§ 375.403 How must I provide a binding estimate?

(a) * * *

(6) * * *

(ii) Negotiate a revised written binding estimate accurately listing, in detail, the additional household goods or services.

* * * * *

■ 5. Amend § 375.405 by revising paragraph (b)(7)(ii) to read as follows:

§ 375.405 How must I provide a non-binding estimate?

* * * * *

(b) * * *

(7) * * *

(ii) Negotiate a revised written non-binding estimate accurately listing, in detail, the additional household goods or services.

* * * * *

■ 6. Amend § 375.609 by adding new paragraph (h) to read as follows:

§ 375.609 What must I do for shippers who store household goods in transit?

* * * * *

(h) When you place household goods in permanent storage, you must place the household goods in the name of the individual shipper and provide contact information for the shipper in the form of a telephone number, mailing address and/or email address.

Issued on: June 14, 2012.

Anne S. Ferro,

Administrator, FMCSA.

[FR Doc. 2012–14999 Filed 6–19–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA–2011–0109; Notice 2]

Petition for Approval of Alternate Odometer Requirements

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

ACTION: Notice of final determination.

SUMMARY: The State of Florida (''Florida'') has petitioned for approval of alternate odometer requirements. Florida's petition [1] is granted as to vehicle transfers involving casual or private sales, and Florida's petition is denied as to sales involving licensed dealers and sales of leased vehicles.

DATES: *Effective date:* July 20, 2012.

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

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

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

FOR FURTHER INFORMATION CONTACT: Marie Choi, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–1738) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Introduction

Federal odometer law, which is largely based on the Motor Vehicle Information and Cost Savings Act of 1972 (Cost Savings Act) [2] and Truth in Mileage Act of 1986, as amended (TIMA),[3] contains a number of provisions to limit odometer fraud and ensure that the buyer of a motor vehicle knows the true mileage of the vehicle. The Cost Savings Act requires the Secretary of Transportation to promulgate regulations requiring the transferor (seller) of a motor vehicle to provide a written statement of the vehicle's mileage registered on the odometer to the transferee (buyer) in connection with the transfer of ownership. This written statement is generally referred to as the odometer disclosure statement. Further, under TIMA, vehicle titles themselves must have a space for the odometer disclosure statement and states are prohibited from licensing vehicles unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Titles must also be printed by a secure process. With respect to leased vehicles, TIMA provides that the regulations promulgated by the Secretary require written mileage disclosures be made by lessees to lessors upon the lessor's transfer of the ownership of the leased vehicle. Lessors must also provide written notice to lessees about odometer disclosure requirements and the penalties for not complying with them. Federal law also contains document retention requirements for odometer disclosure statements.

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

Seeking to implement an electronic vehicle title transfer system, Florida has petitioned for approval of alternate odometer disclosure requirements. In 2009, NHTSA reviewed certain requirements for alternative state programs and approved the Commonwealth of Virginia's alternate odometer disclosure program. 74 FR 643, Jan. 7, 2009. Florida's program is similar to Virginia's program in some respects and broader in scope than Virginia's in others. Like Virginia's program, the scope of Florida's proposed program does not include transactions involving an out-of-state party. Unlike Virginia's program, Florida's proposed program encompasses transactions involving leased vehicles and odometer disclosures by power of attorney. In addition, Florida's proposed program would use different mechanisms to document mileage than Virginia's.

In its initial determination, NHTSA reviewed the statutory background and set out the agency's tentative view on applicable statutory factors governing whether to grant a state's petition. NHTSA initially determined that Florida's petition regarding proposed alternate disclosure requirements for vehicle transfers involving casual or private sales satisfied Federal odometer law, and that Florida's petition regarding sales involving licensed dealers and sales of leased vehicles did not satisfy Federal odometer law. *See* 76 FR 48101, Aug. 8, 2011.

[1] ''Florida's petition'' or ''petition'' shall refer to Florida's Petition for Approval of Alternate Odometer Disclosure Requirements (Dec. 21, 2009) and the Letter from Carl A. Ford, Director, Florida Division of Motor Vehicles, to O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration supplementing Florida's Petition for Approval of Alternate Odometer Disclosure Requirements (Oct. 5, 2010).

[2] Sec. 401–13, Public Law 92–513, 86 Stat. 961–63.

[3] Sec. 1–3, Public Law 99–579, 100 Stat. 3309.

After careful consideration of comments, NHTSA has made a final determination, which is set forth below.

II. Statutory Background

NHTSA reviewed the statutory background of Federal odometer law in its consideration and approval of Virginia's petition for alternate odometer disclosure requirements. *See* 73 FR 35617 and 74 FR 643. The statutory background of the Cost Savings Act and TIMA and the purposes behind TIMA, as they relate to odometer disclosure, other than in the transfer of leased vehicles and vehicles subject to liens where a power of attorney is used in the disclosure, are discussed at length in NHTSA's final determination granting Virginia's petition. 74 FR 647–8. A brief summary of the statutory background of Federal odometer law and the purposes of TIMA, including odometer disclosure requirements for leased vehicles follows.

In 1972, Congress enacted the Cost Savings Act, among other things, to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of buyers with respect to the sale of motor vehicles having altered or reset odometers. *See* Sec. 401, Pub. L. 92–513, 86 Stat. 961–63. The Cost Savings Act required that under regulations to be published by the Secretary, the transferor of a motor vehicle provide a written vehicle mileage disclosure to the transferee. It also prohibited odometer tampering, and provided for enforcement. *See id.* Sec. 408.[4] In general, the purpose for the disclosure was to assist buyers to know the true mileage of a motor vehicle.

A major shortcoming of the odometer provisions of the Cost Savings Act was their failure to require that the odometer disclosure statement be on the vehicle's title. In a number of states, the disclosures were on separate documents that could be easily altered or discarded and did not travel with the title. *See* 74 FR 644. Consequently, the disclosure statements did not necessarily deter odometer fraud employing altered documents, discarded titles, and title washing. *Id.*

Another significant shortcoming involved leased vehicles. The lessor is considered the transferor of the vehicle in leased vehicle sales. Titles to leased vehicles are often transferred without the lessor obtaining possession of the vehicle. Lessors without direct access to their vehicles had to rely solely on lessees to provide actual mileage information. However, lessees had no obligation to provide actual mileage information to lessors upon vehicle transfer. This environment facilitated roll backs of odometers.

Congress enacted TIMA in 1986 to address the Cost Savings Act's shortcomings. It amended the Cost Savings Act by adding section 408(d) to prohibit states from licensing vehicles unless the new owner (transferee) submitted a title from the seller (transferor) containing the seller's signed and dated vehicle mileage statement. *See* Sec. 2, Pub. L. 99–579, 100 Stat. 3309; 74 FR 644. TIMA also prohibits the licensing of vehicles for use in any state, unless the title issued to the transferee is printed using a secure printing process or other secure process, indicates the vehicle mileage at the time of transfer, and contains additional space for a subsequent mileage disclosure by the transferee when it is sold again. *Id.*

TIMA also added section 408(e) to the Cost Savings Act requiring that the Secretary issue regulations regarding odometer disclosures for leased vehicles.[5] The regulations promulgated by the Secretary were to require written mileage disclosures by lessees to lessors upon the lessor's transfer of the ownership of the leased vehicle. The regulations were to require lessors to provide written notice to lessees about the odometer disclosure requirements and the penalties for not complying with them. Also, the regulations were to provide document retention requirements for odometer disclosure statements: Lessors had to retain disclosures made by lessees for at least four years following the date that the lessor transfers that vehicle.[6] *Id.*

TIMA added a provision to the Cost Savings Act allowing states to have alternate odometer disclosure requirements with the approval of the Secretary of Transportation. Section 408(f) of the Cost Savings Act, as amended, states that the odometer disclosure requirements of subsections (d) and (e)(1) shall apply in a state unless the state has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. Section 408(f)(2) further states that the Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a state unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

In 1988, Congress amended section 408(d)(1) of the Cost Savings Act to permit the use of a secure power of attorney for purposes of odometer mileage disclosure in circumstances where the title was held by a lienholder, if allowed by state law. Sec. 401, Pub. L. 100–561, 102 Stat. 2817. Congress required NHTSA to issue a rule ensuring that disclosures be made on the power of attorney document of the actual mileage at the time of transfer and that the mileage be restated exactly by the person exercising power of attorney on the title in the space therefor. *Id.* The rule, consistent with the purposes of the Act and the need to facilitate enforcement thereof, was to prescribe that the power of attorney form be issued by the state to the transferee using a secure process, as provided for titles, and provide for retention of a copy with the original submitted back to the State. *Id.* In 1989, NHTSA implemented the 1988 statutory amendments by promulgating amendments to the odometer disclosure regulations, providing that a transferor may give a secure power of attorney to a transferee for the purpose of mileage disclosure in two circumstances—when the transferor's title is physically held by a lienholder or when the title is lost. In either instance, use of a power of attorney document for mileage disclosure is permissible only if otherwise permitted by state law.[7]

[4] Section 408(a) directed the Secretary to prescribe rules requiring any transferor to provide written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle, including a disclosure of the cumulative mileage registered on the odometer, and a disclosure that the actual mileage was unknown if the transferor knew that the odometer reading was different from the number of miles the vehicle has actually traveled. In addition, the Secretary was directed to prescribe the manner in which the information would be disclosed and the manner in which the information would be retained. Finally, it was a violation for any transferor to violate any rules under Section 408 or to knowingly give a false statement to a transferee in making any disclosure.

