and electronic title and odometer disclosure systems requires paper documents be converted into electronic records. As NHTSA remained concerned document conversion presented opportunities for fraud, § 580.6(a)(8) of the NPRM proposed processes for converting titles and other secure documents to electronic copies maintain security features and that scanning be made in color at a resolution of 600 dpi. Commenters reacted strongly to this proposal and argued strenuously that it was ill founded, costly, and impractical. After consideration of these comments, the agency agrees a 600-dpi requirement is impractical and that a 200-dpi standard should provide the required level of security. Accordingly, the final rule redesignates the proposal's paragraph § 580.6(a)(8) as § 580.6(h), eliminates the requirement that scanning or imaging be performed in color and reduces the required resolution to not less than 200 dpi.

Texas submitted comments suggesting an additional two subsections be added to § 580.6. The first of these would make an explicit provision for using a power of attorney in an electronic title jurisdiction where the transferor holds a lost physical title. Rather than have the transferor execute a power of attorney and then have the transferee obtain a physical title and then convert it to electronic form, the provision would allow use of a single power of attorney to complete the transaction and convert the title. NHTSA concurs with adding this provision, which is adopted by this final rule as § 580.6(i). Texas also offered an amendment providing that reassignment documents may not be used for making odometer disclosures with an electronic title because there is no physical limit on the number of reassignments that can be incorporated into such a title. The agency agrees this provision is desirable and has added § 580.6(j) to implement it in the final rule.

I. Leased Vehicles

Leased vehicles present challenges in making odometer disclosures because they are held by a lessee while the

lessor holds the title and, without the title accompanying the vehicle, frequently transferred by the lessee to a transferor. Section 580.7 establishes special procedures to ensure accurate mileage information is provided by the lessee to the lessor so the lessor can execute the odometer disclosure on the title. The NPRM proposed amendments to § 580.7 allowing the required documents be in the form of "electronic documents." Commenters generally supported the proposed amendments provided NHTSA did not extend the proposal to require states to play a role in facilitating lease vehicle disclosures. Many commenters noted the use of the terms "physical document" and "electronic document" as employed in the proposed regulatory text were incompatible with the definitions and security requirements of these documents proposed elsewhere in the NPRM. Consistent with the revisions this final rule makes to the definitions in § 580.3, this final rule revises § 580.7 by eliminating references to "physical document" and "electronic document" and stating required communications may be made electronically and in writing. Because the existing paper process does not contain such a requirement, the final rule also eliminates a proposal stating a lessee completing an electronic odometer statement must separately acknowledge understanding federal and applicable state law requirements prior to signing the disclosure.

J. Document Retention

Part 580's document retention requirements provide for the maintenance of records essential to establishing the paper trail used to detect and prove cases of odometer fraud. Section 580.8, applicable to dealers and distributors, and § 580.9, which applies to auction companies were both the subject of amendments proposed to include electronic copies or electronic documents as an acceptable form of record. The NPRM further proposed § 580.8 specify dealer electronic records be retained in a format which cannot be altered, and which indicates any attempts to alter it. Commenters questioned whether extending paper record requirements would be necessary in electronic title and odometer disclosure states given those states would store the same data. Comments also questioned the use of the term "electronic document" and "physical document" in the proposal given the definition proposed in § 580.3. Other comments questioned the proposal's amending the requirements for odometer disclosure statements for

dealers and distributors while not applying similar requirements to leased vehicle documents and powers of attorney. The final rule makes several changes to the amendments proposed in the NPRM in response to these comments

This final rule amends § 580.8(a) to provide dealers and distributors must retain paper or electronic copies of each odometer mileage statement they issue and receive for five years. The final rule further states electronic data shall be retained so it cannot be altered and which indicates any attempts to alter it. Similarly, the final rule amends § 580.8(c) to require dealers and distributors to retain paper or electronic copies of each power of attorney, executed pursuant to §§ 580.13 and 580.14, that they receive for five years and imposes the same storage requirements for electronic documents as found in § 580.8(a). Section 580.8(b) is also amended to require lessors to retain both written and electronic odometer disclosure statements they receive from lessees for five years and, if the disclosure is electronic, the data shall be retained so it cannot be altered and which indicates any attempt to alter it. The final rule also adds a new paragraph, § 580.8(d), specifying that in the case of odometer disclosure statements made on electronic titles or electronic powers of attorney, dealers and distributors need not retain the data if the jurisdiction retains this information for five years and makes it available to these dealers and distributors at their principal place of business. To ensure these records are available to enforcement officials, the paragraph further states such data must be available at the dealer or distributors place of business upon demand.

As proposed in the NPRM, § 580.9, establishing document retention requirements for auction companies, employed the terms "electronic document" and "physical document" to describe the materials they must retain. Consistent with other changes made in this final rule, this section dispenses with those terms as used in the NPRM and states that the information may be physical or electronic. Also, the final rule replaces the term buyer in § 580.9(b) with "transferee" as that term is employed throughout part 580.

K. Power of Attorney

As required by the Truth in Mileage Act of 1986 (TIMA), NHTSA issued a final rule in August 1988 (53 FR 29464), stating odometer disclosures may only be made on the vehicle title unless the vehicle has never been titled or the title did not contain sufficient space for the

disclosure. *Id.* at 29471. The command that odometer disclosures can only be made on the title could cause serious difficulties in instances where the title was held by a lienholder because the title, and the means for making an odometer disclosure, would not be available to the owner of the vehicle subject to the lien if that owner wished to sell the vehicle or trade it in when buying a new car. Congress responded to the foregoing final rule by inserting a provision in the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561) amending TIMA’s requirement that odometer disclosures be made only on the title. This amendment allowed use of a special power of attorney for executing odometer disclosures when a title is physically held by a lienholder. NHTSA implemented changes to part 580 authorizing use of this power of attorney by an interim final rule published in the **Federal Register** on March 8, 1989. (54 FR 9609). NHTSA later expanded the applicability of the power of attorney provisions to instances where the title was held by a lienholder or the title was lost. (54 FR 35879).

The advent of electronic title and odometer disclosure systems presents challenges stemming from the requirement that odometer disclosures must be made on the title, a reassignment document if no space for disclosure is available on the title, or through the special power of attorney when a title is physically held by a lienholder or has been lost. If an electronic title is subject to an electronic lien, it is not available to the vehicle owner to allow odometer disclosure until the lien is released. Further, as explained in the NPRM, a person holding an electronic title issued in one state may wish to sell their vehicle in a state that does not have an electronic title and odometer disclosure capability. Again, this vehicle owner would not have a title on which to make an odometer disclosure unless they obtained a printed title from their state beforehand.

NHTSA proposed amending § 580.13(a) and (b), to allow an individual with a vehicle titled in an electronic title state to use a power of attorney to sell a vehicle in a paper title state. Based on the belief that a power of attorney should not be needed when electronic titles and disclosures were available, the agency limited their use to the paper format. Commenters observed the NPRM’s view a power of attorney would be useful in interstate transactions from an electronic title state to a paper state was flawed as the transferor would still need a paper title

to register the vehicle. Most commenters advocated having both electronic and paper versions of the power of attorney in jurisdictions with electronic title and odometer systems. Three commenters noted language in § 580.13(f) stating “. . . if the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title” (emphasis added) is erroneous. These commenters noted the dealer does not complete the disclosure and should be changed to “transferee.” Another commenter encouraged amending § 580.13(f), which specifies that a power of attorney is void if the odometer reading on the power of attorney is lower than on the title, to accommodate instances where the disclosure properly reports the odometer reading is known to be in excess of mechanical limits or is “not actual.” This commenter further asked that this section allow for electronic submission of an original power of attorney by scanning or imaging and that § 580.16 be amended to specify that a copy of a power of attorney be made available upon request rather than returned. Other comments noted an electronic title could be unavailable when subject to an electronic lien or in the event technical issues in an electronic system made titles temporarily unavailable. Commenters aligned with lenders asked the power of attorney be expanded so lenders could perform disclosures for their clients.

The agency is adopting several changes to this portion of the final rule in response to the comments. For clarity, these amendments required bifurcating the former § 580.13(a) into two paragraphs, § 580.13(a) and (b), and redesignating the former § 580.13(b) through (f) as § 580.13(c) through (g). This final rule adds a new paragraph, § 580.13(h), as explained below.

