(4) Costs may not be characterized as time-related costs if they are included in the calculation of a firm's overhead rate.

(5) Equitable adjustment of time and time-related costs shall not be allowed unless the analysis supporting the proposal complies with provisions specified elsewhere in this contract regarding the Contractor's project schedule.

(h) *Markups.* For each firm whose direct costs are separately identified in the proposal, the Contractor shall propose an overhead rate, profit rate, and where applicable, a bond rate and insurance rate. Markups shall be determined and applied as follows:

(1) Overhead rates shall be negotiated, and may be subject to audit and adjustment.

(2) Profit rates shall be negotiated, but shall not exceed ten percent, unless entitlement to a higher rate of profit may be demonstrated.

(3) The Contractor and its subcontractors shall not be allowed overhead or profit on the overhead or profit received by a subcontractor, except to the extent that the subcontractor's costs are properly included in other direct costs as specified in paragraph (f) of this clause.

(4) Overhead rates shall be applied to the direct costs of work performed by a firm, and shall not be allowed on the direct costs of work performed by a subcontractor to that firm at any tier except as set forth in paragraphs (h)(6) and (h)(7) of this clause.

(5) Profit rates shall be applied to the sum of a firm's direct costs and the overhead allowed on the direct costs of work performed by that firm.

(6) Overhead and profit shall be allowed on the direct costs of work performed by a subcontractor within two tiers of a firm at rates equal to only fifty percent of the overhead and profit rates negotiated pursuant to paragraphs (h)(1) and (h)(2) of this clause for that firm, but not in excess of ten percent when combined.

(7) Overhead and profit shall not be allowed on the direct costs of a subcontractor more than two tiers below the firm claiming overhead and profit for subcontractor direct costs.

(8) If changes to a Contractor's or subcontractor's bond or insurance premiums are computed as a percentage of the gross change in contract value, markups for bond and insurance shall be applied after all overhead and profit is applied. Bond and insurance rates shall not be applied if the associated costs are included in the calculation of a firm's overhead rate.

(9) No markup shall be applied to a firm's costs other than those specified herein.

(i) At the request of the Contracting Officer, the Contractor shall provide such other information as may be reasonably necessary to allow evaluation of the proposal. If the proposal includes significant costs incurred by a subcontractor below the second tier, the Contracting Officer may require the same detail for those costs as required for the first two tiers of subcontractors, and markups shall be applied to these subcontractor costs in accordance with paragraph (h) of this clause.

(j) *Proposal preparation costs.* If performed by the firm claiming them, proposal preparations costs shall be included in the labor hours proposed as direct costs. If performed by an outside consultant or law firm, proposal preparation costs shall be treated as other direct costs to the firm incurring them. Requests for proposal preparation costs shall include the following:

(1) A copy of the contract or other documentation identifying the consultant or firm, the scope of the services performed, the manner in which the consultant or firm was to be compensated, and if compensation was paid on an hourly basis, the fully burdened and marked-up hourly rates for the services provided.

(2) If compensation were paid on an hourly basis, documentation of the quantity of hours worked, including descriptions of the activities for which the hours were billed, and applicable rates.

(3) Written proof of payment of the costs requested. The sufficiency of the proof shall be determined by the Contracting Officer.

(k) Proposal preparation costs shall be allowed only if—

(1) The nature and complexity of the change or other condition giving rise to entitlement to an equitable adjustment warrants estimating, scheduling, or other effort not reasonably foreseeable at the time of contract award;

(2) Proposed costs are not included in a firm's time-related costs or overhead rate; and

(3) Proposed costs were incurred prior to a Contracting Officer's unilateral determination of an equitable adjustment under the conditions set forth in paragraph (o) of this clause, or were incurred prior to the time the request for equitable adjustment otherwise became a matter in dispute.

(l) Proposed direct costs, markups, and proposal preparation costs shall be allowable in the determination of an equitable adjustment only if they are reasonable and otherwise consistent with the contract cost principles and procedures set forth in Part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. Characterization of costs as direct costs, time-related costs, or overhead costs must be consistent with the requesting firm's accounting practices on other work under this contract and other contracts.

(m) If the Contracting Officer determines that it is in the Government's interest that the Contractor proceed with a change before negotiation of an equitable adjustment is completed, the Contracting Officer may order the Contractor to proceed on the basis of a unilateral modification to the contract increasing or decreasing the contract price by an amount to be determined later. Such increase or decrease shall not exceed the increase or decrease proposed by the Contractor.

