

The Chief Counsel of the National Highway Traffic Safety Administration, Jonathan C. Morrison signed the following final rule on November 21, 2019 and we are submitting it for publication in the Federal Register. While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the final rule. Please refer to the official version in a forthcoming Federal Register publication, which will appear on the Government Printing Office's FDSys website (www.gpo.gov/fdsys/search/home.action). Once the official version of this document is published in the Federal Register, this version will be removed from the Internet and replaced with a link to the official version.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA-2019-0127]

RIN 2127-AL39

Odometer Disclosure Requirements

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration regarding NHTSA's October 2, 2019, final rule amending NHTSA's odometer disclosure requirements to allow States to adopt electronic odometer disclosure systems and changing the time when vehicles become exempt from federal odometer disclosure requirements from ten years to twenty years. NHTSA received petitions for reconsideration from the America Association of Motor Vehicle Administrators (AAMVA) and the State of Delaware Department of Transportation requesting that the agency delay the effective date of the changes to the exemption from odometer disclosure requirements for one year. After consideration of the petitions, NHTSA has decided to grant the petition. The change to the exemption from the odometer disclosure requirements will take effect on January 1, 2021 and will apply to model year 2011 and newer vehicles. The

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amendments in the October 2, 2019 final rule allowing States to adopt electronic odometer disclosure systems will still take effect as scheduled on December 31, 2019.

DATES: *Effective date:* December 31, 2019.

Petitions for reconsideration of this final action must be received not later than **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Correspondence related to this rule including petitions for reconsideration and comments should refer to the docket number in the heading of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For policy and technical issues: Mr. David Sparks, Director, Office of Odometer Fraud, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, D.C. 20590. Telephone: (202) 366-5953. Email: David.Sparks@dot.gov.

For legal issues: Mr. Thomas Healy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, D.C. 20590. Telephone: (202) 366-7161. Email Thomas.Healy@dot.gov.

SUPPLEMENTARY INFORMATION: On October 2, 2019, NHTSA issued a final rule amending 49 CFR part 580 to allow States to adopt electronic odometer disclosure without prior approval from NHTSA. The final rule also amended the exemption in § 580.17 exempting vehicles greater than ten model years old at the time of transfer from odometer disclosure. Under the final rule, starting with the 2010 model year, a vehicle does not become exempt until it is twenty model years old at the time of transfer. The amendments to the exemption period in the October 2, 2019 final rule were scheduled to go in to effect on December 31, 2019 and would

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have applied to model year 2010 vehicles (which would otherwise be exempt from odometer disclosure beginning January 1, 2020).

On November 8, 2019, AAMVA submitted a petition for reconsideration requesting that NHTSA delay the changes to the exemption period in section 580.17 for one year. AAMVA stated that the 90-day lead time in the final rule was insufficient for member State departments of motor vehicles to implement the changes in information technology systems, order forms and coordinate legislative changes necessary to implement the change to the exemption period. AAMVA stated that, in addition to States, motor vehicle dealers and motor vehicle auctions may need to change their business processes in response to the change to the exemption period. AAMVA further stated that State departments of motor vehicles will require time to train staff on the new exemption period and educate motor vehicle dealers and other effected entities. AAMVA requested a delay of one year to give all parties effected by the changes to the exemption period the time necessary to successfully implement the change to the exemption period.

The State of Delaware Department of Transportation submitted a petition for reconsideration on November 15, 2019 also requesting a one year delay to the changes to the exemption period in § 580.17. Delaware stated that legislative changes were necessary to accomplish the change to the exemption period and that its Legislature did not begin its legislative session until January 2020.

After reviewing the arguments in the petition for reconsideration submitted by AAMVA and Delaware, NHTSA has tentatively decided to delay the effective date of the changes to the exemption period in § 580.17 for one year, and apply the twenty-year exemption beginning with the 2011 model year, to ensure that the change to the exemption period is implemented with

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minimal disruption. The increase in the exemption period to twenty years will now come into effect on January 1, 2021 and will apply to model year 2011 and later vehicles. As is the case prior to implementation of the rule, model year 2010 vehicles will become exempt from odometer disclosure on January 1, 2020.