Section 580.13(a) now specifies a power of attorney may be either a paper document, defined as an “Original power of attorney” in § 580.3, or may exist in electronic form consistent with the final rule’s definition of “Electronic power of attorney.” The restriction on the use of the power of attorney when the title is lost or is physically held by a lienholder remains in place for physical or paper titles. However, either an electronic power of attorney or an original power of attorney may be used when a paper title is lost or held by a lienholder. Given the likelihood that electronic title and odometer disclosure systems will not be implemented across the nation in the foreseeable future, the final rule provides a power of attorney

may be used if the title in question is electronic. For an electronic title, the final rule allows use of a power of attorney under two circumstances. The first is when the electronic title is held or controlled by a lienholder. In NHTSA’s view, this situation is analogous to that where a paper title is physically held by a lienholder as the title is not available to the transferor because the title will only be released when the lien is satisfied. The final rule also provides a power of attorney may be used when an electronic title cannot be accessed. The term “accessed” is employed here as defined in § 580.3 and therefore means the power of attorney may be used only in circumstances where either a transferee or a transferor does not have the ability to make authorized changes to the electronic title. In incorporating this provision into the final rule, NHTSA believes it offers the flexibility required to allow transferors with electronic titles to sell or trade in vehicles in states without electronic titles or odometer disclosure systems when the transferor did not obtain a paper title prior to the transfer.

NHTSA believes the foregoing changes to § 580.13(a) address the pre-eminent concerns expressed by most commenters. The final rule allows both physical and electronic powers of attorney to afford the flexibility required to facilitate vehicle transfers as states transition from paper to electronic titling and odometer disclosure. The agency acknowledges a power of attorney will not, in transactions where vehicle with an electronic title is transferred in a jurisdiction without electronic titles, allow the transferee to register and title the vehicle without obtaining a paper title from the transferor’s state. Nonetheless, that same obstacle exists today in interstate transactions involving a lost physical title or one that is physically held by a lienholder.

This final rule also amends former § 580.13(a) through (e), now redesignated as § 580.13(b) through (f) to make these sections consistent with changes implemented elsewhere. Where it appeared, the term “state” is now replaced with “jurisdiction” to conform to the definition added in § 580.3. References to the power of attorney are also modified by use of the terms “original” and “electronic,” and the term “title” is similarly modified by the terms “electronic” or “physical.” Because of concerns raised by the potential for illegible signatures or address information in instances where a “pen pad” or similar device for recording hand written information electronically may be used, these

sections have also been changed to require a printed name and a printed address.

NHTSA has also made amendments responding to comments addressing the former § 580.13(f), now redesignated at § 580.13(g), and added a new paragraph § 580.13(h). Along with adding the necessary terms to accommodate electronic and original powers of attorney and physical and electronic titles to the former § 508.13(f), the final rule now provides two exceptions to the requirement that mileage shown to be lower than that disclosed on the title voids the power of attorney. The two exceptions added reflect two instances where the mileage on the power of attorney may properly be lower than that shown on the prior title—when the transferor states that the mileage shown reflects mileage in excess of the designed mechanical odometer limit or that the mileage shown does not reflect the actual mileage. This final rule also removes the word “dealer” in this paragraph and replaces it with the word “transferee” for consistency. This final rule also adds § 508.13(h), allowing states to receive copies of an original power of attorney in an electronic format after scanning or imaging.

This final rule also amends §§ 580.14 through 580.16 to allow for the use of both electronic and original powers of attorney, electronic and physical titles and to replace “state” with “jurisdiction” consistent with the definitions in § 580.3. As § 580.14 sets out the requirements of Part B of the power of attorney and is a counterpart to Part A addressed by § 580.13, the final rule also adds the requirement transferees provide a printed name and a printed address in § 580.14(b)(3) and (4). Consistent with § 580.13(g) of this final rule, § 580.15—establishing the certification requirements for a person exercising the power of attorney—is modified to account for situations where a transferor has indicated mileage exceeds mechanical limits of the odometer or has stated the odometer does not reflect the actual mileage. Therefore, § 580.15(a) is revised to relieve the person making the certification from attesting that the mileage they disclosed (as authorized by the power of attorney) is greater than that previously shown in the title or a reassignment document if they disclosed that the mileage exceeds mechanical limits or the odometer reading does not reflect the actual mileage. The foregoing change to § 580.15(a) requires restructuring the remainder of this section for clarity. Accordingly, § 580.15(b) is redesignated in the final rule as § 580.15(c) and the

final sentence of the former § 580.15(a) is now § 580.15(b). In addition to the redesignation, § 580.15(c) is also modified to provide an exception to voiding the power of attorney for mileage inconsistency where the disclosure states the mileage is in excess of mechanical limits or does not reflect the actual mileage. The final rule makes another revision for consistency by replacing the term “purchaser” with “transferee” in § 580.16(b).

L. Exemptions

NHTSA’s NPRM proposed amending § 580.17(a)(3), exempting any vehicle more than 10 years old from the odometer disclosure requirements, to raise this exemption to 25 years. Comments submitted in response to the proposal were consistent in raising concerns about how such a change would be implemented because many vehicles exempt under the former rule would no longer qualify, but may have already been claimed as exempt. Far less consensus existed in consideration of the wisdom of changing the exemption. Some commenters strongly supported the proposal, citing the increased age of the vehicle fleet and providing anecdotal evidence of significant odometer fraud prosecutions involving older vehicles. One commenter noted some states do not issue titles for older vehicles, presenting the paradox of requiring disclosure on a title when no title exists. Out of states submitting comments, only one indicated any degree of opposition, citing possible increased data entry costs. Dealers, insurers, and auctioneers opposing the proposed change to the exemption argued it would increase disclosure and recordkeeping burdens for transferors, transferees, and states, without providing any known benefit. Others also decried the notion this change would provide any benefit, contending buyers of older cars do not consider mileage as an important indicator of value, while one commenter noted theft and cloning are largely restricted to newer and higher value cars.

After review of the comments and consideration of the available data, NHTSA is modifying the 25-year exemption proposed in the NPRM to a period of 20 years. NHTSA notes that it amended the previous 25-year exemption to a 10-year exemption rule in 1988. (53 FR 29464, August 5, 1988). In the preamble to the 1988 final rule, the agency observed it was abandoning the 25-year exemption because of evidence derived from studies conducted in Wisconsin and Iowa that odometer tampering was

disproportionately small as compared to the number of vehicles in that age group. The agency also observed at the time that many commenters indicated that the prices for vehicles over ten years old was not typically based on the odometer reading. Given the low incidence of odometer tampering and substantial evidence that buyers in 1988 were not relying on mileage as the primary indicator of condition in vehicles 10 year old and older than 10 years, NHTSA adopted an exemption that applied to vehicles 10 years old and older. *Id.* at 29472. When that final rule was issued in 1988, the average age of automobiles in use was 7.6 years.² In 2017, almost three decades later, the average age of light vehicles in use had risen to 11.7 years.³

The 2017 National Household Travel Survey also validate this trend of increased vehicles longevity. The survey shows that the average age of household vehicles increase to 10.1 years for cars and 10.4 for light trucks/vans (LTVS) from 7.6 and 8.0 years, respectively, in 1990. In other words, 10 years and older vehicles also have increasingly comprised a greater proportion of household vehicles. In 2017, about 47 percent of the household cars and 50 percent of the household LTVs were 10 years and older—a significant increase from the respective 30 percent and 32 percent in 1990.⁴ Furthermore, based on the NHTSA established scrapped rate schedule, the average age of vehicles when they are scrapped (*i.e.*, age at 50 percent scrappage rate) is about 16 years old for cars and 15 years old for LTVs.

In 2008, noting the increasing age of light vehicles in use, the U.S. Department of Justice (DOJ) requested NHTSA consider review of the 10-year exemption. Among other things, DOJ observed the increasing numbers of “exempt” titles increased opportunities for odometer fraud while the advent of mileage records in Carfax and similar venues made such titles more valuable for those engaging in odometer fraud. Consistent with increases in vehicle age since 1988, the age of vehicles that have their mileage altered has also increased. An April 2002 NHTSA study, which

² Average Age of Automobiles and Trucks, Fed. Highway Admin., available at <https://www.fhwa.dot.gov/ohim/onh00/line3.htm> (last visited Sept. 13, 2019).

³ America’s Cars and Trucks Are Getting Older, Business Insider (Aug. 22, 2018), available at <https://www.businessinsider.com/americas-cars-and-trucks-are-getting-older-2018-8> (last visited Sept. 13, 2019).

