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Room W12-140
1200 New Jersey Avenue, SE
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RE: Odometer Disclosure Requirements; NHTSA-2016-0037 [RIN 2127-AL39]

The American Association of Motor Vehicle Administrators (AAMVA) welcomes the opportunity to comment on odometer disclosure requirements and the prospect of granting state authority for electronic odometer disclosures. The development of clear and concise guidelines from NHTSA will set the stage for a state's ability to handle odometer disclosures electronically, and allow for progressive odometer disclosure processes between jurisdictions.

This NPRM baselined assumptions about the odometer disclosure process by analyzing the current paper processes associated with written odometer disclosures and then suggested transformations towards a more robust electronic process. AAMVA believes that instead of trying to make a paper process conform to an electronic environment this rule should focus on the development of a new electronic method for collecting all of the required data elements for successful odometer disclosure. Such an approach would be much more effective in serving the states, consumers, and the industry.

The NPRM cites the provisions of the Fixing America's Surface Transportation (FAST) Act of 2015 that allow a state to adopt electronic odometer disclosure systems without the prior approval of the Secretary provided it meets "appropriate authentication and security measures" and the requirements of 15 U.S.C. §7001 and 49 U.S.C. 32705. However, a state's authority to pursue an odometer disclosure solution are subject to any new rule as proposed by NHTSA – making the pursuit of a solution a potentially dangerous and costly endeavor. States like Iowa that are obligated under state law to develop an odometer disclosure system would benefit from the prompt implementation of a rule so that the state can develop its system to conform to the requirements of the rule. In the absence of clear regulatory guidance, and under the pressure of satisfying state law, Iowa is in the precarious situation of being required to develop a solution as required by state law, but lacking assurances that their system will meet the requirements of a yet-to-be-developed rule.

Previous State Petitions for Approval of Electronic Odometer Disclosure Schemes

AAMVA requests clarification on the effect of this NPRM on existing waivers granted to states. Specifically, clarification on whether states granted a waiver by U.S. DOT to proceed with an alternative process to collect odometer disclosures continues to have the authority to operate that system under the waiver. States have invested significant resources under the current waiver process. This NPRM and subsequent rules should not jeopardize state investments in systems that have been approved by the Secretary and have been found to present a safety threshold equal to or greater than that which already

exists. AAMVA requests that states who have been granted a petition for alternate odometer disclosures continue to be granted the authority to operate those systems.

Ongoing Concerns Regarding Electronic Disclosures in Light of Previous State Petitions

In an effort to allow program flexibility in meeting the objectives outlined by NHTSA, AAMVA recommends NHTSA utilize the following minimum performance requirements for an authorized system:

1. The system must protect consumers as prescribed by the Truth in Mileage Act.
2. The odometer disclosure must be made during the title transaction or electronic equivalent portion of the transaction, and not (except for a very few limited number of exceptions) on any other document. If the process cannot be completed under fully electronic conditions, a paper title may be used, but no new documents or processes should be integrated.
3. An electronic disclosure system should minimize or eliminate odometer disclosures on physical documents. Electronic odometer processes should not simply become “electronic” by scanning documents. The implemented electronic process will perform all of the necessary components of the paper process in a more secure electronic environment.
4. The scanning of any secure paper documents, or supporting documents, must be done at a resolution that preserves the security features and the ability to identify forgeries and alterations.
5. Any electronic odometer disclosure system must provide adequate means for verifying the identity of the transferors and transferees.
6. Electronic title and odometer disclosure systems must also foreclose the possibility that a seemingly valid physical title and electronic title do not coexist.
7. Any system designed to accommodate transactions involving leased vehicles must employ measures that meet the existing regulatory requirements without employing physical forms, such as power of attorney documents.
8. All electronic odometer disclosure systems must be designed not to impede interstate vehicle sales while providing consumer protection against odometer fraud.

The NPRM states, “Similarly, an electronic odometer disclosure system may not rely on a method of transmitting secure paper documents if that method does not preserve the security features now present in physical titles, reassignments, and powers of attorney. A low resolution scan of such a document is not secure and such a scan may not reveal forgeries or alterations.” Given this statement, AAMVA notes that in a fully electronic odometer disclosure system, there would not be any physical documents to scan.