(n) If the parties cannot agree to an equitable adjustment, the Contracting Officer may determine the equitable adjustment unilaterally.

(o) The Contractor shall not be entitled to any proposal preparation costs incurred subsequent to the date of a unilateral determination or denial of the request if the Contracting Officer issues a unilateral determination or denial under any of the following circumstances:

(1) The Contractor fails to submit a proposal within the time required by this contract or such time as may reasonably be required by the Contracting Officer.

(2) The Contractor fails to submit additional information requested by the Contracting Officer within the time reasonably required.

(3) Agreement to an equitable adjustment cannot be reached within 60 days of submission of the Contractor's proposal or receipt of additional requested information, despite the Contracting Officer's diligent efforts to negotiate the equitable adjustment.

(End of clause)

552.243–72 [Removed]

5. Remove section 552.243–72.

[FR Doc. E8–14253 Filed 6–23–08; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA–2008–0116; Notice 1]

Petition for Approval of Alternate Odometer Disclosure Requirements

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

ACTION: Proposed rule; notice of initial determination.

SUMMARY: The Commonwealth of Virginia has petitioned for approval of alternate requirements governing certain aspects of the Federal odometer law. NHTSA has initially determined that Virginia's proposed alternate requirements are generally consistent with the purposes of the applicable portion of the federal odometer disclosure law. Accordingly, NHTSA preliminarily grants Virginia's petition. This is not a final agency action.

DATES: Comments are due no later than July 24, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: Andrew DiMarsico, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–5263) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Statutory Background

A. The Cost Savings Act

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

To assist purchasers to know the true mileage of a motor vehicle, Section 408 of the Cost Savings Act required the transferor of a motor vehicle to provide written disclosure to the transferee in connection with the transfer of ownership of the vehicle. *See* Public Law 92–513, § 408, 86 Stat. 947 (1972). Section 408 required the Secretary to issue rules requiring the transferor to give a written disclosure to the transferee in connection with the transfer of the vehicle. 86 Stat. 962–63. The written disclosure was to include the cumulative mileage on the odometer and, as the case may be that the actual mileage is unknown, if the odometer reading is known to be different from the number of miles the vehicle actually traveled. Section 408 stated that the Secretary was to prescribe rules requiring any transferor to provide written disclosures to the transferee in connection with the transfer of ownership of a motor vehicle. *Id.* The disclosures were to include the cumulative mileage registered on the odometer, or disclose that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled. The rules were to prescribe the manner in which information shall be disclosed under this section and in which such information shall be retained. *Id.* Section 408 further stated that it shall be a violation for any transferor to violate any rules under this section or to knowingly give a false statement to a transferee in making any disclosure required by such rules. *Id.*

Id. The Cost Savings Act also prohibited disconnecting, resetting, or altering motor vehicle odometers. *Id.* The statute subjected violators to civil and criminal penalties and provided for Federal injunctive relief, State enforcement, and a private right of action.[1]

There were shortcomings in the odometer provisions of the Cost Savings Act. Among others, in some states, the odometer disclosure statement was not on the title; it was a separate document that could easily be altered or discarded and did not travel with the title. Consequently, it did not effectively provide information to purchasers about the vehicle's mileage or substantially curb odometer fraud. In some states, the title was not on tamper-proof paper. The problems were compounded by title washing thought states with ineffective controls. In addition, there were considerable misstatements of mileage on vehicles that had formerly been leased vehicles, as well as on used vehicles sold at wholesale auctions.

B. The Truth in Mileage Act

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

Among other requirements, TIMA precluded the licensing of vehicles, the ownership of which was transferred, for use in any State unless the several requirements were met by the transferee and transferor. The transferee, in submitting an application for a title, is required to provide the transferor's (seller's) title, and if that title contains a space for the transferor to disclose the vehicle's mileage, that information must be included and the statement must be signed and dated by the transferor. TIMA also precluded the licensing of vehicles, the ownership of which was transferred, for use in any State unless the several titling requirements were met. Titles must be printed by a secure printing process or other secure process. They must indicate the mileage and contain space for the transferee to disclose the mileage in a subsequent transfer. As to leased vehicles, the Secretary was required to publish rules requiring the lessor of vehicles with leases to advise its lessee that the lessee is required by law to disclose the vehicle's mileage to the lessor upon the lessor's transfer of ownership. In addition, TIMA required that auction companies establish and maintain records on vehicles sold at the auction, including the name of the most recent owner of the vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction took possession of the vehicle.