⁴ Table 21 of Summary of Travel Trends, 2017 National Household Travel Survey, Fed. Highway Admin., July 2018, available at https://nhts.ornl.gov/assets/2017_nhts_summary_travel_trends.pdf (last visited Sept. 13, 2019).

examined 11 model years of data, found the rate of odometer fraud began to rise in the fourth and fifth year of service and then remained consistently high through years 7 through 10. A 2013 study performed by a private company, CARFAX, found vehicles 14 to 15 years old were most susceptible to having had their odometers rolled back.⁵ The increased longevity of vehicles in years has been matched by change in the number of miles travelled before a vehicle has reached the end of its useful life. In the years before NHTSA's 1988 amendment decreasing the exemption from 25 to 10 years, vehicles that had travelled over 100,000 miles were generally considered to be at or near the end of their useful lives. Improvements in vehicle quality and advancements in technology have greatly extended this figure and worked corresponding changes in the used vehicle market. According to the data Edmunds provided to NHTSA, the 100,000 miles travelled approximated to that for an average 8/9 years old vehicles that were sold in 2017. These 8 to 9 years, on an average, would still maintain 87 to 89 percent of its useful life. Furthermore, not only have vehicles lasted longer, they also retain a greater proportion of their original manufacturer suggested retail price (MSRP). Edmunds data indicated that a 10-year-old vehicle retained 21 percent of its original MSRP in 2012. In 2017, the percentage increase to 26 percent.⁶

Additional considerations supporting changing the exemption include the relative ease with which modern odometers may be rolled back and the significant increases in market value that may be gained through such fraud. Mechanical odometers have vanished from the market and have been controlled by microprocessor driven digital displays. As the microprocessors controlling the odometer display are also employed in service of anti-theft devices and other functions, they may be accessed by specialized software through the vehicle's diagnostic port. This specialized software, which may be used to reset, repair or correct information in the module controlling the odometer and other systems in the instrument cluster can also be employed to remove mileage from the odometer display in minutes. Given the improved

corrosion resistance and improved quality of exterior finishes on contemporary vehicles, resetting an odometer display to remove 100,000 miles from the mileage shown can significantly alter the market value of a car, often by many thousands of dollars. For those inclined to commit odometer fraud, the profit that can be gained from a single transaction can far exceed the investment in software and time needed to change the odometer display. Therefore, NHTSA's view is that the increased age of vehicles, the changes in the used car market prompted by vehicle longevity, the relative ease with which modern odometers may be rolled back and the known trends in odometer fraud support extending the exemption to 20 years.

Implementation of any change in the exemption caused many commenters to voice concern as the NPRM proposal did not account for vehicles subject to the prior exemption in the regulatory text. The final rule addresses this issue by stating the 20-year exemption applies only to vehicles manufactured after the 2010 model year, ensuring previously exempt vehicles are not captured by the new rule.

The agency believes the costs associated with changing the exemption will be negligible and more than offset by the benefits gained from protecting consumers from odometer fraud. Although one state and several commenters associated with dealers and auctioneers cited additional data entry and recordkeeping costs associated with modifying the extension, the exact nature and source of these costs was not described in the comments.

Approximately 40 million used car sales occurred in the United States in 2018. Vehicles over 10 years old accounted for approximately 3 to 4 percent of retail sales by franchised new car dealers⁷ and 12 percent of sales by independent dealers.⁸ Many older vehicles are sold through private sales or at wholesale auctions.⁹ Private used car sales accounted for approximately 28 percent of 2017 used car sales or slightly less than 11 million sales.¹⁰

⁷ Used Vehicle Outlook 2019, Edmunds, available at <https://static.ed.edmunds-media.com/unversioned/img/industry-center/insights/2019-used-vehicle-outlook-report-final.pdf> (last visited Sept. 13, 2019).

⁸ NIADA 2018 Used Car Industry Report, National Independent Auto Dealers Association, available at https://www.niada.com/uploads/dynamic_areas/ei514ZznCKTc8GyrBKd6/34/UCIR_2018_Web.pdf? (last visited Sept. 13, 2019).

⁹ Used Vehicle Market Report, Edmunds, Feb. 2017, available at https://dealers.edmunds.com/static/assets/articles/2017_Feb_Used_Market_Report.pdf (last visited Sept. 13, 2019).

¹⁰ Charles Chesbrough, The Used Vehicle Market: Bumps On The Road Ahead, available at <https://>

Franchised dealers were responsible for approximately 37 percent of the used car sales while independent dealers accounted for approximately 34 percent of these sales.¹¹ Wholesale auctions, which are an important source of used cars inventory for dealers, sold approximately 10 million cars in 2018.¹² Given that approximately 4 and 12 percent of used car sales respectively involving franchised and independent dealers involve vehicles over 10 years old, the change in the exemption will impose some additional costs on these dealers which can be quantified with a degree of certainty. These additional costs will stem from having to complete odometer disclosure forms for vehicles which, because of their age, had the mileage blank on the title marked with the word "exempt" while leaving the remainder of the form blank. In instances where the vehicle's paper title is not available because it is lost or held by lienholders, a transferor will have to employ the power of attorney form dictated by part 580 and the transferee will have to either complete the odometer disclosure on the title when it is obtained or execute Part B of the power of attorney in a subsequent transaction. This is most likely to arise when a consumer transfers a vehicle to a dealer either as a trade-in or in an outright sale. NHTSA believes that it is unlikely that the change in the exemption will involve execution of a both a power of attorney and the odometer disclosure statement in transactions involving private sales and wholesale auctions. In both private sales and auction sales, odometer disclosures are almost always made on the vehicle's title and do not involve the use of a power of attorney. Private sales are more likely to involve vehicles that are not subject to a lien and where the seller has the title in their possession. Buyers in private sales are also more likely to insist on having the title itself available at the time the transfer is completed. Similarly, auction sales also rarely involve vehicles for which the title is not available. As these are wholesale transactions where the auctioneer is acting as the agent on behalf of a seller that is a business entity, the vehicle title is available at the time of sale.

The change in the exemption period made by this final rule will also impose some additional recordkeeping costs.

www.chicagofed.org/~media/others/events/2017/automotive-outlook-symposium/chesbrough-06022017-pdf.pdf (last visited Sept. 13, 2019).

¹¹ *Id.*

¹² Auction Industry Survey For the Year Ended Dec. 31, 2018, available at https://www.naa.com/pdfs/AuctionIndustrySurveySummary_2018.pdf (last visited Sept. 13, 2019).

⁵ Carfax: Odometer Fraud Hits Nearly 200,000 Cars Annually, available at <https://www.carfax.com/press/carfax-odometer-fraud-hits-nearly-200-000-cars-annually> (last visited Sept. 13, 2019).

⁶ Used Vehicle Market Report, Edmunds, Feb. 2017, available at https://dealers.edmunds.com/static/assets/articles/2017_Feb_Used_Market_Report.pdf (last visited Sept. 13, 2019).

Dealers are required to retain copies of executed odometer disclosure statements for a period of five years. As noted above, this may either involve retaining a copy of the executed odometer disclosure on the back of a title or a copy of both the power of attorney form and the odometer disclosure on the back of the title made under the authority given by the power of attorney.

M. Miscellaneous Amendments

The NPRM proposed various amendments updating the agency's address, removing obsolete text, and conforming the petition for alternative disclosure schemes requirements to the other proposed amendments. These included inserting a new address in §§ 580.10(b)(2) and 580.11(b)(2), deleting the text in § 580.12 and amending § 580.11(a). A single commenter supported these proposed amendments. This final rule adopts these amendments as proposed in the final rule.

N. Other Comments

Several commenters proposed amendments not offered in the NPRM. One commenter suggested the term "his" used in various sections of part 580 be changed to be gender neutral and that "purchasers" in § 580.2 be changed to "transferees" because not all transfers of ownership requiring an odometer disclosure are the result of a purchase and "purchaser" is not defined in part 580. This commenter also proposed changing "at the time the lessors transfer the vehicle" in § 580.2 to "at the time the lessees return possession of the vehicle to the lessors" to more accurately fix the time when a lessee must make disclosure. The final rule adopts these changes.

Commenters also asked for clarification on when a power of attorney may be used in conjunction with odometer disclosure by third parties such as lienholders, title services, and auctions. NHTSA observes the definition of both "transferor" and "transferee" in § 580.3 includes not just the owner and the buyer but also an agent acting on their behalf. Such an agent may include an individual or entity appointed by a general or limited power of attorney. If, however, that agent is representing an owner in a situation where the special power of attorney set forth in § 580.13 may be used, that agent must make the odometer disclosure on the secure special power of attorney specified in that section.

Several commenters requested NHTSA implement provisions

providing lenders with the ability to make odometer disclosures through the special power of attorney in § 580.13 as well as requiring the mileage on disclosures be transmitted electronically to lenders. NHTSA does not believe expanding the scope of permissible users of the special power of attorney to be desirable because limiting the use of these documents reduces the opportunity for fraud. The agency also declines to require mileage disclosures to be transmitted electronically to lenders as such a requirement is inconsistent with the purposes of part 580.

Comments were also submitted supporting provisions to address "end of life" of vehicle title processing. These commenters suggested special electronic processes be implemented to facilitate transfers of vehicles that are scrapped or have been declared to be a total loss. NHTSA acknowledges the desirability of streamlining the process of transferring vehicles to recyclers as well as transfers for vehicles that have been declared to be a total loss. The agency does not, however, believe it should take further action other than fostering the development of electronic title and odometer disclosures through issuing this final rule.