E-Manifest

AAMVA recognizes that there are differences between in-person electronic signatures and remote electronic signatures and agree that a rule would not be beneficial if it is prescriptive of how the state must implement the technology components of an e-odometer solution. However, the NPRM is prescriptive with regards to certain technological parameters – such as the level of assurance, the 600 DPI scanning requirements, the potential required hardware – that run counter to the suggestion of a flexible approach to implementation of a system. While each state has the ability to set standards, AAMVA emphasizes that these standards must be malleable and adaptable with the evolution of technology. AAMVA suggests that it is in the best interests of the consumers, states and stakeholders if this rule is permissive in nature and avoids overly-specific technology and methodology requirements.

Once an intrastate methodology has been established for electronic odometer disclosures, the focus will shift towards interstate transactions. Currently, there is no national database that serves all states for the purposes outlined in this NPRM. AAMVA has demonstrated expertise in developing technology solutions to support states in their efforts to access and exchange information on driver licensing, vehicle titling and secure identities. The National Motor Vehicle Title Information System (NMVTIS) is an example of how AAMVA has been able to support the states in exchanging vehicle titling information that includes

odometer capture. AAMVA is uniquely positioned to assist the states in identifying a solution or leveraging existing technologies in support of e-odometer disclosure requirements.

Purpose of Odometer Disclosure Requirements

States already have an underlying incentive to develop electronic systems that improve e-commerce. In the case of electronic titling, a continuous electronic record of ownership shared between states would limit the frequency with which a paper title must be created and relieve the states from the expense associated with paper title issuance. AAMVA recommends the NPRM avoid pursuing interstate communication requirements as they could have the unintentional effect of stifling innovation and restricting the pool of available solutions prematurely. States, and particularly the Departments of Motor Vehicles (DMVs), exchange information through secure means in a variety of different ways – all in accordance with applicable federal and state law. AAMVA believes states can use a similar methodology for electronic odometer disclosures and eventually electronic titling. AAMVA again urges NHTSA to permit states to move forward on implementation authority, but to avoid specific process and procedure requirements that may restrict a state's options.

NHTSA has requested comments on whether it should go further in order to prevent, or limit, variation among the various state's systems. AAMVA discourages NHTSA from going any further or limiting state participation in any way. Variations exist in state systems today, yet the states are able to conduct interstate transactions. Not all states have established electronic titles, few have developed electronic title systems, and even fewer have the ability to complete fully electronic transactions or odometer disclosures. The development of restrictive requirements before all states have had the opportunity to evaluate their existing systems and determine what such a transition could look like is premature. The NPRM should focus on the overall program objectives that a state must meet in order to be granted the authority to process electronic odometer disclosures, and not on mandating new state-specific requirements that may run contradictory to existing state law or regulation. The NPRM should be inclusive of state process and data exchange as long as a state meets the overall program goals for being granted operating authority.

Odometer Disclosure Requirements

As NHTSA considers making changes to the rule, it provides the opportunity to update and reinforce antiquated provisions based on past legislation, court rulings, changes in industry and inquiries to NHTSA. Specifically, 49 CFR 580.13(f) references that "the dealer shall not complete the mileage disclosure on the title" when outlining how to handle a discrepancy between a power of attorney form indicating lower mileage than that appearing on the title. Either this citation provides an errant reference to the dealer, or this citation implies that only a dealer would be completing the mileage disclosure on a title. AAMVA does not believe this is the true intention of the regulation. AAMVA recommends this section be clarified so that the section applies to all transactions, or that additional qualification be provided clarifying that this is the only acceptable use of power of attorney.

Definitions

Electronic Document – AAMVA recommends this be referenced as "electronic record." Once an electronic process is implemented, a paper "document" is eliminated. A "document" is not created in an electronic environment, instead data elements are captured, stored, and aligned with the information previously printed on a paper document. The term "record" also includes information extending beyond title information retained in state systems, which NHTSA should consider when clarifying access points and power of attorney authority.