[5] Pursuant to Section 408(e), in the case of any leased motor vehicle, the rules under Section 408(a) were to require written disclosure regarding mileage to be made by a lessee to a lessor upon the lessor's transfer of ownership of a leased motor vehicle. Under these rules, the lessor of a leased motor vehicle would have to provide written notice to the lessee regarding mileage disclosure requirements, and the penalties for failing to comply with them. The lessor would be required to retain the lessee's disclosure with respect to any motor vehicle for a period of at least 4 years following the date the lessor transferred that vehicle. If the lessor transferred ownership of any leased motor vehicle without obtaining possession of such vehicle, the lessor could, in making the disclosure required by Section 408(a), indicate on the title the mileage disclosed by the lessee unless the lessor had reason to believe that such disclosure by the lessee did not reflect the actual mileage of the vehicle.

[6] Regulations implementing TIMA were published on August 5, 1988. 53 FR 29464. Federal regulations require lessors to retain odometer disclosure statements received from lessees for a period of five years. 49 CFR 580.8(b).

[7] Regulations implementing the amendment were published on August 30, 1989. 54 FR 35879. The regulations addressed numerous aspects of

In 1990, Congress again amended section 408(d) of the Cost Savings Act.[8] The amendment provided that the rule adopted under the 1988 amendment not require that a vehicle be titled in the state in which the power of attorney was issued and addressed retention of powers of attorneys by states. Sec. 7(a), Pub. L. 101–641, 104 Stat. 4654, 4657.[9]

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

III. Florida's Program

As stated in NHTSA's initial determination, Florida, which is in the process of developing an electronic title transfer system (e-title), has petitioned for approval of alternate odometer disclosure requirements. 76 FR 48101.[10] Florida requests approval of alternate disclosure requirements for transfers of motor vehicles in transactions between private parties (casual sales), transfers of motor vehicles, whether subject to a lien [11] or not subject to a lien, between private parties and motor vehicle dealers, and transactions involving leased vehicles.

Florida law authorizes the Florida Department of Highway Safety and Motor Vehicles (''Department'') to accept any application for vehicle title by electronic means. *See* Fla. Stat. Ann. § 319.40 (1997). Florida seeks to amend its statutes to allow the continuation of an electronic certificate of title in lieu of a paper certificate of title for transfers of motor vehicles. With electronic titling there would not be a paper certificate of title on which to disclose the vehicle's mileage at the time of transfer of ownership.

A. Florida's Existing Electronic Titling System

Florida currently stores its titling and registration information (including images of all supporting title documentation) in a secure database referred to as the Florida Real-time Vehicle Information System, or FRVIS. According to Florida's petition, either a Department employee or an authorized tag agent at a state-authorized tag office enters information into this database. Only a Department employee or tag agent can change FRVIS title information, including owner information and the odometer disclosure. For title images (scanned, electronic copies of vehicle title documents), FRVIS stores all applicable data and stores images of documents that remain in the title history for the vehicle. Florida law also requires that the Department retain all documents regarding applications for, and issuance of, certificates of title—including titles, manufacturers' statements of origin, applications, and supporting documents submitted with the application such as odometer statements, VIN verifications, bills of sale, indicia of ownership, dealer reassignments, photographs, and any personal identification, affidavits, or documents required by or submitted to the Department—for a period of at least 10 years. Fla. Stat. Ann. § 319.23(11). The title resides as an electronic record in FRVIS; however, secure paper copies of the title can be generated from FRVIS if needed.

In Florida, lienholders hold the title to the vehicles securing the loan. Florida began its electronic title and lien (ELT) program in 2001. Under the current process, the Department contracts with vendors who provide secure electronic interface with Florida's titling system to participating lienholders. The vendors then contract with financial institutions who wish to participate in Florida's electronic title and lien program. The participating lienholders allow their titles to remain electronic. Electronic liens are satisfied through the secure electronic interface and the title is retained electronically until a paper copy is requested.[12]

B. Florida's Proposed e-Odometer Program

Florida's proposed e-Odometer program can be divided into three transaction types: (1) Casual or private sales; (2) sales involving licensed motor vehicle dealers (including sales from private owners to licensed dealers, sales between licensed dealers, and sales from licensed dealers to private buyers); and (3) sales involving leased vehicles. The Agency understands that the program, as proposed, applies only when the transferred vehicle is electronically titled at the time of transfer of the vehicle.

1. Casual or Private Sales

Currently, a Florida resident wishing to sell his/her vehicle in a casual or private sale needs to have a paper title. The seller signs the paper title and discloses the odometer reading to the buyer on the title. The buyer then signs the paper title verifying the odometer reading. (The odometer disclosure is made on the title and signed by the buyer and seller at the time of transfer, in accordance with 49 U.S.C. 32705 and 49 CFR 580.5.) The buyer takes the paper title to a tag office, which processes the transfer of ownership and prints a new paper title in the buyer's name, or, if the buyer so elects, creates an e-title to be held by the Department.[13] Whether the buyer elects to maintain the title electronically or in paper form, the tag office sends the old paper title and any other supporting documentation to the Department for scanning into FRVIS.

Under Florida's proposed e-title program,[14] if a seller of a vehicle has an

disclosure by power of attorney, including the form, certification by the person exercising the power of attorney, and access of the transferee to prior title and power of attorney documents.

[8] Section 7(a) of Public Law 101–641 directed that the third sentence of subsection (d)(2)(C) be amended. However, there was no subsection (d)(2)(C) in section 408. The amendment was restated as amending the third sentence of subsection (d)(1)(C) as the probable intent of Congress. This amendment is currently codified at 49 U.S.C. 32705(b)(2)(A).

[9] Regulations implementing this amendment were published on September 20, 1991. 56 FR 47681.

[10] We note that Florida's petition differs markedly from other petitions for alternate odometer disclosure requirements NHTSA has received from other states. Florida's proposal relies on tag agents, rather than an online system, to verify the identity of the transferor and transferee in casual sales. These tag agents also verify chain of ownership and odometer disclosure in all transfers before title can be issued. Identity verification in transactions other than casual sales (for which identity of the parties is verified by a tag agent) is left to the parties to the transaction(s). Florida's proposal encompasses a wide variety of transactions and relies on paper forms for a number of these transactions.

[11] Under Florida law, a lienholder physically possesses the title to the vehicle. Thus, Florida permits odometer disclosure by power of attorney when title is held by a lienholder and now petitions for alternate requirements regarding odometer disclosure by power of attorney.

[12] Approximately 24 percent of the more than ten million vehicle lien records Florida has are electronic. Additionally, almost 50 percent of all new transactions with liens are maintained electronically under ELT.

[13] The buyer can request a paper title from the tag agent and pay a $10 fee, or request a paper title online and pay a $2.50 fee. The fee is intended to encourage buyers to maintain vehicle title electronically. This fee applies to any paper title request under Florida's current system and under the State's proposed program.

[14] Florida's proposed program does not apply in a casual vehicle sale by a seller holding a paper title, only those with e-title. A seller holding a paper title must follow the current procedures to transfer the vehicle—the buyer and seller sign and

Continued

electronic title and wants to transfer that title, the seller and buyer would visit an authorized tag office together. After providing adequate identification to the tag agent, the buyer and seller would sign, in the presence of the tag agent, a secure reassignment form transferring ownership and disclosing the odometer reading. A title is then issued in the buyer's name and is stored electronically, or the buyer may choose to have a paper title issued. The secure reassignment form and copies of the identification are scanned into the title record in FRVIS.[15] Florida maintains that these would travel with the title.