The NSVRP urged NHTSA to make whatever changes were needed to ensure odometer readings were reported to the correct jurisdiction at every transfer, including dealer-to-dealer transfers. NHTSA concurs in the goal of having odometer mileage accurately reported at every opportunity and believes the implementation of electronic title and odometer disclosure systems will do much to achieve that goal. As this final rule eliminates reassignment documents in states with electronic odometer disclosure systems, mileage will be reported more frequently when these systems are implemented. The agency is not requiring such reporting where paper documents are used absent further analysis of the burdens that would be imposed and the benefits what would accrue.

Auctioneer representative NAAA stated U.S. Customs and Border Protection (CBP) regulations require vehicles to be exported with the original or certified copy of the title. This commenter fears CBP may not be prepared to work with electronic titles, and delays in issuing paper titles may harm vehicle exporters. NHTSA believes this final rule will not result in titles becoming more difficult to obtain.

Two commenters addressed the petition process for approval of odometer disclosure schemes,

expressing concern about the effect the NPRM would have on the continued existence of the petition process. One commenter requested NHTSA establish rules for rescinding prior grants and that this final rule declare that it did not invalidate any previously granted petition. NHTSA did not propose eliminating the petition process in the NPRM, and this final rule does not make any changes to that process. The agency also does not agree there is a need to craft rules of general applicability for rescinding prior grants of any petitions for approval of alternative disclosure requirements. Historically, NHTSA has received few of these petitions and has, thus far, not encountered any situation calling for a rescinding a prior grant. To the extent any conflict exists between the requirements of this final rule and a previously granted petition, NHTSA expects the final rule to be controlling authority that must be followed. In making this statement, however, it is the agency's belief the provisions of this final rule are not inconsistent with any of its prior determinations approving alternative odometer disclosure schemes.

O. New Technologies

NHTSA intends for this final rule to accommodate emerging technologies such as blockchain that states may wish to use for recording electronic titles, making odometer disclosures, and authenticating electronic signatures. As was discussed previously, we cannot foresee all future security and authentication applications that states may wish to use to facilitate electronic odometer disclosures and title transactions. We intend for this final rule to be technology neutral. States can use any application for electronic odometer disclosure or title transactions so long as the application provides for NIST Level 2 assurance or equivalent and otherwise complies with the requirements of part 580.

IV. Effective Date

The NPRM did not propose a date on which the amendments offered by NHTSA would become effective. NHTSA has determined the amendments provided below shall become effective on December 31, 2019. The agency is issuing this final rule in response to a Congressional directive that NHTSA issue regulations allowing states to implement electronic odometer disclosure systems without having to petition NHTSA for approval. After thorough review of the comments and consideration of existing electronic odometer disclosure systems, the agency believes almost all of the states with

such systems currently will meet the new requirements. However, NHTSA notes that states whose systems may need to be modified to meet the new requirements will need to time to make any changes needed to comply with this rule. NHTSA has established an effective date that allows sufficient time to for states to ensure compliance.

V. Costs and Benefits

The estimated annual costs of the final rule considers the total labor cost for filling the mileage in odometer disclosures when ownership is transferred for 11 to 19 years old used vehicles, the cost for computer storage for these disclosure records, and the processing time for filing these records. The estimated benefits of the final rule primarily are measured by the annual consumer loss from the odometer fraud that can be eliminated by the exemption requirement of the final rule. Allowing e-odometer filing is expected to be more efficient for a paper form of odometer system and thus has the benefits of paper reduction and the decrease of record processing and management time. The agency presently is unable to quantify the efficacy impact of E-odometer, therefore, its benefit is not included. The estimated costs and benefits are expressed in 2018 dollars. Please see the accompanying cost and benefit analysis for a detailed discussion.

This final rule, except for the amendment modifying the exemption for vehicles of a certain age from the odometer disclosure requirements, establishes rules intended to accommodate electronic odometer disclosures in the event states or other jurisdictions seek to adopt such systems. The agency has carefully reviewed previous petitions for approval of such systems, the requirements of federal odometer disclosure law, past rulemaking actions, and the comments provided in response to the NPRM with a goal toward crafting regulations that will continue to protect against odometer fraud while providing sufficient latitude for jurisdictions to either retain or develop electronic title and odometer disclosure schemes. The agency believes the final rule will not require the small number of jurisdictions with electronic odometer systems to make significant changes to comply with the new rules, and NHTSA will work with those jurisdictions to facilitate compliance. Specifically, the final rule requires the security of the electronic systems that are comparable to the practice of the current state security requirements and to that recommended by the task force

sponsored by the American Association of Motor Vehicle Administrators.¹³ Therefore, the agency believes the final rule would not impose costs to states for the implementation of security requirement of the e-odometer systems.

This final rule also alters the previous exemption from odometer disclosure for vehicles that are 10 years old to make it applicable to vehicles 20 years old. This new exemption will apply to vehicles manufactured in the 2010 model year and later and, unlike the remainder of the provisions of this final rule, will be applicable to all vehicle transfers and odometer disclosures regardless of whether the disclosures are made on paper or electronically.

The increased quality and longevity of vehicles dictates half of vehicles now in use are more than 11 years old, and, with the average age at scrapping of 15 years, these vehicles are prime targets for odometer fraud. It is the agency's belief the aggregate cost of odometer fraud to purchasers of vehicles in the 10 to 20-year age range is substantial. Balanced against that cost, the burdens imposed by raising the exemption age are minimal. An odometer disclosure is one of many steps involved in transferring ownership of a vehicle. When a vehicle is old enough to be exempt from the disclosure requirements, the seller may choose to simply place the word "exempt" in the space where the odometer mileage would be entered. In such a case, the buyer and seller do not need to fill in the remainder of the disclosure form or sign it. However, whether made on the title or on a separate document when it is permissible to do so, the claim that the vehicle is exempt or the odometer mileage is recorded and processed by a state when the vehicle is registered. The odometer disclosure is also just one part of the larger process of transferring ownership in which the various participants are executing or processing documents and retaining copies as records. States will be maintaining these records regardless of whether the vehicle is exempt from odometer disclosure. Car dealerships also generally preserve all transaction records for at least five years, for tax and audit purposes. As such, the agency believes that the final rule would not have additional costs on computer and physical storage for states and car dealerships. The final rule also is not expected to increase the record processing burden to states and car

dealerships. Therefore, the only cost from the final rule would be the labor cost for the time that is needed for recording the mileage from "exempt" to the actual mileage, for inspection to ensure accuracy, time to sign the statement and to provide the name and address information.

Based on the NIADA Used Car Industry Report (NIADA report),¹⁴ there were 41.4 million used cars sold in 2017. Examining the data in the NIADA report, the data provided by Edmonds, and Polk vehicle registrations, the agency estimated that 10.4 million vehicles sold annually were between 10 and 19 years old. This represents the whole 10 model years (MY) of vehicles that would be affected by the extended exemption requirement of this final rule in the 10th (2019) and later years. During the first effective year of the final rule, *i.e.*, 2020, only one MY of vehicles, 2010 MY (*i.e.*, age 10) will be affected. One more additional MY vehicles will be added each year between the 2nd to the 9th effective years of the final rule. Afterwards, *i.e.*, the 10th effective year and later, a whole 10 MYs of vehicles will be affected each year.

The number of odometer disclosures for the affected vehicles would depend on the retained sources. Private party transactions (*i.e.*, individual to individual) will require one odometer disclosure assuming that the disclosure conforms to the current individual state regulations for vehicles 0 to 9 years old. By contrast, vehicles sold through dealers will involve at least two disclosures due to the wholesale level when vehicles are passed among dealers. With the lack of the statistics on how many times a used vehicle would be wholesaled before its retail purchase, the agency assumes a total of 5 disclosure transactions per retailed vehicle.

Using several data sources (Polk registration data, NIADA report, and Edmonds), the agency estimated that the total number of affected vehicles is about 1.4 million in 2020 when only one MY of vehicles would be affected. With one additional MY of vehicles affected each progressing year, the volume as expected will be gradually increased until reaching the maximum of 10.5 million units in 2029 and later years (2028+) when 10 MYs of vehicles (*i.e.*, 10 to 19 years old) were included. Derived from the same data source, the agency estimated that 40.3 percent were from private party sales and 59.7

¹³ Roadmap to Electronic Odometer Disclosure Guidance Document from the E-Odometer Task Force, March 2018, American Association of Motor Vehicle Administrators.

¹⁴ NIADA 2018 Used Car Industry Report, National Independent Auto Dealers Association, available at https://www.niada.com/uploads/dynamic_areas/ei514ZznCKTc8GyrBKd6/34/UCIR_2018_Web.pdf (last visited Sept. 13, 2019).

percent from car dealerships (franchised and independent). Therefore, there will be 4.9 million disclosures (=1.4 million * 0.403 * 1 + 1.4 million * 0.597 * 5) for 2020 and 35.4 million annual disclosures (= 10.5 million * 0.403 * 1 + 1.4 million * 0.597 * 5) for 2029+ years. The agency estimated that it will take 15 seconds to fill the actual mileage per disclosure and the average hourly labor cost in 2018 is \$36.39.¹⁵

Multiplying time in hours by the total disclosures and hourly labor cost derived the total cost of the final rule. The total cost of the change to the age-based exemption in the final rule is estimated to be from the minimum of \$0.7 million in 2020 to the maximum of \$5.4 million for 2029+ years.