TIMA further provided that its provisions on mileage statements for licensing of vehicles (and rules involving leased vehicles) apply in a State, unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary.[2] In particular, Section 408(f)(2) provided 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) of Section 408, as the case may be.

[1] In 1976, Congress amended the odometer disclosure provisions in the Cost Savings Act to provide further protections to purchasers from unscrupulous car dealers. *See* Public Law 94–364, 90 Stat. 981 (1976). It amended section 408(b) and added new subsection 408(c) requiring that no transferor shall violate any rule prescribed under this section or give a false statement to a transferee in making any disclosure required by such rule and no transferee who, for purposes of resale, acquires ownership of a motor vehicle shall accept any written disclosure required by any rule under this section if such disclosure is incomplete.

[2] In particular, section 408 of the Cost Savings Act was amended by TIMA to add the following relevant part at the end of section 408. Cost Savings Act Section 408(d) (now codified at 49 U.S.C. 32705(b)) requires the disclosure on the vehicle title. Cost Savings Act Section 408(e) (now codified at 49 U.S.C. 32705(c)) addresses leased vehicles. Cost Savings Act subsection (g) (now codified at 49 U.S.C. 32705(e)) addresses wholesale auctions.

C. Amendments Following the Truth in Mileage Act and the 1994 Recodification of the Law

In 1988, Congress amended section 408(d) of the Cost Savings Act to permit the use of a secure power of attorney in circumstances where the title was held by a lienholder. The Secretary was required to publish a rule, consistent with the purposes of the Act and the need to facilitate enforcement thereof, providing for the mileage disclosure, the transferor to keep a copy of the power of attorney, and for the original power of attorney to be submitted to the State. *See* Public Law 100–561 § 401 (adding Section 408(d)(2)(C)), 102 Stat. 2805 (1988). In 1990, Congress amended section 408(d)(2)(C) of the Cost Savings Act, which had been adopted in 1988. The amendment addressed retention of powers of attorneys by states and provided that the rule adopted by the Secretary shall not require that a vehicle be titled in the State in which the power of attorney was issued. *See* Public Law 101–641 § 7(a), 104 Stat. 4654 (1990).[3]

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

II. Statutory Purposes

As discussed above, the Cost Savings Act, as amended by TIMA in 1986, contains a specific provision on approval of State programs. NHTSA ''shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the [NHTSA] determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be.'' (Subsections 408(d), (e) of the Costs Savings Act were recodified to 49 U.S.C. 32705(b) and (c)). Subsection 408(f)(2) of the Costs Savings Act, recodified to 49 U.S.C. 32705(d). In light of this provision, we now turn to our interpretation of the purposes of these subsections, as germane to Virginia's petition.[4]

A purpose of TIMA was to assure that the form of the odometer disclosure precluded odometer fraud. To prevent odometer fraud, which was facilitated in some States by disclosure statements that were separate from titles, under TIMA the disclosure must be contained on the title provided to the transferee and not on a separate document. Related to this, the title was required to contain space for the disclosures. The Senate Report associated with TIMA noted that Federal law had not specified the form in which the odometer reading disclosure must be made. *See* S. Rep. No. 99–47, at 3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620. In some States, where the disclosure statement was on a separate piece of paper from the vehicle's title, the transferor could easily alter it or provide a new statement with a different mileage. The vehicle could be titled with a lower mileage than in the transferor's disclosure in a State that does not require an odometer reading on the title. *Id.* In this regard, in some States there was no place for recording the odometer reading on the title when the vehicle was sold. *Id.* at 2. A consequence of these practices was that the new title contained no odometer reading and the purchaser/wholesaler could then disclose whatever odometer reading it chose. *Id.*

Another purpose of TIMA was to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. Prior to TIMA, odometer fraud was facilitated by the ability of transferees to apply for titles without presenting the transferor's title with the disclosure. To eliminate or significantly reduce abuses associated with this lack of controls, TIMA required that any vehicle, the ownership of which is transferred, may not be licensed unless the application for the title is accompanied by the title of such vehicle. Thus, ''in the case of an application for a new motor vehicle certificate of title, if the prior owner's title certificate contains a space for the disclosure of the mileage, when the title certificate is submitted to the State * * *, it shall contain a statement, signed and dated by the prior owner, of the mileage required to be disclosed by the prior owner.'' *See* S. Rep. No. 99–47, at 2–3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5625–26. *See also* Cost Savings Act, as amended by TIMA, § 408(d), 49 U.S.C. 32705(b).