2. Sales Involving Licensed Motor Vehicle Dealers

a. Retail Sales of Vehicles With an e-Title But Not Subject to a Lien

Under Florida's current scheme, when a licensed motor vehicle dealer is involved, the process for transferring a title to an e-titled vehicle not subject to a lien is as follows. The seller with e-title brings the vehicle to a dealership. The seller and dealer complete a secure power of attorney with odometer disclosure. The dealer obtains a paper title from a tag agency or online from the Department. The dealer transfers the odometer disclosure information from the secure power of attorney to the title and signs the title as buyer and seller. When the dealer sells the vehicle to another buyer, the dealer and buyer complete the reassignment on the paper title with an odometer disclosure. The dealer takes both the secure power of attorney and the paper title to a tag agency. The title is then transferred to the buyer and a receipt is provided. The buyer has the option of obtaining a new paper title or having the Department hold the title electronically. The secure power of attorney and paper title are scanned and stored with title history in FRVIS. We note that this process does not comply with federal law, because it uses secure power of attorney in a manner not authorized by Federal regulations. 49 CFR 580.13.

Under Florida's proposed program, a seller with e-title would bring the vehicle to a dealership. The seller and dealer complete a secure reassignment form with odometer disclosure. When the dealer sells the vehicle to another buyer, the dealer and buyer complete another secure reassignment form with odometer disclosure. The dealer takes both of the secure reassignment forms to a tag agency. The vehicle title is then transferred to the buyer and a receipt is provided. The buyer has the option to obtain a paper title or have the Department hold the title electronically. The secure reassignment forms are scanned and stored with the vehicle title history in FRVIS.

b. Sales of Vehicles With e-Title Subject to a Lien (e-Lien in Florida)

Currently, when a licensed motor vehicle dealer is involved, the process for transferring an e-titled vehicle subject to an e-lien is as follows: A seller with e-title/e-lien brings the vehicle to a dealership. The seller and dealer complete a secure power of attorney with odometer disclosure. The dealer pays off the lien and the lienholder electronically releases the lien via a secure electronic interface with the Department (ELT). The dealer then obtains the paper title from a tag agency or online from the Department. The dealer transfers the odometer information from the secure power of attorney to the title and signs the title as buyer and seller. When the dealer sells the vehicle to another buyer, the dealer and buyer complete the reassignment on the title with odometer disclosure. The dealer takes both the secure power of attorney and the paper title to the tag agency. The vehicle title is transferred to the buyer and a receipt is provided. The buyer has the option of obtaining a new paper title or having the Department hold the title electronically. The secure power of attorney and old paper title are scanned and stored with title history in FRVIS.

Under Florida's proposed program, a seller with e-title would bring the vehicle to a dealership. The seller and dealer complete a secure reassignment form with an odometer disclosure. The dealer pays off the lien and the lienholder electronically releases the lien via secure electronic interface with the Department (ELT). When the dealer sells the vehicle to another buyer, the dealer and buyer complete another secure reassignment form with an odometer disclosure. The dealer then takes both secure reassignment forms to a tag agency, where the title is transferred to the buyer and a receipt is provided. The buyer has the option of obtaining a paper title or having the Department hold the title electronically. The secure reassignment forms are scanned and stored with the vehicle title history in FRVIS.

c. Dealer Reassignments

Florida currently does not allow for an e-title in the dealer reassignment process. A dealer must obtain a paper title in order to resell the vehicle. Once there is a paper title, the dealer uses the current paper process. The dealer uses the back of the title to document reassignments, including odometer disclosure. Once this form is full (Florida allows for three reassignments on the title), the dealer will use a secure title reassignment supplement (HSMV 82994) which includes the required odometer disclosures. When a vehicle is ultimately sold to a customer, the paper title and all secure title reassignment supplements are provided to the tag agency, and forwarded to the Department for scanning and storing in the title record.

Under Florida's proposed system, the dealer would use a secure reassignment supplement instead of having to obtain a paper title. Any subsequent reassignments would also use the secure reassignment supplement. When the vehicle is ultimately sold to a retail customer, all secure reassignment supplements would be provided to the tag agency for verification of the chain of ownership and verification of the odometer disclosure. All documents would be forwarded to the Department for scanning and storing in FRVIS.

3. Sales Involving Leased Vehicles

In the case of leased vehicles, the lessor typically retains ownership of the vehicle, but does not possess it. The lessor, as a transferor, must comply with the federal odometer disclosure requirements when it subsequently transfers title of a leased vehicle. As noted by Florida, Federal laws require written mileage disclosures to be made by lessees to lessors upon the lessor's transfer of the ownership of the leased vehicle.

Florida's current process for transferring leased vehicles is as follows. The lessor holds the vehicle's paper title. When the lease ends (for example, in a trade-in or buyout situation), the lessee brings the vehicle to a dealership. The lessee signs an Odometer Disclosure Statement. The lessor transfers the odometer reading to the title. The lessor signs title over to the dealer (or other party) along with the Odometer Disclosure Statement. When the dealer sells the vehicle to a buyer, the dealer and buyer complete the reassignment on the paper title with the odometer disclosure. The documents are then sent to an authorized tag agency, where the title is transferred to the buyer and a receipt is provided. The

make the required odometer disclosure on the back of the paper title. The buyer then can bring the signed title containing the required odometer disclosure statement to an authorized tag agent and elect at that time to have the title maintained by the State electronically. If the buyer elects e-title and later sells the vehicle in a casual sale, he can do so by following the procedures for transferring e-title.

[15] The Agency understands that the electronic documents are linked to the vehicle title history by title number and VIN.

buyer has the option of obtaining a new paper title or having the Department hold the title electronically. The old paper title and supporting documentation are scanned and stored with the vehicle title history in FRVIS.

Under Florida's proposal, the lessor holds an e-title. When the lease ends, the lessee would bring the vehicle to a dealership. The lessee signs an odometer disclosure statement. The lessor then signs a secure power of attorney to the dealer which includes the odometer disclosure. The dealer signs a secure reassignment form agreeing with the odometer disclosure. When the dealer sells the vehicle to another buyer, the dealer takes the documents (bill of sale, reassignment document, and power of attorney) to the tag agency, where the title is transferred to the buyer and a receipt is provided. The buyer has the option of obtaining a new paper title or having the Department hold the vehicle title electronically. All documents are sent to Department and scanned into the vehicle title history in FRVIS.

C. Florida e-Odometer Implementation Schedule

Florida proposes implementing its electronic title or ''e-title'' system in three phases. Under the first phase, which Florida states is complete, participating lienholders are allowed, but not required, to have their titles and liens held electronically by the Department. This option allows lienholders to avoid maintaining paper lien portfolios. The Department and the lienholders encourage owners who satisfy their liens to continue to maintain the title electronically.

Under the second phase of the e-title project, dealers would be allowed to buy and sell e-title vehicles and take e-title vehicles in on trade without acquiring a paper title. It is the Agency's understanding that the program will extend to leased vehicles, including end-of-lease vehicles coming back to the dealer and vehicles being traded in prior to the end of the lease. Lessors will give the dealer power of attorney to disclose the vehicle mileage, as indicated by the lessee on an odometer disclosure statement, on a secure reassignment form, which will then be used to transfer title from the lessor to a subsequent purchaser. This process will obviate the need for the dealer to obtain a paper title.

The third phase of the project would extend e-title capability to private or casual sales. Under the proposal, the seller (transferor) and buyer (transferee) will have two options for completing a motor vehicle sale. Currently, the vehicle's title is either held physically by the vehicle owner or the vehicle is titled electronically. If the vehicle is titled electronically, the owner now must acquire a secure paper copy of the title prior to transferring the vehicle. The transferor makes the required odometer disclosure on the title and both parties sign the title, effectuating transfer of the vehicle. Under Florida's proposed program, if the vehicle has an e-title, the transferor would not be required to obtain a paper title to transfer it. The transferor and transferee will have the option of going to a tag agent or tax collector's office and, after providing adequate identification to the agent, executing a secure reassignment form to transfer title from the transferor to the transferee without the need to first acquire a paper title.[16]

D. Florida's Position on Meeting the Purposes of TIMA

As noted in in NHTSA's initial determination, Florida submitted that its proposed e-Odometer program met the purposes of TIMA. 76 FR 48110. The petition, as supplemented on October 5, 2010, identified the purposes of TIMA as amended and the State's assessment on how its proposed program would comply with each purpose.