Sign or Signature – AAMVA recommends NHTSA remove references to the term "form" as it relates to electronic odometer disclosure and electronic titles. Required disclosures and statements will still need to be made by the transferor and the transferee, but these disclosures and statements will not be made on a paper-based "form."

Identify Parties to a Motor Vehicle Transfer and Security of Signatures

The Executive Summary of the National Institute of Standards and Technology (NIST) Special Publication 800-63-2, *Electronic Authentication Guideline* states:

“Electronic authentication (e-authentication) is the process of establishing confidence in user identities electronically presented to an information system. E-authentication presents a technical challenge when this process involves the remote authentication of individual people over an open network, for the purpose of electronic government and commerce.”

Because the process will ultimately be so different for persons that present themselves in person and those where the parties are separate, NHTSA must distinguish between an in-person transaction where an electronic signature is captured as separate from remote identity verification.

The recommendation for a Level of Assurance (LOA) 2 is reasonable and achievable for remote identification verification scenarios. However, compliance with a LOA-3 would have adverse implications for all entities involved in an online transaction. Per the NIST *Electronic Authentication Guideline*:

“Level 3 – Level 3 provides multi-factor remote network authentication. At least two authentication factors are required. At this level, identity proofing procedures require verification of identifying materials and information. Level 3 authentication is based on proof of possession of the allowed types of tokens through a cryptographic protocol. Multi-factor Software Cryptographic Tokens are allowed at Level 3. Level 3 also permits any of the token methods of Level 4. Level 3 authentication requires cryptographic strength mechanisms that protect the primary authentication token against compromise by the protocol threats for all threats at Level 2 as well as verifier impersonation attacks. Various types of tokens may be used as described in Section 6.

Authentication requires that the Claimant prove, through a secure authentication protocol, that he or she controls the token. The Claimant unlocks the token with a password or biometric, or uses a secure multi-token authentication protocol to establish two-factor authentication (through proof of possession of a physical or software token in combination with some memorized secret knowledge). Long-term shared authentication secrets, if used, are never revealed to any party except the Claimant and Verifiers operated directly by the CSP; however, session (temporary) shared secrets may be provided to independent Verifiers by the CSP. In addition to Level 2 requirements, assertions are protected against repudiation by the Verifier.”

According to the standard – if the requirement by rule is set at LOA-3, then every aspect of the online transaction- including the systems and the participating entities must meet the LOA-3 standard. If one aspect of the transaction does not meet the LOA-3 standard, then the entire transaction is considered at the threshold of the lowest common denominator – which in this case would mean that if one aspect of the transaction only satisfies LOA-2, then the entire transaction system may only be considered LOA-2. The following citation from the NIST guideline affirms this:

“4.8 Calculating the Overall Authentication Assurance Level

The overall authentication assurance level is based on the low watermark of the assurance levels for each of the components of the architecture. For instance, to achieve an overall assurance level of 3:

- *The registration and identity proofing process shall, at a minimum, use Level 3 processes or higher.*

- *The token (or combination of tokens) used shall have an assurance level of 3 or higher.*
- *The binding between the identity proofing and the token(s). If proofing is done separately from token issuance, shall be established at level 3.*
- *The authentication protocols shall have a Level 3 assurance level or higher.*
- *The token and credential management processes shall use a Level 3 assurance level or higher.*
- *Authentication assertions (if used) shall have a Level 3 assurance or higher.*

Understanding that there are a combination of usability factors, general business impacts, and fiscal realities, an attempt to force all potential participating parties to comply with a standard set at LOA-3 will ultimately lead to a common inability to do so. In light of the self-asserted nature of a signature on a physical document (LOA-1) and the improvement that assertions of a higher level of assurance provide, AAMVA believes that LOA-2 is an achievable goal that would demonstrate process improvements and provide all interested parties with a higher level of assurance than currently provided. AAMVA emphasizes that the current paper process and authentication of a wet signature is not believed to be the preeminent method for verifying the identity of the transferors and transferees or the ability to identify forgeries and alterations.