TIMA also sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. In furtherance of these purposes, in the context of paper titles, under TIMA the title must be set forth by means of a secure printing process. It could also be set forth by other secure process that might evolve in the future. As noted in the legislative history, because the title could be printed through a non-secure process, persons could alter it or launder it. *See* S. Rep. No. 99–47, at 3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620. The House Report noted that '''other secure process' is intended to describe means other than printing which could securely provide for the storage and transmittal of title and mileage information.'' H.R. Rep. No. 99–833, at 33 (1986). ''In adopting this language, the Committee intends to encourage new technologies which will provide increased levels of security for titles.'' *Id. See also* Cost Savings Act, as amended by TIMA, § 408(d), 49 U.S.C. 32705(b).

Another purpose was to create a record of the mileage on vehicles and a paper trail. The underlying purposes of this record and trail was to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. The creation of a paper trail would improve the enforcement process by providing evidence of fraudulent transfers, including by consumers and the individuals engaged in such practices. More specifically, the paper trail would document transfers and create evidence showing the incidence of rollbacks. Under TIMA, as part of the paper trail, the title must include a space for the mileage of the vehicle. New applications for titles must include a mileage disclosure statement signed by the prior owner of the vehicle. There would be a permanent record on the vehicle's title at the place where the vehicle is titled, usually the State motor vehicle administration. This record could be checked by subsequent owners or law enforcement officials, who would have a critical snapshot of the vehicle's mileage at every transfer, which is the fundamental link in the paper trail for enforcement. These provisions were aimed at providing purchasers and law

[3] NHTSA previously reviewed this legislative history in 1991 when adopting the current regulations governing powers of attorney. *See* Odometer Disclosure Requirements, Final Rule, 56 Fed. Reg. 47681 (Sept. 20, 1991).

[4] Virginia's petition does not address disclosures in leases or disclosures by power of attorney. In view of the scope of Virginia's petition, Virginia will continue to be subject to current federal requirements as to leases and disclosures by power of attorney, and we do not address the purposes of the related provisions.

enforcement with the much-needed tools to combat odometer fraud. The House Report associated with TIMA focused on the lack of evidence or ''paper trail'' showing the incidence of rollbacks as one of the major barriers to decreasing odometer fraud. H.R. Rep. No. 99–833, at 18 (1986). The House Report noted that a purpose of Section 408(d), which required the seller to disclose the mileage on the title and titles to include the mileage disclosure and a space for recording mileage on the next transfer, is to create a permanent record or paper trail for car owners and law enforcement and other State officials to track odometer fraud. *Id.* A permanent record on the vehicle's title would be maintained at the place where it is titled. *Id.* Thus, the underlying purpose of this record and trail was to enable consumers to be better informed and provide a mechanism through which odometer tampering can be traced and violators prosecuted. *See* Cost Savings Act, as amended by TIMA, § 408(d), 49 U.S.C. 32705(b).

Moreover, the general purpose of TIMA was to protect consumers by assuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. The TIMA amendments were directed at resolving shortcomings in the Cost Savings Act.

III. Virginia's Petition

Virginia proposes to allow parties to transfer title through the Internet by electronic means and to maintain an electronic record of the title in the Virginia Department of Motor Vehicles (VADMV) system. The proposal permits the transferee to request a hard copy of the title, printed by a secure printed process. While it is not entirely clear from Virginia's petition, it appears that the ''title'' will reside as an electronic record with the VADMV, but that a hard copy of the title will be generated for the transferee, if requested.