1. Vehicle Transfers in the Absence of a Lease Agreement

a. Casual or Private Sales

In its petition, Florida referred to NHTSA's prior final determinations granting petitions for alternate odometer disclosure requirements, cited the purposes of TIMA as amended as articulated by NHTSA,[17] and acknowledged that those purposes applied to its own petition. As recognized by Florida, one purpose of the disclosure required by TIMA is to ensure that the form of the odometer disclosure precludes odometer fraud. Florida asserted that the proposed secure reassignment form would have the same security features currently included on paper title and would travel with the title record in FRVIS, and that both parties would be present together in a tag agency with identification in order to process the title transfer, which would include execution of the odometer disclosure statement on the secure reassignment form.

A second purpose of TIMA, as stated by Florida, is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title both a condition of the application for a title and a requirement for title issuance by a State. Florida stated that under its proposal, odometer disclosure would remain a required data input for application of a title and a required output on the title. By having both parties present with required identification, Florida stated the process would be more secure than the current process, which allows the owner to sign the title over to the buyer who then produces the document when obtaining title without the seller present.

A third purpose, cited by Florida, is to prevent alterations of disclosures on title and to preclude counterfeit titles through secure processes. Florida stated in its petition that, with both parties present at a tag agency with identification, this process would prevent alterations and preclude counterfeit titles. If changes are necessary, a new secure document is signed by both parties present in front of an authorized tag agent.

A fourth purpose, acknowledged by Florida, is to create a record of the mileage on vehicles and a paper trail. Florida stated that under its proposal, the secure document, whether a secure reassignment form or secure paper title, signed by both the buyer and seller would be scanned and stored as evidence of the agreement by both the buyer and seller of the odometer reading. This would create a permanent record easily checked by subsequent owners or law enforcement officials.

Florida noted that a fifth purpose is to protect consumers by ensuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. Under its proposal, Florida stated this purpose would be served, because consumers (buyers) would be present with sellers at the time the title is transferred (currently this is not usually the case).

b. Sales Involving Licensed Dealers (With and Without a Lien)

In its petition (as supplemented), Florida cited the statutory purposes of TIMA as amended, stated in NHTSA's prior final determinations granting petitions for alternate odometer disclosure requirements, and applied

[16] The secure reassignment form contains an odometer disclosure statement that is required to transfer the vehicle title. Sellers would accurately disclose vehicle mileage in the presence of both the buyer as well as a tag agent. The tag agent will verify that the buyer agrees to the mileage being disclosed and will require proper identification from both the buyer and the seller. (Currently, a vehicle owner with an e-title who wants to transfer or sell the vehicle must acquire a paper title from the State to process the transaction.)

[17] Any statements which refer to ''the purposes of TIMA'' or ''a ''purpose of TIMA'' should be interpreted to refer to ''the purpose of the disclosure required by subsection (d) or (e), as the case may be,'' as stated in Section 408 of the Cost Savings Act, as amended by TIMA.

those purposes to its own petition. As recognized by Florida, one purpose of TIMA as amended is to ensure that the form of the odometer disclosure precludes odometer fraud. Florida stated its proposal would meet this purpose because the secure reassignment form would have the same security features currently included on paper title. The dealer would use secure reassignment forms, which would travel with the title, which the dealer would sign with the previous owner and with the new buyer.

A second purpose, as stated by Florida, is to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. Florida stated that the e-title process requires disclosure of an odometer's mileage on a secure document. The secure reassignment forms would have the same security features currently included on a paper title and would travel with the title record.

A third purpose listed by Florida is to prevent alterations of disclosures on a title and to preclude counterfeit titles through secure processes. Florida stated that a title would not be issued to a buyer if the chain of ownership could not be established. The submission of all secure reassignment forms would establish the chain of ownership. Odometer disclosures would be part of those forms.

A fourth purpose acknowledged by Florida is to create a record of the mileage on vehicles and a paper trail. Florida noted that the secure reassignment document signed by the previous owner, the dealer, and the buyer would be scanned and stored as evidence of the agreement by both the buyer and seller of the odometer reading.

Florida noted that a fifth purpose is to protect consumers by ensuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. According to Florida, the secure reassignment forms would allow for valid representation of the odometer mileage during both transactions (the original owner to dealer transaction and the subsequent dealer to buyer transaction).

2. Transfers Involving Leased Vehicles

Florida recognized, with regard to leased vehicles that one purpose of TIMA as amended is to ensure that lessors have the vehicle's actual odometer mileage at the time of transfer. Florida stated that the only change proposed by its e-title proposal from the current process is that, instead of signing an actual paper title, the lessor would sign a power of attorney and disclose the odometer reading as provided to it by the lessee. This power of attorney would then transfer this odometer information to the dealer to sell the vehicle.

A second purpose as stated by Florida is to ensure that lessees provide lessors with an odometer disclosure statement. Florida stated that its proposed e-title process would not affect this requirement.

A third purpose listed by Florida is to ensure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information. Florida stated that its proposed e-title process would not affect this requirement.

A fourth purpose acknowledged by Florida is to set rules for accurate disclosure by lessors, directing them to indicate on the title the mileage provided by the lessee, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle. Florida stated that its proposal would satisfy this purpose by allowing the lessor to indicate the mileage on a secure reassignment form that would travel with the title.

Florida noted that a fifth purpose is to create records and a paper trail, including the written, dated and signed odometer disclosure statement by the lessee. Florida stated that its proposal would not change this requirement. The title would remain in electronic form; however, the secure reassignment form with the lessor's odometer disclosure, the power of attorney form and bill of sale would all be scanned into the title history. The Department's database would store these documents with the title.

IV. NHTSA's Initial Determination

In its initial determination, NHTSA restated the statutory purposes of the disclosure required by TIMA as amended. 76 FR 48103–48107. NHTSA then discussed Florida's petition (*Id.* at 48107–48111) and analyzed whether it was consistent with the statutory purposes (*Id.* at 48111–48115). NHTSA preliminarily granted Florida's petition for proposed alternate disclosure requirements as to vehicle transfers involving casual or private sales, and preliminarily denied the petition as to sales involving licensed dealers and leased vehicles. *Id.* at 48115.

NHTSA explained that Florida's proposal as to sales involving licensed dealers was problematic because of Florida's proposed use of reassignment forms instead of a title as the document on which odometer mileage would be disclosed. *Id.* at 48112–48113. Disclosing mileage on a reassignment form rather than title is inconsistent with the statutory purposes of (a) Ensuring that the form of disclosure precludes odometer fraud; (b) preventing odometer fraud by processes and mechanisms making odometer mileage disclosures on the title a condition for the application for a title, and a requirement for the title issued by a State; (c) creating a record of vehicle mileage and a paper trail; and (d) protecting consumers by ensuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. *Id.* at 48112–48113; 48115. Florida's proposal to have odometer mileage disclosed on a reassignment form rather than title disposes of a critical aspect of TIMA (namely, mileage disclosures on title) intended to provide a mechanism to trace and prosecute odometer tampering, and to prevent odometer fraud. *Id.* at 48112–48113.

NHTSA also explained that Florida's proposal involving use of powers of attorney in sales of leased vehicles (among other things) was problematic in light of the purposes of TIMA as amended in 1988. *Id.* at 48113–48115. One purpose of the amendments to TIMA on powers of attorney was to provide a limited exception to a rule prohibiting a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction. The rule was intended to preclude situations, rife with potential fraud, where the same person signed as the reporter and verifier of the odometer reading. A consequence was that powers of attorney could be used to make mileage disclosures. *Id.* at 48114. This presented problems when vehicles that were subject to a lien were traded-in, because the seller did not have the title (the lienholder had the title or controlled it) upon which to make the odometer disclosure. TIMA was amended to permit power of attorney to be used in a limited situation—where a vehicle's title was unavailable because it was ''physically held by a lienholder.'' Sec. 401, Pub. L. 100–561, 102 Stat. 2817. When it enacted regulations governing powers of attorney, NHTSA considered whether power of attorney could be used to disclose mileage in situations where title was unavailable because it was lost, as indicated in the

legislative history,[18] and decided affirmatively.