Table 1 summarizes the affected MYs, the number of affected vehicles, the total number of mileage disclosures, and

the total costs from 2020. Note that the first part of the table shows the affected MYs and their corresponding age for each effective calendar year. The last column “2029+” indicates that 2029 and later, 10 MYs of vehicles will be affected by this final rule but with rolling one MY forwards each year. In other words, affected vehicles are MYs 2010–2019 for 2029, MYs 2011–2020 for 2030, and so on so forth.

TABLE 1—ESTIMATED COST OF THE FINAL RULE
[Affected vehicles]

Model year	Calendar year									
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029+
2010	10	11	12	13	14	15	16	17	18	19
2011		10	11	12	13	14	15	16	17	18
2012			10	11	12	13	14	15	16	17
2013				10	11	12	13	14	15	16
2014					10	11	12	13	14	15
2015						10	11	12	13	14
2016							10	11	12	13
2017								10	11	12
2018									10	11
2019										10

COST ESTIMATES
[In 2018 dollars]

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029 –
Units Sold (in Million)	1.4	2.8	4.2	5.5	6.6	7.7	8.6	9.3	9.9	10.5
Number of Transactions (in Million)	4.9	9.6	14.2	18.5	22.	26.0	29.0	31.5	33.7	35.4
Labor Hours (in 1000)	20.2	40.1	59.1	77.1	93.6	108.1	120.8	131.3	140.3	147.5
Labor Costs (in Million)	\$0.7	\$1.5	\$2.2	\$2.7	\$3.4	\$3.9	\$4.4	\$4.8	\$5.1	\$5.4

The benefit of the final rule as stated earlier is measured by the consumer cost from odometer fraud that can be eliminated due to the final rule. Based on the 2013 Carfax study,¹⁶ there are about 190,000 cases of odometer fraud (or rollbacks) with an annual loss of \$761 million indicating an average of \$4,000 loss per case. The study also stated that 60 percent of rollbacks occurred in vehicles 11 to 19 years old and the average rollback is about 50,000 miles.

These are the available rollback statistics and fraud monetary loss that the agency used as starting points for benefit estimates. Specifically, the fraud loss was adjusted from 2013 economics to 2018 economics. Therefore, the fraud loss is estimated to be \$820 million in 2018 dollars. The 60 percent rollback rate is used as the rate for all affected vehicles (*i.e.*, 10–19 years old) because of the lack of annual rollback

information by individual age. This implies that during the full effective calendar year where 10 MYs of vehicles will be affected, rollbacks for these 10 MYs of vehicles account for 60 percent of all rollbacks of that calendar year. The agency believes that the impact on fraud loss will be reduced disproportionately with increased age given the same rollback miles. To reflect this, the agency used the overall annual fraud loss of \$820 million as the base and estimated the proportion each age of vehicles’ contributing to this loss. To achieve this, the agency first developed a regression model describing the relationship between retail price and vehicle mileage using data provided by Edmonds. The 50,000 miles was treated as the average rollback miles and was used in the regression model to project the retail price when mileage is increased by 50,000 miles for all age of vehicles. The average price difference is

the retail price difference between a vehicle with a specific mileage level and with that mileage increased by 50,000 miles. The Edmonds data used in the regression model only reflects dealership transactions which tend to involve younger used vehicles. The model projected price difference thus might not account for the relative occurrence of each age of vehicles in the annual used car market. To address these issues, the projected price difference for individual vehicle age was indexed relative to that of age 0 (*i.e.*, ratio of price difference of individual age to that of Year 0). The relative indexes were then weighted by the vehicle age factors to account for the occurrence of each vehicle age. The age factors were developed using 2013 to 2018 Polk vehicle registration data. Thus, in 2020, there are about 15,700 rollbacks in vehicles 10–19 years old, representing a minimum annual impact.

¹⁵ Average of first three Quarters of 2018. Series Id: CMU101000000000D (C); Series Title: All Civilian Total compensation for All occupations;

Cost per hour worked as of March 18, 2019. Bureau of Labor Statistics, <https://data.bls.gov/cgi-bin/dsrv>.

¹⁶ Odometer Fraud 2013, Carfax, available at <https://cfx-wp-images.s3.amazonaws.com/2017/11/>

[odometer_fraud_infographic.jpg](#) (last visited Sept. 13, 2019).

These rollbacks would account for 3.6 percent of the overall annual fraud loss which equates to \$29.4 million (= \$820 million * 0.036). Representing a maximum annual impact, from 2028 onwards when a whole of 10 MYs would be affected each year, there would be 114,300 annual rollbacks. These rollback account for 18.3 percent of the overall annual fraud loss resulting in a \$150.1 million (= \$820 million *

0.183) loss to consumers. Table 2 summarizes the estimated annual rollbacks for affected vehicles, its share in overall annual fraud loss, annual consumer economic loss, and a 5-percent rollback scenario. As shown, if the rule can deter 5 percent of rollbacks from affected vehicles, *i.e.*, the 5% of loss, the rule would reduce \$1.5 million annual consumer loss in 2020 and \$7.5 million from 2029 forwards. In addition,

Table 2 also presents the breakeven point of the rule. The breakeven point is defined as the projected effectiveness of the final rule where the benefit is equal to the cost. The rule is expected to break even if the rule can eliminate 3.6 percent of the annual fraud loss (or rollbacks). If the rule can deter more than 3.6 percent of rollbacks in affected vehicles, the rule would accrue monetary benefits.

TABLE 2—BENEFITS ESTIMATES
[In 2018 dollar]

	Calendar year									
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029+
Units w/Rollback (in 1000)	15.7	31.1	45.8	59.8	72.5	83.8	93.6	101.8	108.7	114.3
Percent of Overall Annual Loss *	3.6%	6.8%	9.7%	12.3%	14.5%	16.4%	17.4%	18.0%	18.3%	18.4%
Annual Loss (in Million)	\$29.5	\$55.8	\$79.6	\$100.9	\$110.0	\$134.5	\$142.7	\$147.7	\$150.1	\$150.9
5% of Loss (in Million)	\$1.5	\$2.8	\$4.0	\$5.0	\$5.9	\$6.7	\$7.1	\$7.4	\$7.5	\$7.5
Breakeven Point **	2.5%	2.6%	2.7%	2.8%	2.9%	2.9%	3.1%	3.2%	3.4%	3.6%

* Overall annual loss from all vehicle ages is estimated to be \$820 million.

** The projected effectiveness where the benefit is equal to the cost.

Note: rounding might affect the final outcomes.

VI. Regulatory Notices and Analyses

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

Executive Order 12866, Executive Order 13563, and the Department of Transportation’s regulatory policies require this agency to make determinations as to whether a regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Orders. Executive Order 12866 defines a “significant regulatory action” as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

NHTSA has considered the potential impact of this final rule under Executive Order 12866, Executive Order 13563, and the Department of Transportation’s regulatory policies and procedures, and have determined that it is not significant. This proposal amends existing requirements to allow States a

new alternative means of complying with those requirements and changes the terms of an existing exemption from mileage disclosure. This change in the exemption will require slight additional data entry and otherwise does not impose any new regulatory burdens. For those States with existing electronic title and odometer disclosure systems, the agency believes that changes required to meet the new rule will not be burdensome. Therefore, this document was not reviewed by the Office of Management and Budget under E.O. 12866 and E.O. 13563.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

E.O. 13771 (82 FR 9339, February 3, 2017), Reducing Regulation and Controlling Regulatory Costs, requires that for “every one new [E.O. 13771 regulatory action] issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

An E.O. 13771 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” As discussed earlier, this final rule does not impose new requirements but rather creates opportunities for states to implement an electronic odometer disclosure system without petitioning NHTSA for approval. As such, it is considered a deregulatory action.

C. National Environmental Policy Act

NHTSA has reviewed this rule for the purposes of the National Environmental Policy Act and determined it would not have a significant effect on the quality of the human environment.

D. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration’s regulations at 13 CFR part 121 define a small business, in part, as a business entity “which operates primarily within the United States.” 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies the proposal would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a proposal would not have a significant economic impact on a substantial number of small entities.

In compliance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this final rule on small

entities. The head of the agency has certified that this final rule would not have a significant economic impact on a substantial number of small entities. The changes promulgated by this final rule, except for modification of the ten-year old vehicle exemption to 20 years, allow states the option of an alternative means of complying with previously existing requirements. Adoption of electronic title and odometer schemes by states choosing to do so, will likely confer benefits on small businesses. This final rule's modification of the previous 10-year exemption from mileage disclosure to 20-year old vehicles will require minimal changes in data entry for small businesses and not result in any significant effect.

E. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999). Executive Order 13132 requires agencies to determine the federalism implications of a final rule. The agency has determined this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The final rule adds another option to the way states may process existing odometer disclosure requirements and alters existing statutory or regulatory requirements only by changing the terms of an exemption for owners from disclosing vehicle mileage when transferring the vehicle.

F. Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, Executive Order 12988 specifically requires the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposal is discussed above in connection with Executive Order 13132.

NHTSA has also considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect. NHTSA notes further there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

G. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA finds this final rule, which establishes requirements for electronic odometer disclosure systems, does not implicate or encompass the issues outlined in the foregoing policy statement.

H. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113), all federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments, except when use of such a voluntary consensus standard would be inconsistent with the law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies, such as the SAE International. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. NHTSA is referencing the standards provided in NIST Special Publication 800-63-3, *Digital Identity Guidelines* (including sub-parts 800-63-

3A, 800-63-3B and 800-63-3C), to determine the appropriate level of security to authenticate electronic signatures.

I. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). In 2011 dollars, this threshold is \$139 million.

This final rule would not result in the expenditure by state, local, or tribal governments, in the aggregate, or more than \$139 million annually, and would not result in the expenditure of that magnitude by the private sector.

J. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a federal agency unless the collection displays a valid OMB control number. Today's final rule does not propose any new federal agency information collection requirements; it merely allows states to provide an alternative means of collecting information they already collect.

K. Incorporation by Reference

As discussed earlier in the relevant portions of this document, NHTSA is incorporating a single standard issued by the NIST into the Code of Federal Regulations in this rulemaking. The standard NHTSA is incorporating is NIST Special Publication 800-63-3 *Digital Identity Guidelines* (including sub-parts 800-63-3A, 800-63-3B and 800-63-3C).

Under 5 U.S.C. 552(a)(1)(E), Congress allows agencies to incorporate by reference materials that are reasonably available to the class of persons affected if the agency has approval from the Director of the Federal Register. As a part of that approval process, the Director of the Federal Register (in 1 CFR 51.5) directs agencies to discuss (in the preamble) the ways that the materials NHTSA is incorporating by reference are reasonably available to interested parties.

NHTSA has worked to ensure that standards being considered for incorporation by reference are reasonably available to the class of persons affected. In this case, those directly affected by incorporated

provisions are states and vehicle lessors choosing to adopt electronic systems for odometer disclosures. These entities have access to copies of the aforementioned standard through NIST at no charge. Other interested parties in the rulemaking process beyond the class affected by the regulation include members of the public, vehicle dealers, law enforcement agencies, consumer protection groups, etc. Such interested parties can access the standard by obtaining a copy from NIST.

Interested parties may also access the standards through NHTSA. All approved material is available for inspection at NHTSA's Office of Technical Information Services, 1200 New Jersey Avenue SE, Washington, DC 20590, phone number (202) 366-2588.

M. Executive Order 13211

Executive Order 13211 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, the agency must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA.

This rule is not economically significant and is not likely to have a detectable effect on the supply, distribution, or use of energy.

N. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, NHTSA must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not economically significant will not pose such a risk for children.

O. Privacy Act

Anyone can 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 organization, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://www.dot.gov/privacy.html>.

P. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 580

Consumer protection, Incorporation by reference, Motor vehicles, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, NHTSA amends 49 CFR part 580 as follows:

PART 580—ODOMETER DISCLOSURE REQUIREMENTS

- 1. Revise the authority citation for part 580 to read as follows:

Authority: 49 U.S.C. 32705; Pub. L. 112-141; delegation of authority at 49 CFR 1.95.

- 2. Revise § 580.1 to read as follows:

§ 580.1 Scope.

This part prescribes rules requiring transferors and lessees of motor vehicles to make electronic or written disclosure to transferees and lessors respectively, concerning the odometer mileage and its accuracy as directed by sections 408(a) and (e) of the Motor Vehicle Information and Cost Savings Act as amended, 49 U.S.C. 32705(a) and (c). In addition, this part prescribes the rules requiring the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors and the retention of certain other information by auction companies as directed by sections 408(g) and 414 of the Motor Vehicle Information and Cost Savings Act as amended, 49 U.S.C. 32706(d) and 32705(e).

- 3. Revise § 580.2 to read as follows:

§ 580.2 Purpose.

The purpose of this part is to provide transferees of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title and by requiring lessees to disclose to their

lessors the vehicle's mileage at the time the lessee returns the vehicle to the lessor. In addition, the purpose of this part is to preserve records that are needed for the proper investigation of possible violations of the Motor Vehicle Information and Cost Savings Act and any subsequent prosecutorial, adjudicative or other action.

- 4. Amend § 580.3 by:
 - a. Revising the introductory text;
 - b. Adding in alphabetical order definitions for "Access", Electronic power of attorney", "Electronic title", and "Jurisdiction";
 - c. Revising the definition of "Physical power of attorney";
 - d. Adding in alphabetical order definitions for "Printed name" and "Sign or signature"; and
 - e. Revising the definition of "Transferor".

The revisions and additions read as follows:

§ 580.3 Definitions.

All terms defined in 49 U.S.C. 32702 are used in their statutory meaning. Other terms used in this part are defined as follows:

Access means the authorized entry to, and display of, an electronic title in a manner allowing modification of previously stored data, even if the stored data is not modified at the time it is accessed. The term does not include display of an electronic record for viewing purposes where modification of stored data is not possible, or where modification to the record is possible but results in a new, unique electronic title.

Electronic power of attorney means a power of attorney maintained in electronic form by a jurisdiction that meets all the requirements of this part. For the purposes of this part, this term is limited to a record that was created electronically and does not include a physical power of attorney that was executed on paper and converted by scanning or imaging for storage in an electronic medium.

Electronic title means a title created and maintained in an electronic format by a jurisdiction that meets all the requirements of this part. An electronic title incorporates an electronic reassignment form or process containing the disclosures required by this part facilitating transfers between transferors and transferees who do not take title to the vehicle. As set forth in § 580.5(g), an electronic reassignment may precede issuance of an electronic title when no electronic title exists. For the purposes of this part, this term is limited to a record created electronically and does not include a physical title

incorporating an odometer disclosure executed on that title and converted by scanning and imaging for storage in an electronic medium.

Jurisdiction means a state, territory, or possession of the United States of America.

* * * * *

Physical power of attorney means, for single copy forms, the paper document set forth by secure process which is issued by the jurisdiction, and, for multicopy forms, any and all copies set forth by a secure printing process or other secure process which are issued by the jurisdiction pursuant to § 580.13 or § 580.14.

Printed name means either:

(1) For a physical title or physical power of attorney, the clear and legible name applied to the physical document of the signatory; or

(2) For an electronic title or electronic power of attorney, the clear, legible, visible, audible, recognizable, or otherwise understandable name of the electronic signatory recorded and stored electronically.

Physical when referring to a document means a manufacturer's certificate of origin, title, reassignment document, or power of attorney printed on paper by a secure printing process or other secure process that meets all the requirements of this part.

* * * * *

Sign or signature means either:

(1) For a physical document, a person's name, or a mark representing it, as hand written personally.

(2) For an electronic odometer disclosure incorporated in an electronic title or power of attorney, an electronic sound, symbol, or process:

(i) Using a secure authentication system identifying a specific individual with a degree of certainty equivalent to or greater than Level 2 as described in NIST Special Publication 800-63-3, Revision 3, *Digital Identity Guidelines* (including sub-parts 800-63-3A, 800-63-3B and 800-63-3C), June 2017. NIST Special Publication 800-63-3, Revision 3, *Digital Identity Guidelines* (including sub-parts 800-63-3A, 800-63-3B and 800-63-3C), June 2017 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NHTSA must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at NHTSA Office of Technical Information Services, 1200 New Jersey Avenue SE, phone number (202) 366-2588, and is

available from the National Institute of Standards and Technology, U.S.

Department of Commerce, 100 Bureau Drive, Gaithersburg, Maryland 20899, <https://pages.nist.gov/800-63-3/sp800-63-3.html>. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html; or

(ii) Completed in person before a bona fide employee of the jurisdiction or statutory agent under a surety bond with the jurisdiction.

* * * * *

Transferor means any person who transfers their ownership of a motor vehicle by sale, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferor.

■ 5. Revise § 580.4 to read as follows:

§ 580.4 Security of physical documents, electronic titles and electronic powers of attorney.

(a) Each physical title shall be set forth by means of a secure printing process or other secure process. Additionally, a physical power of attorney issued pursuant to §§ 580.13 and 580.14 and physical documents, which are used to reassign the title, shall be issued by the jurisdiction and shall be set forth by a secure printing process or other secure process.

(b) Each electronic title shall be maintained in a secure environment so it is protected from unauthorized modification, alteration or disclosure. In addition, an electronic power of attorney maintained and made available pursuant to §§ 580.13 and 580.14 and shall be maintained by the jurisdiction in a secure environment so that it is protected from unauthorized modification, alteration and disclosure. Any system employed to create, store or maintain the foregoing electronic records shall record the dates and times when the electronic document is created, the odometer disclosures contained within are signed and when the documents are accessed, including the date and time any unauthorized attempt is made to alter or modify the electronic document and any unauthorized alterations or modifications made.

■ 6. Amend § 580.5 by revising paragraphs (a) through (g) to read as follows:

§ 580.5 Disclosure of odometer information.

(a) At the time a physical or electronic title is issued or made available to the transferee, it must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c) through (f) of this section at the time of future transfer.

(b) Any physical documents which are used to reassign a title shall contain a space for the information required to be disclosed under paragraphs (c) through (f) of this section at the time of transfer of ownership.

(c) In connection with the transfer of ownership of a motor vehicle, the transferor shall disclose the mileage to the transferee on the physical or electronic title or, except as noted below, on the physical document being used to reassign the title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the electronic title or the physical title, and not on a reassignment document. This disclosure must be signed by the transferor and must contain the transferor's printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the disclosure. In addition to the signature of the transferor, the disclosure must contain the following information:

- (1) The odometer reading at the time of transfer (not to include tenths of miles);
- (2) The date of transfer;
- (3) The transferor's printed name and current address;
- (4) The transferee's printed name and current address; and
- (5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(d) In addition to the information provided under paragraph (c) of this section, the physical document shall provide a statement referencing federal law and stating failure to complete the disclosure or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable law of the jurisdiction. If the transaction at issue is electronic, the information specified in this paragraph shall be displayed, prior to the execution of any electronic signatures.

(e) In addition to the information provided under paragraphs (c) and (d) of this section:

- (1) The transferor shall certify that to the best of their knowledge the

odometer reading reflects the actual mileage, or;

(2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, they shall include a statement that the mileage exceeds mechanical limits; or

(3) If the transferor knows that the odometer reading does not reflect a valid mileage display or differs from the mileage and that the difference is greater than that caused by odometer calibration error, they shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(f) Upon receipt of the transferor's signed disclosure statement, the transferee shall sign the disclosure statement, which shall include their printed name, and make copy available to their transferor. If the disclosure is on an electronic title, the jurisdiction shall provide a means for making copies of the completed disclosure statement available to the transferee and transferor.

(g) If the vehicle has not been titled the written disclosure shall be executed on a separate physical document or by electronic means and incorporated into the electronic title record. A separate physical reassignment document may be used for a subsequent reassignment only after a transferor holding title has made the mileage disclosure in conformance with paragraphs (c), (e), and (f) of this section on the title and assigned the physical title to their transferee. An electronic title system shall provide a means for making mileage disclosures upon assignment and reassignment electronically and incorporating these disclosures into the electronic title. A physical reassignment document shall not be used with an electronic title or when an electronic reassignment has been made. In instances where a paper title is held by the initial transferor, an available electronic reassignment may be used for a subsequent reassignment after a transferor holding title has made the mileage disclosure in conformance with paragraphs (c), (e), and (f) of this section on the title and assigned the physical title to their transferee

* * * * *

■ 7. Add § 580.6 to read as follows:

§ 580.6 Additional requirements for electronic odometer disclosure.

(a) Any electronic title or power of attorney as defined in this part shall be retained:

(1) In a format which cannot be altered unless such alterations are made as authorized by the jurisdiction, and which indicates any unauthorized attempts to alter it;

(2) In an order that permits systematic retrieval; and

(3) For a minimum of five years following conversion to a physical title, issuance of a subsequent physical or electronic title by any jurisdiction, or permanent destruction of the vehicle; otherwise, the record shall be retained indefinitely.

(b) Any electronic signature made on an odometer disclosure shall identify an individual, and not solely the organization the person represents or employs them. If the individual executing the electronic signature is acting in a business capacity or otherwise on behalf of another individual or entity, the business or other individual or entity shall also be identified when the signature is made. Electronic signatures on odometer disclosures made in connection with transfers by a licensed dealer or at an auction sale need only identify the individual executing the signature and the dealer transferring the vehicle or auction entity conducting the sale.

(c) Any requirement in these regulations to disclose, issue, return, notify or otherwise provide information to another person in the course of an electronic odometer disclosure is satisfied when the required information is electronically transmitted or otherwise electronically available to the party required to review or receive it.

(d) When an electronic title is created following transfer of ownership a vehicle with a physical title or an existing physical title is converted to an electronic title, the jurisdiction issuing the electronic title shall obtain the physical title or proof that the physical title has been invalidated or lost, and retain a physical or electronic copy of the physical title or proof for a minimum of five years.

(e) A jurisdiction issuing an electronic title may provide a paper record of ownership, which includes the odometer disclosure information, provided the paper record clearly indicates it is not an official title for the vehicle and may not be used to transfer ownership for the vehicle.

(f) A jurisdiction issuing an electronic title shall retain the capacity to issue physical titles meeting all the requirements of this part. If a physical

title is created by a jurisdiction with an electronic title and odometer disclosure statement system, any electronic record of the title must indicate that a physical title has been issued and the date on which the physical title was issued. The jurisdiction shall retain a record of the identity of the recipient of the physical title if the recipient is not an owner or a lienholder.

(g) Any physical documents employed by transferors and transferees to make electronic odometer disclosures shall be set forth by means of a secure printing process or other secure process. This requirement does not apply to mileage disclosures made by lessees as required by § 580.7

(h) Physical documents employed to comply with any of the requirements of this part that are converted to an electronic format by scanning or imaging must maintain and preserve the security features incorporated in the physical document so that any alterations or modifications to the physical document can be detected in the physical document's electronic format. Scanning of physical documents must be made at a resolution of not less than 200 dpi.

(i) When a transferor's physical title is lost, a jurisdiction may facilitate the transfer of a physical title through an electronic process without issuing another physical title provided a physical or electronic power of attorney pursuant to § 580.13 is properly executed by the transferor.

(j) Electronic reassignments shall be made on or in the electronic title or, as set forth in § 580.5(g), may be entered in the electronic title system prior to the first issuance of an electronic title. A physical reassignment document shall not be used with an electronic title.

■ 8. Amend § 580.7 by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 580.7 Disclosure of odometer information for leased motor vehicles.

(a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee electronically or in writing stating that the lessee is required to provide a written or electronic disclosure to the lessor regarding the mileage. This written or electronic notice shall contain a reference to the federal law and shall state failure to complete the disclosure or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable law of the jurisdiction. If the notice is electronic, the information specified in this paragraph shall be displayed prior to, or

at the time of, the execution of any electronic signatures.

(b) In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written or electronic statement regarding the mileage of the vehicle. This statement must be signed by the lessee. This statement, in addition to the lessee acknowledging receiving notification of federal law and any applicable law of the jurisdiction as required by paragraph (a) of this section, shall also contain the following information:

- (1) The printed name of the person making the disclosure;
- (2) The current odometer reading (not to include tenths of miles);
- (3) The date of the statement;
- (4) The lessee's printed name and current address;
- (5) The lessor's printed name and current address;
- (6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;
- (7) The date that the lessor notified the lessee of disclosure requirements;
- (8) The date that the completed disclosure statement was received by the lessor; and
- (9) The signature of the lessor

* * * * *

(e) Any electronic system maintained by a lessor for the purpose of complying with the requirements of this section shall meet the requirements of § 580.4(b) of this part.

■ 9. Revise § 580.8 to read as follows:

§ 580.8 Odometer disclosure statement retention.

(a) Dealers and distributors of motor vehicles who are required by this part to execute an odometer disclosure statement shall retain, except as noted in paragraph (d), for five years a photostat, carbon, other facsimile copy, or electronic copy of each odometer mileage statement, which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order appropriate to business requirements and that permits systematic retrieval. Electronic copies shall be retained in a format which cannot be altered and which indicates any attempts to alter it.

(b) Lessors shall retain, for five years following the date they transfer ownership of the leased vehicle, each written or electronic odometer disclosure statement which they receive from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business

requirements and that permits systematic retrieval. Electronic copies shall be retained in a format which cannot be altered and which indicates any attempts to alter it.

(c) Dealers and distributors of motor vehicles who are granted a power of attorney, except as noted in paragraph (d) of this section, by their transferor pursuant to § 580.13, or by their transferee pursuant to § 580.14, shall retain for five years a photostat, carbon, or other facsimile copy, or electronic copy of each power of attorney they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval. Electronic copies shall be retained in a format which cannot be altered and which indicates any unauthorized attempts to alter it.

(d) Any odometer disclosure statement made on an electronic title or electronic power of attorney shall be retained by the jurisdiction for a minimum of five years and made available upon request to dealers, distributors, and lessors for retrieval at their principal place of business and inspection on demand by law enforcement officials. Dealers, distributors, and lessors are not required to, but may, retain a copy of an odometer disclosure statement made on an electronic title or electronic power of attorney.

■ 10. Amend § 580.9 by revising the introductory text and paragraph (b) to read as follows:

§ 580.9 Odometer record retention for auction companies.

Each auction company shall establish and retain in physical or electronic format at its primary place of business in an order appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

* * *

- (b) The name of the transferee;

* * *

■ 11. Amend § 580.10 by revising paragraph (b)(2) to read as follows:

§ 580.10 Application for assistance.

* * * * *

- (b) * * *

(2) Be submitted to the Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, W41-326, Washington, DC 20590;

* * * * *

■ 12. Amend § 580.11 by revising paragraphs (a), (b)(2) through (4), and (c) to read as follows:

§ 580.11 Petition for approval of alternate disclosure requirements.

(a) A state may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of § 580.5, § 580.6, § 580.7, or § 580.13(f) of this part.

(b) * * *

(2) Be submitted to the Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, W41-326, Washington, DC 20590;

(3) Set forth the motor vehicle disclosure requirements in effect in the jurisdiction, including a copy of the applicable laws or regulations of the jurisdiction; and

(4) Explain how the jurisdiction's motor vehicle disclosure requirements are consistent with the purposes of the Motor Vehicle Information and Cost Savings Act.

* * * * *

(c) Notice of the petition and an initial determination pending a 30-day comment period will be published in the **Federal Register**. Notice of final grant or denial of a petition for approval of alternate motor vehicle disclosure requirements will be published in the **Federal Register**. The effect of the grant of a petition is to relieve a jurisdiction from responsibility to conform the Jurisdiction disclosure requirements with § 580.5, § 580.6, § 580.7, or § 580.13(f), as applicable, for as long as the approved alternate disclosure requirements remain in effect in that jurisdiction. The effect of a denial is to require a jurisdiction to conform to the requirements of § 580.5, § 580.6, § 580.7, or § 580.13(f), as applicable, of this part until such time as NHTSA approves any alternate motor vehicle disclosure requirements.

§ 580.12 [Removed and Reserved]

■ 13. Remove and reserve § 580.12.

■ 14. Revise § 580.13 to read as follows:

§ 580.13 Disclosure of odometer information by power of attorney.

(a) If otherwise permitted by the law of the jurisdiction, the transferor may grant a power of attorney to their transferee for the purpose of mileage disclosure under one of the following conditions:

- (1) The transferor's physical title is held by a lienholder; or
- (2) The transferor's physical title is lost; or
- (3) The transferor's electronic title is held or controlled by a lienholder; or

(4) The transferor's electronic title cannot be accessed.

(b) The physical or electronic power of attorney shall contain, in part A, a space for the information required to be disclosed under paragraphs (c) through (f) of this section. If a state permits the use of a physical or electronic power of attorney in the situation described in § 580.14(a), the power of attorney must also contain, in part B, a space for the information required to be disclosed under § 580.14, and, in part C, a space for the certification required to be made under § 580.15.

(c) In connection with the transfer of ownership of a motor vehicle as described in paragraph (a) of this section, where the transferor elects to give their transferee a physical or electronic power of attorney for the purpose of mileage disclosure, the transferor must appoint the transferee their attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the physical or electronic power of attorney form issued by the jurisdiction in which the transfer occurs. This disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's printed name and current address;

(4) The transferee's printed name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(d) In addition to the information provided under paragraph (c) of this section, the physical or electronic power of attorney form shall refer to the federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the jurisdiction may result in fines and/or imprisonment. Reference may also be made to applicable law of the jurisdiction.

(e) In addition to the information provided under paragraphs (c) and (d) of this section:

(1) The transferor shall certify that to the best of their knowledge the odometer reading reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, they shall include a statement to that the mileage exceeds mechanical limits; or

(3) If the transferor knows the odometer reading differs from the

mileage and the difference is greater than that caused by a calibration error or does not reflect a valid mileage display, they shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(f) The transferee shall sign the physical or electronic power of attorney, which shall include their printed name, and make a copy of the power of attorney form available to the transferor.

(g) Upon receipt of the transferor's physical or electronic title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the physical or electronic power of attorney. The transferee shall submit the physical or electronic power of attorney to the jurisdiction that issued it with the actual physical or electronic title when the transferee submits a new title application. The jurisdiction shall retain the physical or electronic power of attorney form and physical or electronic title for a minimum of three years or a period equal to the state titling record retention period, whichever is shorter. If the mileage disclosed on the physical or electronic power of attorney is lower than the mileage appearing on the physical or electronic title, the power of attorney is void and the transferee shall not complete the mileage disclosure on the title unless:

(1) The transferor has included a statement that the mileage exceeds mechanical limits; or

(2) The transferor has included a statement that the odometer reading does not reflect the actual mileage.

(h) A jurisdiction may permit submission of a physical power of attorney in an electronic format such as by scanning or imaging.

■ 15. Revise § 580.14 to read as follows

§ 580.14 Power of attorney to review title documents and acknowledge disclosure.

(a) In circumstances where part A of a physical power of attorney form has been used pursuant to § 580.13 of this part, and if otherwise permitted by the law of the jurisdiction, a transferee may grant power of attorney to their transferor to review the physical or electronic title and any physical reassignment documents, if applicable, for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the physical or electronic title. The power of attorney shall be on part B of the physical or electronic

power of attorney referred to in § 580.13(a), which shall contain a space for the information required to be disclosed under paragraphs (b), (c), and (d) of this section and, in part C, a space for the certification required to be made under § 580.15.

(b) Part B of the physical or electronic power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's printed name and current address;

(4) The transferee's printed name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable law of the jurisdiction.

(d) In addition to the information provided under paragraphs (b) and (c) of this section:

(1) The transferor shall certify that to the best of their knowledge the odometer reading reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, they shall include a statement to that the mileage exceeds mechanical limits; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error or does not reflect a valid mileage display, they shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the physical or electronic power of attorney form, which shall include their printed name.

(f) The transferor shall give a copy of the physical power of attorney form to their transferee.

■ 16. Revise § 580.15 to read as follows:

§ 580.15 Certification by person exercising powers of attorney.

(a) A person who exercises a power of attorney under both §§ 580.13 and 580.14 must complete a certification that they disclosed the mileage on the physical or electronic title as it was provided to them on the physical or electronic power of attorney form, and that upon examination of the physical or electronic title and any applicable physical reassignment documents, the mileage disclosure made on the physical or electronic title pursuant to the physical or electronic power of attorney is greater than that previously stated on the physical or electronic title and applicable physical reassignment documents unless:

- (1) The transferor has included a statement that the mileage exceeds mechanical limits; or
 - (2) The transferor has included a statement that the odometer reading does not reflect the actual mileage.
- (b) This certification shall be under part C of the same form as the powers of attorney executed under §§ 580.13 and 580.14 and shall include:
- (1) The signature and printed name of the person exercising the power of attorney;
 - (2) The printed address of the person exercising the power of attorney; and
 - (3) The date of the certification.
- (c) If the mileage reflected by the transferor on the power of attorney is

less than that previously stated on the title and any reassignment documents, the power of attorney shall be void unless:

- (1) The transferor has included a statement that the mileage exceeds mechanical limits; or
- (2) The transferor has included a statement that the odometer reading does not reflect the actual mileage.

■ 17. Revise § 580.16 to read as follows

§ 580.16 Availability of prior title and power of attorney documents to transferee.

(a) In circumstances in which a power of attorney has been used pursuant to § 580.13, if a subsequent transferee elects to return to their transferor to sign the disclosure on the physical or electronic title and does not give their transferor a power of attorney pursuant to § 580.14, the transferor shall, upon the subsequent transferee's request, show that transferee a copy of the physical or electronic power of attorney that he they received from their transferor.

(b) Upon request of a transferee, a transferor who was granted a power of attorney by their transferor and who holds the title to the vehicle in their own name, must show to the transferee the copy of the previous owner's title and the physical or electronic power of attorney form.

■ 18. Amend § 580.17 by revising paragraphs (a)(3) and (4) and adding paragraph (a)(5) to read as follows

§ 580.17 Exemptions.

- (a) * * *
- (3)(i) A vehicle manufactured in or before the 2009 model year that is transferred at least 10 years after January 1 of the calendar year corresponding to its designated model year;
- (ii) Example to paragraph (a)(3): For vehicle transfers occurring during calendar year 2019, model year 2009 or older vehicles are exempt.
- (4)(i) A vehicle manufactured in or after the 2010 model year that is transferred at least 20 years after January 1 of the calendar year corresponding to its designated model year; or
- (ii) Example to paragraph (a)(4): For vehicle transfers occurring during calendar year 2030, model year 2010 or older vehicles are exempt.
- (5) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

* * * * *

Under authority delegated in 49 CFR 1.95, 501.5, and 501.7.

Jonathan Charles Morrison,
Chief Counsel.

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