The Virginia petition states that its proposal would permit ''the transferor to disclose the odometer mileage to the transferee and the transferee to view and acknowledge receipt of the transferor's disclosure in connection with the sale of a motor vehicle, as part of a secure on-line transaction with the VADMV.'' Under Virginia's proposal, to complete a sale of the motor vehicle, the owner of the vehicle (transferor) and the purchaser of the vehicle (transferee) would be required to perform several steps after they agree upon the sale. Included in this process is the creation and use of electronic signatures.[5]

Under Virginia's petition, an electronic signature would be created during the process of transferring the title. According to VADMV, the customer number, unique personal identification number (PIN) and date of birth (DOB) of the customer will be used in combination to create the electronic signature for each transferor and transferee. Thus, as a threshold matter, the process for transferring title would require both the transferor and the transferee to obtain a PIN from the VADMV.[6]

The online transaction begins when the transferor logs on to the VADMV's Web site using his/her customer number, date of birth and PIN to verify the transferor's identity. These also would be used to create the electronic signature of the transferor. The transferor would then select the ''vehicle transfer of ownership'' transaction and either choose the vehicle from a displayed list of eligible vehicles or enter the vehicle's VIN. The transfer would then enter the vehicle sales price, the odometer reading and brand (Actual, Not Actual or Exceeds). After entering this data, the VADMV system will provide the transferor with a unique transaction number. The transferor must provide the unique transaction number to the transferee to complete the transaction. The VADMV system will also prompt the transferor to mail the existing vehicle title to the VADMV for destruction.[7]

The transaction would remain in ''pending'' status with VADMV until the transferee logs on to complete the transfer of ownership transaction. Meanwhile, the VADMV system would automatically check the odometer reading entered by the transferor against the odometer reading on the VADMV system. If the odometer reading entered by the transferor is lower, the transaction will be immediately rejected and referred to the VADMV Law Enforcement Services Division for an investigation.

The transferee would then log on to VADMV's Web site, using his/her customer number, DOB and PIN (this would be the transferee's electronic signature). The transferee would select the pending vehicle transfer of ownership transaction, and he/she would enter the unique transaction number that was provided by the transferor. The transferee would be required to enter the correct transaction number in order to obtain access to the pending transaction. Once such access is obtained, the transferee would verify the sales price, odometer reading and brand that were entered by the transferor. The transaction would process if all the data entered by the transferor is verified and acknowledged as correct by the transferee. Ownership of the vehicle would transfer to the transferee and an electronic title record would be established by VADMV. The VADMV would then maintain the electronic title and would issue a paper title upon the request of the transferee.

If the transferee does not agree with the information entered by the transferor, then the VADMV system will reject the transaction. The transferor will have the opportunity to correct the sales price, odometer reading and brand for the rejected transaction. The transferee would then re-verify the information to ensure the accuracy. A second discrepancy would result in cancellation of the electronic transaction.

Virginia's petition asserts that its proposed alternate odometer disclosure is consistent with federal odometer law, but it did not address the purposes of TIMA. As advanced by VADMV, Virginia's alternative ensures that a fraudulent odometer disclosure can readily be detected and reliably traced to a particular individual by providing a means for the VADMV to validate and authenticate the electronic signatures of both parties. This verification is done through the generation of the customer number and unique PIN that are provided to customers of the VADMV. Virginia states that this unique electronic signature can be quickly and reliably traced to a particular individual.

---

[5] The term ''electronic signature'' means an electronic sound, symbol or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. 15 U.S.C. 7006(5) (2004).

[6] According to Virginia, the process whereby a customer obtains a PIN is currently in place, as a PIN already provides a secure and confidential Internet access to VADMV services and is required in order to conduct a number of on-line transactions. In order to obtain a PIN, a customer must provide his or her unique customer number and date of birth and certify, under penalty of perjury, that the customer number and DOB submitted in the PIN request belong to the customer requesting the PIN. Within three (3) business days of the customer's request, the VADMV mails a randomly generated 4-digit PIN to the customer by first class mail, and the assigned PIN is encrypted on the customer's VADMV record. In order to conduct a transaction on VADMV's Internet Web site, the customer is prompted to enter the VADMV assigned PIN and the Web site will prompt the customer to personalize his/her PIN for added security.

[7] According to the Virginia petition, if the transferor fails to return the existing vehicle title to the VADMV, the title is invalidated in the VADMV system and would be unable to transfer title in Virginia.

Second, Virginia states that the electronic odometer disclosure provided by the transferor will be available to the transferee at the time ownership of the vehicle is transferred. During the transfer-of-ownership transaction, the transferee would view the odometer reading and brand information that was supplied by the transferor, thereby ensuring that the transferee is aware of the vehicle's mileage as well as any problem with the odometer that was disclosed by the transferor.