Although a lessor would have the title, Florida proposes allowing power of attorney to be used as part of a disclosure process involving a number of steps and transfers, requiring the use of at least three separate documents, instead of the title, to disclose odometer mileage.[19] 76 FR 48109. Florida's proposal makes use of multiple forms, which can be lost or fraudulently replaced before being scanned into FRVIS. *Id.* As stated in the initial determination, Florida's proposal was not consistent with the purposes of the disclosure required by TIMA, as amended. *Id.* at 48113–48115. NHTSA stated that Florida's proposal was inconsistent with the purpose of preventing alterations on odometer disclosures by powers of attorney and precluding counterfeit powers of attorney through secure processes and protecting consumers by ensuring that they receive valid representations of a vehicle's actual mileage at a time of transfer. 76 FR 48114–48115. NHTSA explained that Florida's proposed alternate disclosure requirements for sales of leased vehicles were also inconsistent with the statutory purposes relevant to leased vehicles to (a) ensure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information on the disclosure to the lessor; (b) set ground rules for the lessors, providing for lessors to indicate the mileage provided by the lessee on the title, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle; and (c) create records and a paper trail. *Id.* at 48112–48115.

V. Summary of Public Comments

NHTSA received two comments. The first was from the Florida Division of Motorist Services (Florida).[20] In general, Florida comments that federal laws should be reviewed and amended to allow for further variances in processes and mechanisms through which vehicles are titled. The second comment was from the National Auto Auction Association (NAAA).[21] NAAA generally remarks that Florida's proposed alternate disclosure requirements are no less secure than Florida's current odometer disclosure requirements.

A. Florida's Comment

Florida seeks to employ new electronic technology. Florida recognizes that its proposal varied significantly from previous petitions. Unlike the other States that have petitioned NHTSA, Florida requested variances from Federal requirements with regard to dealer and lease transactions. Florida states that the ''intent of Federal odometer laws is to ensure the buyer of a motor vehicle knows the true mileage of the vehicle'' and that ''[w]hile the intent of the federal laws remains necessary, the processes and mechanisms by which motor vehicles are sold continue to change with new technology.'' It adds that federal laws regarding odometer disclosure have not been amended in years and that when these laws were enacted, many States did not have electronic alternatives to titling. Florida recommends that ''federal laws be reviewed and amended to allow for further variances to enable states to use new systems and technology to enhance titling processes in their state.'' Finally, Florida contends in a sweeping manner that ''its alternative requirements are consistent with the purpose of the disclosure and should be granted in their entirety.''

Florida agrees with NHTSA's initial determination to approve Florida's proposal for casual or private sales.

With regard to its petition on sales involving licensed dealers without a lien, Florida requests use of secure reassignment forms in lieu of paper titles. Florida then requests a ''variance in a case where there is no lien on the vehicle and title is held electronically.'' Florida comments on NHTSA's initial determination, which states, ''if, however, the transfer from the titled seller to a dealer was on a title, NHTSA's initial decision would be that Florida's proposal insofar as it concerns subsequent transfers of the vehicle among licensed Florida dealers meets the purposes of TIMA.'' 76 FR 48112 n. 48. Florida responds, ''our petition is to allow Florida to enhance its electronic titling initiative by not requiring an owner to convert an electronic title to paper to transfer the vehicle. By requiring a paper title in all instances, we would not need to seek a petition for variance from the odometer requirements.'' Florida suggests that ''electronic title be looked at similarly to one that is held by a lienholder, which federal law currently allows the use of secure power of attorney to disclose the odometer reading.'' Florida requests that NHTSA reconsider its position and allow Florida to use a secure reassignment form for the initial transfer from the seller to the dealer when there is an electronic title, and contends that the intent of the disclosure requirements would be met.

Florida observes that previous petitions by other States for approval of odometer disclosure requirements did not involve a review of disclosure requirements for leased vehicles. Florida also recognizes that federal laws allow the use of powers of attorney to disclose odometer readings only where the owner does not have the title: when the title is held by a lienholder, or when title is lost. Florida contends that a lessor acts in a similar manner to a lienholder in an e-title scenario in Florida, because in both instances, the person with the title is not the person who physically has possession of the vehicle. Florida's proposal seeks to avoid the current procedure in Florida of requiring a lessor to go to a tag agent and have the e-title printed before delivering a vehicle to the dealer. Florida proposes that a lessor disclose the odometer reading on a secure power of attorney, avoiding the step of printing an e-title to paper. Florida requests that NHTSA reconsider its position, and allow Florida to use a power of attorney in leased vehicle transactions.

B. The National Auto Auction Association's Comment

NAAA represents hundreds of auto auctions. NAAA supports electronic titling, which is a state function. NAAA fully supports Florida's petition, stating that ''electronic titling is the wave of the future, and odometer disclosure laws must change to keep pace with electronic titling laws.'' NAAA asserts that ''the burden [is] on NHTSA to find that the proposed alternate disclosure requirements do not comply with the law.'' NAAA recognizes that NHTSA raises legitimate concerns regarding the use of secure reassignment forms and powers of attorney that do not accompany the paper title document itself. However, NAAA believes that

[18] 49 CFR 580.13; 134 Cong. Rec. 30088 (1988). House Representative John Dingell of Michigan stated, ''* * * I want to observe that some have suggested that the amendment also cover lost titles * * * the present law allows the National Highway Traffic Safety Administration to, by rule, deal with this problem before next February.''

[19] A lessee would disclose mileage on an unspecified ''Odometer Disclosure Statement'' (presumably given to the lessor), then the lessor would sign a secure power of attorney to a dealer including odometer disclosure, and then the dealer would sign a secure reassignment document agreeing with the odometer disclosure. 76 FR 48113–48114.

[20] Letter from Sandra C. Lambert, Director, Florida Division of Motorist Services, to O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration (''Florida's Comment'') (Sept. 7, 2011).

[21] Letter from Bertha M. Phelps, Legislative and Government Relations Committee, National Auto Auction Association, to O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration (''NAAA's Comment'') (Sept. 7, 2011).

Florida has a very strong argument in that it would make no sense to require the printing of a paper title because the paper title would be less secure than the electronically stored title.

For dealer sales, NAAA recognizes the concern that Florida would provide for the issuance of a new title based only on reassignment forms. NAAA points out that Florida's proposal is no less secure than Florida's current procedures. In its comment, NAAA did not dispute that in some respects Florida's current practice does not comport with Federal odometer statutes, and associated regulations. *See* 76 FR 48115. NAAA states that reassignment forms have always been considered an extension of and part of the title itself, and having the paper title accompany the reassignment form would make it no less likely for fraud to occur. Further, NAAA asserts that criminals can discard and create another secure reassignment form just as easily as they can with paper title, and that criminals can alter titles to match reassignment forms.

Second, as to lease sales, NAAA states that NHTSA points out, correctly, that under current law, powers of attorney can be used only when the transferor's title is physically held by a lienholder or the title is lost. NAAA argues that NHTSA's position of strict construction of the law appears not to comply with the Congressional mandate that NHTSA approve alternate disclosure requirements unless NHTSA determines they are not consistent with TIMA's disclosure requirements. NAAA states that if the power of attorney can be used when a title is in the physical possession of a lienholder or lost, powers of attorney should be allowed when titles are securely in the possession of a state titling agency as a result of being held intact in a secure electronic environment, inaccessible to criminals who might want to alter it.

In conclusion, NAAA states that it ''in no way thinks NHTSA has acted arbitrarily.'' NAAA further states that as the motor vehicle industry moves to electronic titling as a norm, states have the opportunity to create odometer disclosure systems more effective and secure than those currently in place. NAAA believes that NHTSA should approve such systems. NAAA states that it in all honesty, could argue either NHTSA's position or Florida's position in a debate and that it hopes that NHTSA obtains specific Congressional authority for rulemaking to accommodate electronic titling procedures.

VI. Statutory Purposes

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

In its petition, as supplemented on October 5, 2010, Florida restated and applied the purposes of TIMA as previously articulated by NHTSA. NHTSA's initial determination set forth the purpose(s) of the disclosure required by section 408(d) of the Cost Savings Act as amended. 76 FR 48104–48107. NHTSA also provided a full opportunity for comment. NHTSA received two comments: one from Florida, and one from NAAA.

