



May 13, 2011

David Strickland, Administrator
National Highway Traffic Safety Administration
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Administrator Strickland:

The Federal Odometer Act (Federal Motor Vehicle Information and Cost Savings Act), has been primarily viewed as a protection to consumers on the improper reporting of prior mileage for purposes of resale. While it does serve that purpose, its value has been limited through a combination of limited support for enforcement with a staff of one supervisor and two (of four) positions filled nationally as of last year. NSVRP does understand that an effort is being made to fill the two vacant slots, and we wish to make sure that this increase to fill the two vacant positions is successfully taking place.

More importantly, the number of investigations and the progression of any investigation is also impacted by these limited resources, in that complaints are usually filed by an individual consumer or by a state after investigating a consumer complaint, and then slowly researched to a threshold of occurrences in order to then take action against an individual seller. Again, the focus is on under---reporting of mileage in a given transaction. Presently just two investigators handle complaints for the whole country.

On the other hand, the powers of investigation provided to NHTSA under the Act are quite significant --- stronger than the authority under NMVTIS, and enforcement authority is also quite significant. The Act also prescribes obligations for record keeping that are quite important. In addition, the Act allows for impoundment, and the civil penalties, while monetarily capped more importantly include in the statute and rules for criminal penalties for violation of the Act. In contrast, NMVTIS supports higher civil penalties, but has a much weaker investigative authority and a more limited range of penalties for the violation of the Anti---Car Theft Act.

The key issue is that the Federal Motor Vehicle Information and Cost Savings Act (FMVICSA) commonly referred to as the Federal Odometer statutes, while commonly understood as protecting consumers against the under---reporting or misreporting of mileage when vehicles are sold or ownership is transferred, actually is also a proscription on the seller to require them to disclose the mileage at the time of transfer. The greatest form of violation is not under---reporting of mileage through fraudulent disclosure of a fictitious (lower) mileage, but is the failure to disclose the transaction at all and thereby not to disclose any mileage. The failure to document and disclose, and the failure to fill out disclosure declarations of mileage (whether correctly stated or incorrectly reported) is carefully noted in the rules as a violation under the Act.

It is exactly this failure to disclose by way of not declaring the transfer of ownership of the vehicle, coupled with the strong investigative and criminal penalties for the Act that is most important. Furthermore, the rules clearly provide for coordination with the AG in enforcement of the Act. Based upon these points NSVRP strongly urges the NHTSA Administrator to set a policy that the Office of Odometer Fraud Investigations be directed to coordinate its efforts with the Bureau of Justice Assistance which is the responsible agency for NMVTIS enforcement. This coordination is important because NMVTIS is able to identify large scale systemic violators who resell and transfer of ownerships of vehicles on a large scale without reporting the transfer paperwork in any fashion, where there are entities engaging in title skipping, curbside sales, and blatant criminal cloning and VIN swapping. Since these activities also result in direct violations of the Federal Odometer statutes, the

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coordination of efforts between both agencies will both simplify discovery of major violations, and improve compliance and enforcement on a large scale at very low cost to either agency.

In today's environment large scale vehicle transactions take place over the Internet. Many of these sales involve either repeat bulk resellers such as auction houses, insurers, fleets and brokers, and it is becoming apparent that in many cases the transactions are not either well regulated or transparently reported. Others are transacted over exchanges such as EBay Motors and Craig's List. Many such transactions involve purchases where the reseller then engages in fraudulent practices up to and including theft and VIN swaps to hide the identity of the stolen vehicles. As part of these acts a violation of the Federal Odometer Act also takes place. The unique requirements of the Odometer Act for reporting, and the compliance and enforcement powers provided to NHTSA under the act are well suited to coordinate with the efforts of other agencies and help all of us to apply stronger controls on the marketplace to protect consumers and reduce fraud and auto theft. It will also help to reduce the ability of criminal groups to paper over illegal sales transactions to the public and help cut off a source of funding to criminal groups and terror organizations.

NSVRP has documentation available, which it has been sharing with both BJA and the Office of Odometer enforcement on examples of apparent large scale title skipping by insurance companies, auctions and other entities resulting in potentially many thousands of violation of the FMVICSA Act along with coordinating violations of the Anti---Car Theft Act (NMVTIS), and where the behavior as described by those entities have also been determined by the relevant state authorities to be apparent violations of state law.