Third, VADVM asserts that its proposal provides a level of security equivalent to that of a disclosure on a secure title document. According to Virginia, the unique electronic signatures (customer number, PIN and DOB) utilized by each party to the transaction in addition to the unique transaction number generated by the VADMV ensure secure access to the on-line transaction and a reliable means of verifying the identities and electronic signatures of each individual. In addition, Virginia notes added security in its proposal because the information from the transferor and transferee must match exactly. If a discrepancy exists that is not corrected, the transaction would automatically be rejected and transfer of ownership would not take place. Virginia states that the same process would be used in dealer transactions with additional safeguards.[8] The additional safeguards will include a requirement that a dealership notify the VADMV of employees authorized to do titling activities for the dealership. This authorization will be stored by the VADMV on-line system. When the employee logs onto the VADMV on-line system, he or she will also be requested to enter the dealer number that is assigned by the VADMV and the employee's logon information. If the VADMV does not show an authorization by the dealership, the employee will not be eligible to continue with the transaction for that dealership.

Virginia refers to an April 25, 2003 letter by former NHTSA Chief Counsel, Jacqueline Glassman, stating that an electronic signature in the lessee-to-lessor context satisfies the requirement for a written disclosure under 49 CFR 580.7(b).[9] Virginia contends that the written disclosure requirements under 49 CFR 580.7(b) are no different than those under 49 CFR 580.5(c). It also maintains that the electronic record and signature aspects of its proposal comport with the Electronic Signatures in Global and National Commerce Act (E-Sign), 15 U.S.C. 7001 *et seq.*, and Virginia's Uniform Electronic Transactions Act (UETA), Va. Code 46.2–629. Last, Virginia notes that it does not have regulations in effect that address odometer mileage disclosure requirements. Current state law permits the creation of electronic certificates of title, but requires a paper certificate of title for all transfers of vehicle ownership. Va. Code 46.2–603. If its proposal were approved, VADMV would seek legislation to amend Section 46.2–603 to implement the alternate odometer disclosure requirements.

IV. Analysis

As discussed above, the standard is that NHTSA ''shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the [NHTSA] determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be.'' The purposes are discussed above, as is the Virginia program. We now provide our initial assessment whether Virginia's proposal satisfies TIMA's purposes as relevant to its petition.[10]

A purpose is to assure that the form of the odometer disclosure precludes odometer fraud. In this regard, NHTSA has initially determined that Virginia's proposed alternate disclosure requirements satisfy this purpose. Under Virginia's proposal, it appears that the ''title'' will reside as an electronic record with the VADMV, but that a hard copy of the title will be generated for the transferee, if requested. Virginia's proposed system will, therefore, continue to have the odometer disclosure on the virtual ''title'' itself, as required by TIMA, and not as a separate document. As to TIMA's requirement that the title contain a space for the transferor to disclose the vehicle's mileage, NHTSA does not believe the electronic transaction Virginia has outlined implicates the space requirement. NHTSA, however, assumes that if a hard copy of the title is requested, Virginia will continue to provide a separate space on the hard copy title, in keeping with TIMA and current practice.

Another purpose of TIMA was to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. In this regard, NHTSA has initially determined that Virginia's proposed process satisfies this purpose. During the proposed on-line process for retitling, the disclosure of odometer information occurs during the transfer of ownership and a title is required by Virginia's proposal to complete the transaction. During the on-line transaction, the transferor is instructed to mail the existing title to the VADMV for destruction.[11] If the transaction is successful, the VADMV will retain an electronic title, which includes a record of the transaction and the odometer disclosure information.

Another purpose of TIMA is to prevent alterations to disclosures on titles and to preclude counterfeit titles, through secure processes. NHTSA has initially determined in this matter that Virginia's alternate disclosure requirements appear to provide equivalent security against alterations, tampering or counterfeit titles to a paper title printed through a secure process, if not even more security. Electronic recordation of the odometer reading decreases the likelihood of any subsequent odometer disclosure being altered by erasures or other methods. As we understand Virginia's proposal, once the transaction is completed, VADMV stores an electronic version of the title until the transferee requests it. The transferee may never request the title, even if there is a subsequent transfer. Under this system, all subsequent transfers may be performed through the on-line process. Each time an on-line transfer occurs, the VADMV stores the electronic version of the title, and issues a paper title only upon request. If the title remains in electronic form, the likelihood of an individual altering, tampering or counterfeiting the title is decreased significantly. Moreover, the electronic recordation can detect an attempted alteration or fraudulent disclosure almost immediately. If a transferee requests a paper title, the VADMV will issue a paper title, printed through a secure process, with the requisite odometer information on the title.

Another purpose of TIMA is to create a record of the mileage on vehicles and

[8] Dealers will continue to be subject to the dealer retention requirements as set forth in 49 CFR § 580.8(a), which requires dealers and distributors to retain a copy of odometer disclosure statements that they issue and receive for five years. These requirements are not based upon the TIMA amendments that added Section 408(d) to the Cost Savings Act.

[9] 49 CFR 580.7, *Disclosure of odometer information for leased motor vehicles,* governs lessee-to-lessor disclosures.

[10] This initial determination does not address odometer requirements that are not based on Section 408(d) of the Cost Savings Act, as codified at 49 U.S.C. 32705(b). Virginia will continue to be subject to all federal requirements that are not based on Section 408(d).

[11] If the transferor does not return the existing title to VADMV, the existing title will be invalid once the vehicle transfers to the transferee.

a paper trail. NHTSA has initially determined in this matter that Virginia's alternate disclosure requirements provides for a system that creates an equivalent to a ''paper trail'' that assists law enforcement in identifying and prosecuting odometer fraud. The paper trail starts with the establishment of the electronic signatures of the parties. The electronic signatures of the transferor and transferee are readily detectable and can be reliably traced to the particular individual due to the system's means for validating and authenticating the electronic signature of each individual. VADMV can validate and authenticate an individual electronic signature because the electronic signature consists of the individual's unique customer number, DOB and PIN. In order to obtain a unique customer number, VADMV must have an individual's address on file. In order to obtain a PIN, the individual must also certify, under penalty of perjury, that the customer number and DOB submitted in the PIN request belong to the customer requesting the PIN. The customer number and PIN are required to log on to the VADMV system. Based upon the information provided by each individual to the transaction, the VADMV can trace the PIN to the assigned individual. The ability to identify the individuals to the transaction through the electronic signature [12] maintains the purposes behind the creation of a paper trail since the VADMV will have a history of each transfer of the vehicle and can discover incidences of rollbacks. After the transaction is completed, the title is electronically recorded and stored by the VADMV. It includes the mileage of the vehicle at the transfer. These electronic records will create the electronic equivalent to a paper based system and are accessible to law enforcement officials.

Moreover, the overall purpose of TIMA is to protect consumers by assuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. Here, Virginia's alternate disclosure requirements include several prerequisites that make it unlikely that the representations of a vehicle's actual mileage by the transferor to the transferee would be of lesser validity than representations made through a vehicle transfer by paper title and potentially deter odometer fraud better than a paper title. These prerequisites include the verification of the individuals to the transfer transaction through the issuance of a PIN number from VADMV. Virginia's alternate disclosure requirements also include procedures to assure that a transferee verifies the odometer disclosure made by the transferor. In addition, the verification of the odometer reading provides indication of potential fraud to the transferee should the transferor attempt to enter a different mileage into the system than the mileage the transferee observed on the vehicle when the agreement to purchase was made.[13]

V. NHTSA'S Initial Determination

For the foregoing reasons, NHTSA preliminarily grants Virginia's proposed alternate disclosure requirements. This is not a final agency action. NHTSA invites public comments within the scope of this notice. Should NHTSA decide to issue a final grant of this petition, it will likely reserve the right to rescind that grant in the event that information acquired after that grant were to indicate that, in operation, Virginia's alternate requirements do not satisfy applicable standards.

Request for Comments

How Do I Prepare and Submit Comments?

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

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

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

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

How Can I Be Sure That My Comments Were Received?

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

How Do I Submit Confidential Business Information?

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

Will the Agency Consider Late Comments?

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

How Can I Read the Comments Submitted by Other People?

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

You also may see the comments on the Internet. To read the comments on the Internet, go to *http://*

[12] Electronic signatures are generally valid under applicable law. Congress recognized the growing importance of electronic signatures in interstate commerce when it enacted the Electronic Signatures in Global and National Commerce Act (E-Sign). *See* Public Law 106–229, 114 Stat. 464 (2000). E-Sign established a general rule of validity for electronic records and electronic signatures. 15 U.S.C. 7001. It also encourages the use of electronic signatures in commerce, both in private transactions and transactions involving the Federal government. 15 U.S.C. 7031(a).

[13] Further protection is provided by the VADMV system itself. The system automatically cross references the odometer reading entered by the transferor against the odometer reading on the VADMV system. If the odometer reading entered by the transferor is lower than the mileage recorded in the VADMV system, the VADMV system will immediately reject the transaction and refer the individual to the VADMV Law Enforcement Services Division for investigation.

www.regulations.gov, and follow the instructions for accessing the Docket.

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

Issued on: June 11, 2008.

Stephen P. Wood,

Assistant Chief Counsel for Vehicle Safety, Standards and Harmonization.

[FR Doc. E8–13592 Filed 6–23–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 070717352–8511–0]

RIN 0648–AV65

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Pelagic Longline Take Reduction Plan

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

ACTION: Proposed rule; notice of availability of draft take reduction plan; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the initial determination that the pelagic longline fishery has a high level of mortality and serious injury across a number of marine mammal stocks, and proposes regulations to implement the Atlantic Pelagic Longline Take Reduction Plan (PLTRP) to reduce serious injuries and mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. The PLTRP is based on consensus recommendations submitted by the Atlantic Pelagic Longline Take Reduction Team (PLTRT). This action is necessary because current serious injury and mortality rates of pilot whales and Risso's dolphins incidental to the Atlantic pelagic longline component of a Category I fishery are above insignificant levels approaching a zero mortality and serious injury rate (zero mortality rate goal, or ZMRG), and therefore, inconsistent with the long-term goal of the Marine Mammal Protection Act (MMPA). The PLTRP is intended to meet the statutory mandates and requirements of the MMPA through both regulatory and non-regulatory measures, including a special research area, gear modifications, outreach material, observer coverage, and captains' communications.

DATES: Written comments on the proposed rule must be received no later than 5 p.m. eastern time on September 22, 2008.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (RIN) 0648–AV65, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Facsimile (fax): 727 824–5309, Attn: Assistant Regional Administrator, Protected Resources.
- Mail: Assistant Regional Administrator for Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

This proposed rule, references, and background documents for the PLTRP can be downloaded from the Take Reduction web site at *http://www.nmfs.noaa.gov/pr/interactions/trt/teams.htm#pl-trt.htm* and the NMFS Southeast Regional Office website at *http://sero.nmfs.noaa.gov/pr/pr.htm*.

FOR FURTHER INFORMATION CONTACT: Laura Engleby or Jennifer Lee, NMFS, Southeast Region, 727–824–5312, or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Bycatch Reduction Requirements in the MMPA

Section 118(f)(1) of the MMPA requires NMFS to develop and implement take reduction plans to assist in the recovery or prevent the depletion of each strategic marine mammal stock that interacts with Category I and II fisheries. It also provides NMFS discretion to develop and implement a take reduction plan for any other marine mammal stocks that interact with a Category I fishery, which the agency determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

The MMPA defines a strategic stock as a marine mammal stock: (1) for which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as threatened or endangered under the ESA or as a depleted species under the MMPA (16 U.S.C. 1362(2)). PBR is the maximum number of animals, not including natural mortalities, that can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level. Category I or II fisheries are fisheries that, respectively, have frequent or occasional incidental mortality and serious injury of marine mammals.

The immediate goal of a take reduction plan for a strategic stock is to reduce, within six months of its implementation, the incidental serious injury or mortality of marine mammals from commercial fishing to levels less than PBR. The long-term goal is to reduce, within five years of its implementation, the incidental serious injury and mortality of marine mammals from commercial fishing operations to insignificant levels approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The insignificance threshold, or upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate, has been defined at 50 CFR 229.2 as 10 percent of the PBR for a stock of marine mammals.

Impetus and Scope of the Plan

The impetus for this plan was a 2003 settlement agreement between NMFS and the Center for Biological Diversity (CBD), that required the convening of a Take Reduction Team (the PLTRT) under the MMPA by June 30, 2005, to address serious injury and mortality of short- and long-finned pilot whales and common dolphins in the Atlantic