A. Consideration of Florida's and NAAA's Comments

Neither Florida's nor NAAA's comments dispute the relevant Cost Savings Act purposes set forth in the initial determination. However, Florida asserts in its comment that the processes and mechanisms by which motor vehicles are sold continue to change with new technology and that federal laws should be reviewed and amended to allow for further variances to enable states to use new systems and technology to enhance titling processes in their state. NAAA comments that the burden is on NHTSA to find that the proposed alternate disclosure requirements do not comply with the law. NAAA also urges NHTSA to consider that Florida's proposal is more secure than its current system. These aspects of Florida's and NAAA's comments are addressed below.

1. Florida's Position on the Statutory Purposes

In its supplement to its petition, Florida referred to and applied the purposes of TIMA as previously articulated by NHTSA. Florida has not renounced this acceptance of NHTSA's articulation of TIMA's purposes. In its comment on the agency's initial determination, Florida does not challenge NHTSA's analysis of statutory purposes of TIMA as amended, but it requests a variance to accommodate changes in technology. Florida's comments state generally that federal laws should be reviewed and amended to allow for variances in processes and mechanisms through which vehicles are titled. This is not within NHTSA's authority. NHTSA cannot grant a variance because the statute does not provide for variances.

2. NAAA's Position on the Statutory Purposes

NAAA's comments also do not directly challenge NHTSA's analysis of statutory purposes in the initial determination. Rather, NAAA appears to suggest that NHTSA should compare Florida's proposed odometer disclosure system to its current system rather than determining if the proposal is consistent with the applicable statutory purposes.

First, NAAA asserts that Florida's proposal as to sales by licensed motor vehicle dealers and transfers involving leased vehicles should be adopted because it is more secure than Florida's current titling system. However, this general standard is not articulated in TIMA or any of the subsequent amendments. NHTSA's authority to approve alternate vehicle mileage disclosure requirements is based on consistency with the purpose of the disclosure required by subsection[s] [of section 408] as the case may be. Whether or not Florida's current program is less secure than its proposed program, to approve Florida's program for alternate vehicle mileage disclosure requirements, NHTSA must evaluate the program in the framework of the purposes of TIMA as amended (recodified to 49 U.S.C. 32705(b), (c)). NAAA then comments that ''the burden [is] on NHTSA to find that proposed alternate disclosure requirements do not comply with the law.'' NHTSA's burden is to examine the Florida proposal in light of the purposes of TIMA as amended.

B. Adoption of the Statutory Purposes Set Forth in the Initial Determination

After careful consideration of the comments, as part of the agency's final determination, we adopt the purposes stated in our initial determination of Florida's petition. 76 FR 48103–48107.

1. TIMA's Purposes Regarding Vehicle Transfers in the Absence of a Lease Agreement

As to vehicle transfers in the absence of a lease agreement, the statutory purposes of the disclosure required by TIMA and its amendments are in short [22] as follows: (1) To ensure that the form of the odometer disclosure precludes odometer fraud; (2) to prevent odometer fraud by processes and mechanisms making odometer mileage disclosures on the title a condition of any application for a title, and a requirement for any title issued by a State; (3) to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes; (4) to create a record of vehicle mileage and a paper trail; and (5) to protect consumers by ensuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. 76 FR 48104.

2. TIMA's Purposes Relevant to Leased Vehicles

As to leased vehicle transfers, the statutory purposes are: (1) To ensure that lessors have the vehicle's actual odometer mileage at the time of transfer; (2) to ensure that lessees provide lessors with an odometer disclosure statement; (3) to ensure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information; (4) to set the ground rules for the lessors, providing for lessors to indicate the mileage provided by the lessee on the title, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle; (5) to create records and a paper trail; and (6) to ensure that there are valid representations of the vehicle's actual mileage at the time of transfer. 76 FR 48104.

3. The Purposes of TIMA as Amended Relevant to Power of Attorney

The statutory purposes of the disclosure required by TIMA and its amendments regarding power of attorney are: (1) To provide limited exception(s) to a rule prohibiting a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, which had the effect of prohibiting the use of powers of attorney for purposes of recording mileage on titles of motor vehicles; (2) to ensure that the form of the power of attorney document issued by a State precludes odometer fraud; (3) to set ground rules for transferors and transferees, providing that both parties provide all of the information and signatures required in parts A, and as applicable B, and C of the secure power of attorney form; (4) to prevent odometer fraud by establishing processes, mechanisms and conditions calculated to result in the disclosure of the actual mileage on the title; (5) to prevent alterations on odometer disclosures by powers of attorney and to preclude counterfeit powers of attorney through secure processes; (6) to create a record of the mileage on vehicles and a paper trail; and (7) to protect consumers by ensuring that they receive valid representations of a vehicle's actual mileage at a time of transfer. *See* 76 FR 48104–48107.

VII. NHTSA's Final Determination

Section 408(f)(2) of the Cost Savings Act sets forth the legal standard for approval of state alternate vehicle mileage disclosure requirements: NHTSA ''shall'' approve alternate motor vehicle mileage disclosure requirements submitted by a State unless NHTSA determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) of section 408, as the case may be. In this section, NHTSA will consider Florida's program in light of the purposes of the disclosure required by subsection (d) of section 408, and address Florida's and NAAA's comments.

A. Casual or Private Sales

NHTSA preliminarily granted Florida's petition regarding proposed alternate disclosure requirements for vehicle transfers involving casual or private sales. 76 FR 48111–48112. Both Florida and NAAA supported this initial determination. NHTSA grants Florida's proposed alternate disclosure requirements for vehicle transfers involving casual or private sales.[23]

Florida's proposed alternate disclosure requirements as to casual or private sales meet the purposes of the disclosure required by TIMA and its amendments. Under Florida's program there would be an e-title.[24]

First, Florida's program for casual or private sales ensures that the form of the odometer disclosure precludes odometer fraud. A required part of the date to be entered in the transfer of title would be the vehicle's odometer reading. Florida's program requires the buyer and seller to visit a tag office together, provide identification to a tag agent, and sign a single document referred to as a secure reassignment form [25] before the tag agent transferring ownership and disclosing the odometer reading. This document is stored on Florida's electronic database and linked to the vehicle's title through title number and VIN.

Second, the processes and mechanisms noted above make the disclosure of odometer mileage on one document, an information entry form, before a tag agent a condition of the application for a title and a requirement for title issuance.

Third, this portion of the Florida proposal employed secure processes that prevent alterations of disclosures on titles and preclude counterfeit titles. Specifically, odometer mileage is disclosed initially on secure paper (either on the paper title itself or on a secure form which complies with 49 CFR 580.4) in the presence of a tag agent.

Fourth, Florida's proposal would create a record of the mileage on vehicles and a paper trail. Namely, Florida requires both the buyer and seller to sign a secure document in the presence of a tag agent disclosing odometer mileage. Then, Florida has all documents scanned and stored in FRVIS. This creates a paper trail that can be easily checked by subsequent purchasers or law enforcement officials.

Finally, Florida's program is consistent with the overall purpose of the disclosure required by TIMA and its amendments—to protect consumers by ensuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer.

B. Sales Involving Licensed Motor Vehicle Dealers

NHTSA preliminarily denied Florida's petition regarding proposed alternate disclosure requirements for sales involving licensed dealers. *See* 76

[22] *See* 76 FR 48104.

[23] NHTSA's rationale is summarized below. For a full statement, *see* 76 FR 48111–48112.

[24] Florida notes that paper titles will still be necessary for title transactions involving at least one out of state party. For instance, if a vehicle enters Florida with an out of state title, Florida cannot recognize another state's e-title. The buyer will need to obtain a signed paper title from the seller. Conversely, if an owner sells a Florida titled vehicle to someone who will title it in another state, the owner will need to obtain the paper title to allow the buyer to obtain a title in the other state.

[25] We note that Florida's use of the term ''secure reassignment form'' in this situation appears to be a misnomer. The transfer of title in casual or private sales is not a reassignment as there is no prior assignment. The document is more accurately described as a secure State title transfer form for use when a vehicle has e-title and the title cannot be physically signed. We noted this in the initial determination and Florida did not dispute our characterization.

FR 48112–48113. Both Florida and NAAA asserted in their comments that Florida's proposal as to dealer sales is consistent with the purposes of the disclosure required by TIMA and its amendments. However, other than seeking a variance and asserting that Florida's proposal is just as secure, if not more secure than its current system (*see* Section VI), neither Florida nor NAAA provided any explanation as to how Florida's program is consistent with the purposes of the disclosure required by TIMA, beyond what had previously been provided by Florida in its petition, as supplemented.