In addition, as another example, the State of California recently indicted a broker for more than 1200 violations of sham transactions that included forged paperwork, undisclosed previous total loss damage and fraudulent and unreported mileage. These violations also were coupled with the failure to report into NMVTIS, and again represent a corresponding violation of the Odometer statutes.

NSVRP believes that when there has been a violation of the NMVTIS rules on the reporting of a vehicle, there very often will be a corresponding violation of the Federal Odometer Act. NSVRP also is convinced that the investigative, compliance and enforcement of these two acts support each other, and in fact the department in DOJ that is responsible for prosecution for both Acts is the same department, making the coordination even easier to justify and manage.

An additional consequence of the current Internet based resale of used and salvage vehicles on a mass scale, is that suspicious and fraudulent transactions by individual entities can be flagged with relative ease, and that as a result agencies when working together can then more easily build cases for large scale violations. While the Internet presents additional difficulties for state jurisdictions to enforce actions against these national and international players, NHTSA, DOJ and other federal parties do not have the same impediments to overcome. NSVRP believes that the Federal Odometer Act is uniquely suited as a tool to help regulate the modern electronic market place for the resale of vehicles and to help protect the public by forcing the entities that either operate the large scale electronic market places, or the major suppliers of vehicles to those market places to report completely and to operate transparently. This will also allow for a very cost efficient way to funnel excellent leads to a limited NHTSA Odometer Enforcement staff to be highly effective at developing and closing out compliance actions.

Lastly, as presently interpreted, the requirement for odometer reporting is limited to vehicles less than 10 years old. NSVRP understands that this limitation was not set at 9 years as part of the original act, but was reduced to 0---9 years in a subsequent update made through regulation rather than by a change in underlying statute.

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Presently, the average age of a vehicle on the road is more than 9 years, and is still rising. It is not in the interest of the consumer to have 50% of the cars, and a majority of used cars to be exempted from the disclosure protections of the act.

Based on the above NSVRP recommends:

- 1) That the resources provided for the Odometer Act enforcement be increased, so that all current positions are filled, and that the country be supported by more than just the four regional investigator positions.
- 2) That the Office of Odometer Enforcement of NHTSA coordinate their investigative and enforcement efforts with the Bureau of Justice Assistance, and to view the non-reporting of a sales transaction under NMVTIS and often a corresponding failure to disclose mileage or any type of documentation and primary violation of the Odometer statutes to be enforced and coordinated with BJA.
- 3) That NHTSA issue an updated regulation setting the range of years for which a vehicle be required to disclose mileage under the Act back to the original 0-24 model years. Ideally, the reporting should be without any exemptions at all, and when NHTSA is considering rules for the electronic recording of transfers, NSVRP would urge that there be no exemption on reporting of mileage.
- 4) That the requirement for recording under the Act which is defined as being required 'upon transfer' be set as a federal definition to eliminate ambiguity as to when the obligation to record such transfer is required under the law. 'Upon Transfer' should be based upon a common sense meaning where money has been paid, or where assignment of control of the vehicle has been made between parties such that the original owner has no effective ownership control of the vehicle. As an example, if an insurer either pays off a claim or takes control of the vehicle in a way that the prior owner has no control and no financial stake in the subsequent disposition of the vehicle, then that would be considered a transfer from the owner to the insurer under a common sense definition of 'upon transfer'.
- 5) That any parties that help effect the transactions, such as an auction or electronic clearing house be obligated to insure that as a part of their role as an intermediary they either meet the definition of a direct party to the transfer and report under the Act(if they are a party in the money chain by issuing the purchase funds directly to the buyer), or otherwise they provide a mechanism to insure that the buyer and seller that is using their services as the intermediary have properly recorded the odometer information as required under the Act. In other words, it should be a violation under the Act for an intermediary auction or electronic exchange service to allow for the transfer to a vehicle using their services that has not been properly recorded under the Act and for which the auction or electronic clearing house is being paid to help in the facilitation of that commerce. The current act only references auctions if they 'take possession of the vehicle' this would clarify the obligation even if they are electronic auctions which were not in existence at the time the Act was drafted.

The mechanism to clarify this obligation could be done by recognizing that 'possession' includes virtual or effective possession, and not only on-site physical possession for purposes for the auction. Possession would mean that by having control over the vehicle with the authority to sell it or obligate its sale by way of an auction would fit the definition of 'possession' for purposes of the Act.

Respectfully submitted on behalf of the board of NSVRP,

Howard Nusbaum
Administrator, NSVRP

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