NHTSA requests comment on whether any other requirements are necessary to ensure that investigators can trace an electronic signature to identify the individual and/or computer used in the electronic equivalent of a paper trail. Conversely, if an odometer disclosure is altered, do the proposed system requirements develop an adequate paper trail to lead investigators to the IP address or computer used to alter the discloser, and if not, what additional system requirements are necessary? AAMVA recommends that NHTSA develop the rule in such a manner that the electronic odometer solution should provide the appropriate information to identify the individual and/or device used in order to process the electronic odometer disclosure statement. Further, the solution should provide investigators with the necessary information to identify and recommend odometer fraud crimes for prosecution. AAMVA discourages NHTSA from identifying specific technology or system requirements as any such requirements will unlikely be able to keep pace with the evolution of applicable technology. The states stand with NHTSA in working to ensure investigatory tools and prosecution methods for odometer fraud stay intact. An electronic odometer disclosure solution will provide additional information well beyond the information currently available with a paper-based, wet signature process and may further assist odometer fraud investigations. The state titling agencies are well aware of the need to protect the information associated with vehicle ownership and title documents. The states have been collecting and protecting this information, along with other sensitive information, for decades.

Security of Title Documents

NHTSA seeks comment regarding whether proposed changes to 49 CFR 580.4 appropriately matches the security and authenticity requirement for electronic documents with respect to current paper documents. The changes and additions to §580.4 provide no clear comparison. Currently, titling agencies are required to print titles on secure paper. In transitioning to an electronic environment, titling agencies will instead be required to retain the same information in a secure electronic environment. Many titling agencies already convert information from the title to their system of records and adequately protect that information. The security of state titling systems provides a level of security beyond that of a paper document. States implementing an electronic odometer disclosure system will take into account the risks associated with data collection and establish the appropriate safeguards. Rather than include overly prescriptive requirements on system security, NHTSA should understand that states are already collecting and protecting this information in their system of records and that the data is comparable whether in electronic or paper form.

NHTSA also cites the need to “have certain security safety features to inhibit altering the disclosure and to aid in the detection of alterations.” AAMVA notes that in most cases, dates and times are available to the states to make determinations on who accessed certain records. AAMVA understands the need to clarify record controls, however, AAMVA cautions that the language must take into consideration the extensive business processes used by the states each day so that any requirements do not interrupt titling agency business.

NHTSA requests comment on whether requirements should be included for the hardware used in an electronic odometer system to protect the system from threats which could disrupt the electronic records. AAMVA reemphasizes that states have been protecting sensitive data for a long time. The states will continue to safeguard the title information regardless of how it is captured. Including hardware requirements not only limits a state’s ability to keep pace with technology innovations, but it also carries the potential to put a state into conflict with procurement and competitive bidding policies as the regulation ages.

Odometer Disclosures

It seems that the NHTSA approach to this NPRM is 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. These physical documents are being scanned today as part of the titling process but take place entirely outside the scope of an electronic disclosure system. If a secure document is physically signed, than that document already conforms to existing regulation and really has no bearing on any shift to an electronic disclosure system. 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.

The secure power of attorney process as described in the NPRM is not consistent with current business process. State titling agencies do not accept a physical power of attorney from a state without the corresponding title. This NPRM contemplates the use of a power of attorney to facilitate transfer from an electronic title state to a physical title state. This process is already utilized without NPRM consideration and has served as the basis for numerous NHTSA responses to state petitions that require a state to maintain the ability to provide a secure physical title. The ability to produce a secure physical title does not necessarily preclude the possibility of an electronic disclosure system working in tandem with title production.

AAMVA does anticipate a use for power of attorney that the existing and proposed regulations do not address. A secure power of attorney, whether physical or electronic, needs to be permissible when the current record of title is electronic. Current regulations require the title be physically held by the lienholder. Because an electronic title cannot be physically held and there is no title available for the seller to sign, power of attorney could be utilized just as if the title were in physical possession of the lienholder.