One purpose of TIMA is to ensure that the form of the odometer disclosure precludes odometer fraud. To prevent odometer fraud facilitated by disclosure statements that were separate from titles, TIMA required mileage disclosures to be on a secure vehicle title, containing space for the seller's attested mileage disclosure and a new disclosure by the buyer when the vehicle was sold again, instead of a separate document. The form of disclosure in Florida's proposal for retail vehicle sales to dealers of vehicles without or with a lien does not satisfy this purpose. In instances when a private seller sells a vehicle to a dealer, Florida proposes that the seller and dealer complete what Florida calls a secure reassignment form to make the odometer disclosure. Florida states that the reassignment forms will travel with the title. But from a TIMA perspective, when there is a transfer involving a transferor in whose name the vehicle is titled, the transferor must disclose the mileage on a title, and not on a separate reassignment document such as one that is supposed to travel with the title.[26] Florida's proposed program is not consistent with a purpose of the disclosure required by TIMA pertaining to the form of the disclosure.

A second purpose of TIMA is to prevent odometer fraud by processes and mechanisms making odometer mileage disclosure on the title a condition for the application for a title and a requirement for the title issued by the State. As explained above, a major shortcoming of the odometer provisions of the Cost Savings Act prior to TIMA was the absence of a requirement that the odometer disclosure statement be on the vehicle's title that, following the sale of the vehicle, was presented to the State for retitling. Florida's proposed alternate disclosure requirements for vehicles transferred from a private owner to a licensed dealer do not satisfy this purpose. If the initial sale transaction to the dealer were corrected, Florida's proposed alternate disclosure requirements for subsequent vehicle transfers between licensed dealers would satisfy this purpose. Florida's proposal for sales to dealers provides for disclosure and acceptance of odometer information on a secure reassignment form; not on a title. Following the ultimate resale of a vehicle to a consumer by a dealer (possibly not the same dealer that took the vehicle as a trade-in), that dealer would take secure reassignment forms to the tag agency for titling. Florida does not propose making the disclosure of odometer mileage on the title in the initial transaction involving a transferor in whose name the vehicle is titled a condition for the application for a title and a requirement for the title issued by the State. Florida would provide for issuance of a new title based on secure reassignment forms. Such a form can be easily discarded and another secure reassignment form bearing an inaccurate odometer disclosure could be created by an unscrupulous dealer somewhere in the chain of transfers. In order for the proposed program to be consistent with a purpose of TIMA, in the first transfer of title of a vehicle from a private seller to a dealer Florida may not provide for a mileage disclosure on a secure reassignment form.

A third purpose of TIMA is to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. In view of the shortcomings of Florida's proposed program regarding the use of secure reassignment forms instead of titles in sales between private parties and dealers discussed above, NHTSA stated in its initial determination that it was inappropriate to reach a conclusion regarding the security aspects of those forms in that context. 76 FR 48112. Florida did not provide any additional information on secure processes in its comment. Therefore, NHTSA declines to reach a conclusion on this issue.

A fourth purpose of TIMA is to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record and paper trail are to inform consumers and provide a mechanism to trace and prosecute odometer tampering. Florida's proposed alternative scheme would not, in one critical respect, create a scheme of records equivalent to the current ''paper trail'' used for identifying and prosecuting odometer fraud. Florida proposes widespread use of secure reassignment forms in transfers from private parties to dealers. In particular, Florida proposes that, instead of a title, a reassignment form would be used to create the record of the mileage on the odometer in the case of a transferor in whose name the vehicle is titled. In these circumstances, use of reassignment documents would not create the records and paper trail consistent with the purposes of TIMA.

The remainder of Florida's proposal on sales involving licensed motor vehicle dealers would otherwise meet the record creation purposes of TIMA. Regardless of whether the buyer requests a paper title or surrenders the title to the Department to maintain electronically, the Department would retain an electronic copy of the prior titles (including the prior odometer disclosure statements) and any supporting documentation, including secure reassignment forms and powers of attorney. The Department would scan these documents and store them in FRVIS with the vehicle's electronic title history. For title images, FRVIS would store all applicable data and images of documents that would remain in the title history for the vehicle. Furthermore, Florida requires that all documents used to issue a title be retained for a period of at least ten (10) years. These electronic records would create the electronic equivalent of a paper based system that would be readily available to law enforcement. Additionally, the vehicle mileage would be available for public view via an online motor vehicle check available to Florida customers.

TIMA's overall purpose is to protect consumers by ensuring that they receive valid odometer disclosures representing a vehicle's actual mileage at the time of transfer. Because Florida's proposed program relies on reassignment documents, which change hands before being scanned into FRVIS, and cannot be authenticated by the tag agent, it does not satisfy this purpose.

After careful consideration of the comments, the Agency concludes that Florida's proposed program on sales involving licensed motor vehicle dealers does not meet the purposes of the disclosure required by TIMA and its amendments.

[26] Virginia, Texas, and Wisconsin sought to allow dealers to use electronic titling systems. 74 FR 646; 75 FR 20928; 76 FR 1371. NHTSA approved the petitions of Virginia, Texas, and Wisconsin for approval of alternate odometer mileage disclosure requirements. However, these states did not use reassignment forms in the manner proposed by Florida. Instead, these states provided for direct electronic recordation of an odometer reading in the e-title system by a transferor. 74 FR 649; 75 FR 20929; 76 FR 1374. Virginia, Texas, and Wisconsin also required the identity of all individuals accessing the e-title system to be validated and authenticated, and used unique electronic signatures to verify the identities of individuals who accessed the e-title system. 74 FR 646; 75 FR 20929; 76 FR 1374.

C. Sales Involving Leased Vehicles

NHTSA's initial determination preliminarily denied Florida's petition regarding proposed alternate disclosure requirements for sales of leased vehicles. In their comments, Florida and NAAA asserted that Florida's proposal as to the sale of leased vehicles was consistent with the purposes of the disclosure required by TIMA and its amendments. But neither Florida nor NAAA provided support as to how or why Florida's proposal was consistent with the statutory purposes beyond what was stated in Florida's petition as supplemented.

Analysis of Florida's proposed alternate vehicle mileage disclosure requirements for sales involving leased vehicles involves consideration of the purposes of the disclosure required by the leased vehicle provisions of TIMA and its amendments, as well as power of attorney provisions of TIMA and its amendments.[27]

1. Florida's Proposal in Relation to the Purposes of the Disclosure Required by the Leased Vehicle Provisions of TIMA and Its Amendments

One purpose of TIMA's leased vehicle provisions is to ensure that the lessor has the vehicle's actual odometer mileage when it transfers ownership. Florida's proposal satisfies this purpose. In our initial determination, we stated our understanding, which Florida did not dispute in its comments, that under the state's proposal, lessees will be required to sign an odometer disclosure statement that will be provided to the lessor. We adhere to that understanding. 76 FR 48113.

A second purpose of TIMA's leased vehicle provisions is to ensure that the lessee provides the lessor with an odometer disclosure statement regarding the mileage of the vehicle at the time of transfer. Florida's proposal satisfies this purpose. As discussed above, the lessee would provide this via an odometer disclosure statement to the lessor when surrendering the leased vehicle to the dealer, and the dealer would provide this statement to the buyer.

A third purpose is to ensure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information. Florida's proposal does not satisfy this purpose. We note that Florida did not address this purpose in its petition other than a statement that the e-title process does not change the current requirement. We recognize that Fla. Stat. Ann. § 319.225(4) requires lessors to conform to Federal disclosure regulations under 49 CFR 580.7. In addition, Fla. Stat. Ann. § 319.225(9) provides that State statutes regarding vehicle transfer and reassignment forms and odometer disclosure statements be construed to conform to 49 CFR Part 580. According to Florida, the requirement that the lessee provide the lessor with an odometer disclosure statement when the lessee surrenders the vehicle typically is part of the lease agreement, which provides notice of the requirement and the penalties for failing to comply. But this is not a formal requirement. Underlying the adoption of the leased vehicles provisions of TIMA was significant concern about considerable understatements of mileage on leased vehicles that were turned in and resold. And in its comments on the initial determination, Florida did not suggest that it was a formal requirement. Reliance on what is typically in a lease is not sufficient to ensure that lessees are formally notified of their odometer disclosure obligations and the penalties for failing to comply by not providing complete and truthful information.