Response to Petitions for Reconsideration

Pursuant to the process established under 49 CFR 553.37, after carefully considering all aspects of the petition, NHTSA has decided to grant the petitions discussed above without further proceedings.

Rulemaking Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

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

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the potential impact of this rulemaking under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures and have determined that today's final rule is not significant for any of the aforementioned reasons. We are delaying changes to the exemptions from odometer disclosure to give State departments of motor vehicles the time necessary to implement the change. We thus anticipate that the economic impacts of this rulemaking will be limited.

Executive Order 13771

Executive Order 13771 titled "Reducing Regulation and Controlling Regulatory Costs," directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," are subject to these requirements. As discussed above, this rule is not a significant rule under Executive Order 12866 and, accordingly, is not subject to the offset requirements of 13771.

NHTSA has determined that this is a deregulatory action under E.O. 13771, as it imposes no costs and, instead, amends 49 CFR 580.17 to delay the compliance date by one year

Delaying the compliance date of the amendments to section 580.17 for one year will result in a cost savings of \$740,000 for the 2020 calendar year. These cost savings will accrue

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because persons and entities transferring ownership of a vehicle will not have to complete an odometer disclosure for vehicles older than ten models in age.

Executive Order 13609: Promoting International Regulatory Cooperation

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

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

NHTSA finds this rule will not implicate or encompass the issues outlined in the foregoing policy statement.

Regulatory Flexibility Act

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

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provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The delay to the implementation of the change to the exemption period will require minimal changes in data entry for small businesses thereby providing these small businesses additional time to take any actions necessary to comply with the new requirements and will not result in any significant effect.

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will delay changes to the terms of an exemption for owners from disclosing vehicle mileage when transferring the vehicle giving State departments of motor vehicles sufficient time to make changes to their business processes necessary to implement the change to the exemption period.

Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, Executive Order 12988 specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a

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general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

NHTSA notes that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks)

Executive Order 13045, “Protection of Children from Environmental Health and Safety Risks,” (62 FR 19885; April 23, 1997) applies to any proposed or final rule that: (1) is determined to be “economically significant,” as defined in Executive Order 12866, and (2) concerns an environmental health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If a rule meets both criteria, the agency must evaluate the environmental health or safety effects of the rule on children, and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the agency. This rule is not subject to Executive Order 13045 because it is not economically significant.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104-113), “all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.” Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or

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adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. For the specific provisions that we are adjusting in this rule, there are no applicable consensus standards.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). We note that as this rule only makes minor adjustments to 49 CFR part 580. Thus, it will not result in expenditures by any of the aforementioned entities of over \$100 million annually.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Today's rule does not propose any new federal agency information collection requirements.

Regulation Identifier Number (RIN)

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

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List of Subjects in 49 CFR Part 580

Consumer protection, Motor vehicles, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 49 CFR part 580, as amended October 2, 2019, at 84 FR 52664, is further amended as follows:

PART 580—ODOMETER DISCLOSURE REQUIREMENTS

1. The authority citation continues to read as follows:

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

2. Section 580.17, as amended October 2, 2019, at 84 FR 52664, is further amended by revising paragraphs (a)(3) and (4) to read as follows

§580.17 Exemptions.

(a) * * *

(3)(i) A vehicle manufactured in or before the 2010 model year that is transferred at least 10 years after January 1 of the calendar year corresponding to its designated model year;

(ii) Example to paragraph (a)(3): For vehicle transfers occurring during calendar year 2020, model year 2010 or older vehicles are exempt.

(4)(i) A vehicle manufactured in or after the 2011 model year that is transferred at least 20 years after January 1 of the calendar year corresponding to its designated model year; or

(ii) Example to paragraph (a)(4): For vehicle transfers occurring during calendar year 2031, model year 2011 or older vehicles are exempt.

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Issued in Washington, D.C., under authority delegated in 49 CFR 1.95 and 501.5.

Jonathan Charles Morrison

Chief Counsel