NHTSA has requested comment on the proposal that disclosures be made on an electronic form incorporated into the electronic title. AAMVA envisions that the concept for electronic odometer disclosures would be capturing each complete data field and integrating that data as a part of the electronic title record. There would be no need for an electronic “title” as the data elements previously printed on paper titles would become part of the electronic record. The same information that was collected on the paper title document would continue to be a part of the electronic record maintained by the titling agency.

NHTSA requests comments on the proposal to not extend the printed name requirement to electronic disclosures, including technologies that provide comparable electronic hand-writing exemplars as paper document exemplars, and on the proposal to require that any electronic system be capable of providing

the transferor and transferee with a copy or record of the disclosure made. AAMVA fully agrees with the NPRM that a “printed name” provides no additional value in an electronic odometer disclosure environment.

NHTSA requests comments on the proposal to limit the current separate document disclosures for first title issuance and for when the title does not contain sufficient space for the disclosure requirements in paper-based jurisdictions. AAMVA does not support requiring the document upon which the odometer statement is completed in these situations to be on a secure document set forth by the jurisdiction since this is not a requirement today.

NHTSA also seeks comment on requiring disclosures for first title issuance to be conducted within the electronic title system in electronic disclosure jurisdictions. AAMVA supports allowing (but not requiring) jurisdictions to facilitate an electronic process for first title issuance.

Requirements for Electronic Transactions

NHTSA requests comments on the additional requirement for electronic disclosures and what, if any, more specific requirements would be appropriate to ensure that electronic records are not altered and indicate any attempts to alter them. AAMVA is wary of NPRM verbiage relating to “accessing” and “altering” information. While AAMVA assumes NHTSA intends this language in terms of odometer fraud protection, titling agencies will need have the authorization to access electronic odometer disclosure information, and in some instances, alter that information to correct it. While AAMVA supports NHTSA’s intent to provide a mechanism to track *unauthorized* access and alteration of this information, we caution against any language that would limit titling agency authority or impede titling agency business.

NHTSA proposes to add §580.6(a)(2) requiring 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. AAMVA supports individual identification and the affiliation of an individual to any entity that is completing the odometer disclosure in a business capacity as part of the electronic signature requirement.

NHTSA proposes to add §580.6(a)(3) which provides that 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. AAMVA does not support this proposal. The responsibility to provide odometer disclosure information resides with the transferee and transferor and should remain there. Further, the notification emphasis should be transaction based rather than a process based on individual account notification methods. Were NHTSA to pursue such a method, it would also impose additional technology requirements on the states.

With regard to physical documents used in making electronic disclosures, AAMVA agrees that the continued use of physical documents to accomplish transfer of title or odometer disclosure in an electronic disclosure jurisdiction should be strongly discouraged. Each different document inserted into the process presents a new opportunity for fraudulent activity to occur. AAMVA also agrees that to the extent that continued use of physical documents is necessary in an electronic system, any physical documents used must comply with regulatory requirements.

The exchange of electronic and paper title records will be necessary. A successful electronic system should be able to designate which title or record is the current title of record – as titling agencies currently provide today. AAMVA encourages the common practice of destroying expired, antiquated, transferred or invalid paper titles. An active electronic title record and an active paper title cannot coexist. A disclosure from a previous transaction cannot be affiliated with another title transaction. Once completed, the disclosure is translated to a new odometer reading on a new electronic title record or a

new paper-based title. Any odometer reading that is disclosed and acknowledged on a previous transfer is required to be incorporated and printed on the new title. The same holds true for current electronic record transactions. An odometer disclosure on a transfer is incorporated on a new record, and is maintained in an electronic environment. States provide receipts of transfers today with the newly recorded mileage that do not constitute ownership evidence regardless of the whether the title is paper or electronic.

In instances where paper titles are combined with an electronic disclosure, 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 or not a transferor or transferee actually destroys the document. Given that 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.

NHTSA has requested comments on the standards that should be used for scanning and maintaining documents, including whether the scan must be in color, be made at a minimum resolution, or preserve the security features of the original to ensure that fraud or alteration could be detected. In terms of resolution, a 600 dpi scan is excessive and the NPRM provides no clear evidence or case study to support a high resolution standard. Utilizing 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. Further, whether a document is scanned at 300 dpi or 600 dpi, or whether the document is scanned in color, states would still not retain the original document for evidentiary purposes once they are destroyed. Odometer cases are proven through interviews and statements from vehicle owners as well as reference to vehicle history through the numerous vehicle records that delineate the timeline and odometer readings of the vehicle. Documents such as the vehicle service records, crash records, and insurance records provide a much clearer resource of evidence than an original document that may include an alteration. The creation of vehicle history systems and databases provide investigators with a great tool to identify mileage discrepancies that were not previously available.

AAMVA further notes that reviewing titles for alterations is not as relevant in an electronic environment. Many states already invest in a system where they scan title documents into an image system prior to destruction. Instead of focusing on title document alteration, the focus should be redirected to the increased reporting and improved integrity of odometer disclosures captured by an electronic system. Incorporating all sellers and buyers who independently report odometer information into an electronic state system would add increased value to law enforcement and investigators.

Leased Vehicles

NHTSA proposes to add language to §580.7(a) specifying that legal notices given on paper odometer disclosure documents must be provided to, and acknowledged by, an individual making an electronic disclosure; adding language to §580.7(b) clarifying that a printed name need not be provided for electronic disclosures; and add a new §580.7(e) requiring any electronic system maintained by a lessor for the purpose of complying with this section meet the requirements set forth in this part. State titling agencies are not currently involved in this process and AAMVA does not support involving the state in transactions made between the lessee and the lessor. The use of the term “physical document” as associated with a lessee making an odometer disclosure to a lessor is particularly troublesome. As proposed, these physical documents would include a title, reassignment document, or power of attorney. AAMVA recommends that the duty of the state remain only in the receipt of an actual odometer disclosure made by the titled owner.

NHTSA requests comments as to whether electronic disclosures of leased vehicles should be a required part of the electronic system established by a jurisdiction or are best left to individual companies/lessors

to establish and whether the current proposal would sufficiently aid law enforcement in detecting altered documents. Because the actual odometer disclosure performed on the title of the transaction is done by the owner of the vehicle (the lessor) AAMVA does not feel state intervention in this process is necessary or warranted. AAMVA does not support any requirement mandating lessor/lessee odometer information exchange take place within the confines of a state system.

Record Retention

NHTSA is proposing to add a specific requirement in a new §580.8(d) and in §580.9 that electronic records kept by motor vehicle dealers and distributors and by auction companies must be stored in a format that cannot be altered and which indicates any attempts to alter the document, consistent with the standards set forth in proposed §580.4(b). NHTSA requests comment on whether this requirement would be sufficient to allow law enforcement to detect altered documents. AAMVA feels that this requirement is unnecessary as states systems would provide the required security protocols. Only authorized access and modifications to the records as submitted to the states would be permitted and further specific regulation seems unnecessary. Law enforcement will still be able to obtain the appropriate information to detect fraud and any new requirements carry the potential to further obfuscate paper versus electronic processes between parties.

Power of Attorney

NHTSA proposes to amend §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. In this way, the electronic title with the required odometer disclosure is equivalent to a lost title or a title held by a lienholder. While the use of power of attorney provides an additional step in the transfer process, and thus another opportunity for fraud to occur, the agency believes as a practical matter that there must be some other way for a vehicle owner from an electronic title state to sell the vehicle in a paper title state without first obtaining a converted official paper title from the electronic title state. AAMVA does not believe that 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.

NHTSA requests comments on whether power of attorney would be necessary in an electronic odometer system for intra-state transfers. 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.

NHTSA notes that the requirements in §580.13 permitting disclosures by power of attorney assume that the power of attorney document itself is a physical document. Therefore, NHTSA requests comments on whether odometer disclosure by power of attorney would be made on something other than a paper document, i.e. electronically, in these situations and, if so, explanation of how that would work. AAMVA does not believe a power of attorney will be necessary in electronic odometer disclosure transactions, but does not suggest the rule preclude a state from using a power of attorney if necessary. Should an acceptable methodology be determined to proceed with an electronic power of attorney, AAMVA supports the development of that methodology.

Exemptions

Section 580.17(3) currently exempts any vehicle which is more than 10 years old from the odometer disclosure requirements. The average age of the United State vehicle fleet has been trending upward and recently reached 11.5 years. Because of this, NHTSA is proposing to raise this exemption to 25 years. AAMVA supports the extension of the exemption beyond the current 10 years. Twenty-five years is consistent with many definitions of an antique vehicle among the titling agencies, though it is not uniformly recognized at that age. Some states discontinue the issuance of titles once a vehicle has reached a certain age – for example 15 years. This presents a potential area of impact as a title document for odometer disclosure may not be offered by the state.

AAMVA is concerned with the process of implementing the extended exemption and the lack of clarity regarding how states should process vehicles that are currently exempt but will not be exempt upon the effective date of the final rule. An immediate 25-year exemption has the potential to increase fraud by allowing sellers to disclose mileage on vehicles that are currently exempt with no documented mileage on their titles. Should this be permitted, states would need clarification on whether the newly certified mileage would be distinguished as "Actual," "Not Actual," or another designation. Any discrepancies would create confusion for the customer, the titling agency, and law enforcement. Titling agencies would have mileage disclosed on previously exempt vehicles with little assurance of its accuracy, notwithstanding the historical mileage figures available prior to the vehicle attaining 25 years of age. AAMVA recommends that any vehicle that does not reflect "actual" mileage in the title record be precluded from movement towards an actual reporting even if mileage is disclosed at a later date.

AAMVA recommends that the rule phase-in the 25 year exemption, by first applying the requirement to vehicles under 25 years old that are currently subject to odometer reporting. AAMVA further recommends that the rule does not require odometer disclosures on vehicles that were previously exempt. For example, as it stands today, a 2007 or newer model year is required to have an odometer disclosure. If the rule becomes effective in 2016, AAMVA would recommend the following rule language for §580.17:

"Odometer disclosure are required on vehicles manufactured in model year 2007 or newer. Exemption: A vehicle that was manufactured in a model year beginning at least twenty five years before January 1 of the calendar year in which the transfer occurs is exempt. Example to paragraph (a)(3): For vehicle transfers occurring during calendar year 2032, model year 2007 or older vehicles are exempt."

This proposed solution would ensure that no vehicles are to go from exempt status today to a disclosed certified mileage on the next title transfer. Vehicles that currently have a certified mileage on the title will continue to maintain mileage until they become exempt at 25-years old. Every year, titling agencies would get one year closer to the goal of a 25-year exemption. In 15 years, all vehicles 25 model years old or less would have a complete 25-year history.

Miscellaneous Amendments

NHTSA has conducted maintenance, but has not addressed items of importance in existing regulation. For example, the term "dealer" is mentioned without context in §580.13. This term needs to be changed to transferee or NHTSA needs to provide further clarification as to the intent of the regulation.

AAMVA requests clarification on when the use of power of attorney in conjunction with odometer disclosure is permitted outside of the use delineated in regulation. For example, is use by third parties such as lienholders, title services, and auctions signing a non-secure power of attorney permissible?

AAMVA requests the regulations be updated to allow for a power of attorney to be used in intrastate transactions when there is an electronic title. A secure power of attorney should be permissible when there is an existing electronic title within a jurisdiction and transfer is taking place within that jurisdiction. This would be comparable to a title being unavailable when held by a lienholder or lost.

Finally, AAMVA believes that states should have an option to petition for an alternative disclosure process. AAMVA hopes that the final rule is written in such a way that the petition process is not necessary but feels that alternative disclosure requirements from those proposed in §580.6 provides an applicable safeguard.

AAMVA thanks NHTSA for the opportunity to comment on this NPRM. These initial steps can help titling agencies, dealers, and consumers take the first responsible steps towards bringing ownership transactions

into the 21st century. We look forward to continued collaboration with NHTSA and all relevant stakeholders in furthering the discussion and making electronic odometer disclosures a tangible solution.