A fourth purpose of TIMA's disclosure requirements is to set the ground rules for the lessors, providing for lessors to indicate the mileage provided by the lessee on the title, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle. Florida's proposal does not satisfy this purpose. Under Florida's proposal, a lessee would make an odometer disclosure by executing an odometer disclosure statement upon relinquishing the leased vehicle. The lessor would transfer the odometer disclosure from the lessee's statement to a power of attorney unless the lessor had reason to believe that the lessee's statement did not reflect the vehicle's actual mileage, in which case the lessor would be required to indicate on the title ''true mileage unknown'' or words to that effect. As Florida and NAAA acknowledged, odometer disclosure using a power of attorney is permissible only in the limited circumstances when the transferor's title is physically held by a lienholder at the time of the transfer, or when title has been lost. This stems from the 1988 amendments to TIMA. These circumstances do not include lessors giving power of attorney to dealers for purposes of odometer disclosure. Under Florida's proposal, the vehicle title is not unavailable to the lessor.

A fifth purpose of TIMA's leased vehicle provisions is to create records and a paper trail. The paper trail includes the signed odometer disclosure statement by the lessee. Florida's proposed alternate disclosure requirements do not satisfy this purpose. Florida's proposed program for leased vehicle transactions would not create a scheme of records equivalent to the current ''paper trail'' now assisting consumers and law enforcement. The lessee would sign an odometer disclosure statement when surrendering the vehicle, but the lessor would not be required to sign this document. Instead, the lessor would execute a power of attorney form. Also, under TIMA as implemented, dealers and lessors are required to retain all odometer disclosure statements that they issue and receive. However, Florida's proposed program does not specify that the dealer and lessor are required to maintain a copy of the lessee's odometer disclosure statement, and does not provide an alternative mechanism such as a provision that the statement will be forwarded to either a tag agent for mileage verification or the Department for scanning and maintaining as part of the vehicle's title history. Florida did not correct this in its comments. Florida's proposal as to the sale of leased vehicles does not satisfy the purposes of TIMA, because it does not require dealers and lessors to retain odometer disclosure statements from lessees.

The overall purpose of TIMA's leased vehicle provisions is to ensure that vehicles subject to leases have adequate odometer disclosure statements executed on titles at the time of transfer. Florida's proposed program does not meet TIMA's overall purpose. Under Florida's proposal, upon the termination of a lease, a lessee would sign an odometer disclosure statement. But Florida would not have the lessor sign this document. Instead, the lessor would sign a separate power of attorney document. The lessor's granting a power of attorney to a dealer for purposes of odometer disclosure allows the same person to sign an odometer disclosure for both parties. This creates an opportunity for fraud, and Congress did

[27] The Virginia and Texas petitions for approval of alternate odometer mileage disclosure requirements did not cover leased vehicle sales. 74 FR 643; 75 FR 20925. The Wisconsin petition for approval of alternate odometer mileage disclosure requirements discussed an incomplete plan for transactions involving leased vehicles which was still under development, but NHTSA did not approve Wisconsin's plan insofar as it concerned leased vehicles, as Wisconsin indicated that it would submit a separate petition addressing leased vehicle transfers. 76 FR 1374. In addition, because the Virginia, Texas, and Wisconsin petitions did not propose expanding the use of power of attorney or even involve the use of power of attorney, NHTSA did not address the statutory purposes of the power of attorney provisions in its final determinations for those states. 74 FR 643; 75 FR 20925; 76 FR 1367.

not extend the use of power of attorney to this circumstance. Further, Florida's proposal[28] does not require the odometer disclosure statement made by the lessee to be co-signed by the lessor, to be submitted with title documents, or to be retained by any party. In the Agency's view, this is an important link in the chain of odometer disclosure for a leased vehicle to ensure valid odometer disclosures.

2. Florida's Proposal in Relation to the Purposes of the Disclosure Required by the Power of Attorney Provisions of TIMA and Its Amendments

The first purpose of the power of attorney provision in TIMA as amended was to provide limited exception(s) to a rule prohibiting a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, which had the effect of prohibiting the use of powers of attorney for purposes of recording mileage on titles of motor vehicles. Florida's proposal does not fit within the confines of the exceptions identified by Congress and NHTSA and does not meet this purpose of TIMA as amended. Under Florida's proposed program, a lessor (not a lienholder) would execute a power of attorney. No lienholder would be involved nor is there a requirement that the title be lost. More importantly, overall purposes of TIMA as amended are not preserved by Florida's proposed expansion of power of attorney usage. Florida seeks to use power of attorney as part of a mileage disclosure process which would use at least three separate documents to disclose mileage: an Odometer Disclosure Statement by a lessee (the form of which is unspecified), a power of attorney form, and a secure reassignment form. Florida has presented no measure of control over these documents, which can be fraudulently replaced prior to recordation in Florida's e-title system.

In the initial determination, NHTSA did not make a determination as to whether Florida's proposal met the second, third, fourth, and sixth purposes of the discourse required by TIMA. 76 FR 48114–48115. Florida's comments did not provide any additional justification as to how its program was consistent with these purposes of TIMA. Accordingly, NHTSA declines to make a final determination as to whether Florida's proposal meets these purposes.

The fifth purpose is to prevent alterations of odometer disclosures by powers of attorney and to preclude counterfeit powers of attorney through secure processes. Florida's proposal does not satisfy this purpose. Under NHTSA's regulations, power of attorney forms shall be issued by the State and shall be set forth by a secure process. 49 CFR 580.13(a). Under Florida's proposal, the power of attorney document used by the lessor would not be State-issued and would not be secure. As noted above, TIMA was written in part to prevent alterations of disclosures on titles and preclude counterfeit titles by requiring secure processes. In furtherance of these purposes, paper titles must be produced using a secure printing process or there must be some ''other secure process.'' Allowing lessors to transfer title and make the required disclosure through a non-secure power of attorney is inconsistent with the purpose of the odometer disclosure requirements. Accordingly, Florida's proposed program does not meet this purpose. A power of attorney form—and any document used to reassign a vehicle title—must be issued by the State and produced by a secure process.

Finally, the overall purpose of the disclosure required by TIMA is to protect consumers by ensuring that they receive valid representations of a vehicle's actual mileage at a time of transfer. Florida's proposal is not consistent with this purpose.

Upon careful consideration of the comments, NHTSA adopts the analysis set forth in its initial determination, and denies Florida's proposed alternate disclosure requirements for transfers involving leased vehicles.

D. Conclusion

For the foregoing reasons, and upon review of the entire record, NHTSA hereby issues a final determination granting Florida's petition for requirements that apply in lieu of the federal requirements adopted under section 408(d) of the Cost Savings Act as to vehicle transfers involving casual or private sales, and denies Florida's petition as to sales involving licensed motor vehicle dealers and leased vehicles. Other requirements of the Cost Savings Act continue to apply in Florida. NHTSA reserves the right to rescind this partial grant in the event that information acquired after this grant indicates that, in operation, Florida's alternate requirements do not satisfy one or more applicable requirements.

Authority: 49 U.S.C. 32705; delegation of authority at 49 CFR 1.50, 501.2, and 501.8.

Issued on: June 12, 2012.

David L. Strickland,

Administrator.

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[28] Florida's proposal provides for odometer disclosure in transfers of leased vehicles to be made on a secure reassignment form. Lessors (transferors) are titled owners in Florida. But as explained above, in the case of a transferor in whose name the vehicle is titled, the transferor must disclose the mileage on the title, and not on a reassignment document. Florida's proposal runs counter to this requirement. The dealer takes the documents (bill of sale, reassignment document, and power of attorney) to the tag agency. Then, the documents are sent to the Department and scanned into the title history.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812345–2142–03]

RIN 0648–XC060

Snapper-Grouper Fishery of the South Atlantic; 2012 Commercial Accountability Measure and Closure for the South Atlantic Lesser Amberjack, Almaco Jack, and Banded Rudderfish Complex

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex in the South Atlantic for the 2012 fishing year through this temporary rule. Commercial landings for the lesser amberjack, almaco jack, and banded rudderfish complex, as estimated by the Science Research Director (SRD), are projected to reach their combined commercial annual catch limit (ACL) on July 2, 2012. Therefore, NMFS closes the commercial sector for this complex on July 2, 2012, through the remainder of the fishing year in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the lesser amberjack, almaco jack, and banded rudderfish resources.

DATES: This rule is effective 12:01 a.m., local time, July 2, 2012, until 12:01 a.m., local time, January 1, 2013.

ADDRESSES: Electronic copies of the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) to the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper