



February 19, 2014

National Highway Traffic Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building Ground Floor, Room W12-140
Washington, DC 20590

Re: NHTSA-2014-0014

Administrator Friedman:

The National Salvage Vehicle Reporting Program (NSVRP), a leading not-for-profit law enforcement support organization dedicated to reducing auto theft, title fraud and abuse and to helping control criminal activities related to the exportation of stolen and fraudulently obtained vehicles, appreciates the opportunity to comment on NHTSA's 2014-2018 strategic planning.

NSVRP works closely with the U.S. Department of Justice (DOJ), the FBI, U.S. Customs and Border Protection, and other federal agencies, state governments and other parties to help further our mutual objectives. In addition, NSVRP is recognized by DOJ as an independent third party voluntary standards body for the National Motor Vehicle Title Information System (NMVTIS), which was created as a result of the Anti-Car Theft Acts of 1992 and 1996. NSVRP's board is comprised of representatives of local and national law enforcement organizations.

In NSVRP's opinion, the Truth in Mileage Act (TIMA) is one of the two most critical federal statutes to help control commerce in the more than \$300 billion per year market of used and salvage vehicles, with the NMVTIS being the other. As noted in 49 USC Part 580.2, odometer disclosure requirements provide purchasers of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title and by requiring lessees to disclose to their lessors the vehicle's mileage at the time the lessors transfer the vehicle. In addition, [odometer disclosure requirements] preserve records that are needed for the proper investigation of possible violations of the Motor Vehicle Information and Cost Savings Act and any subsequent prosecutorial, adjudicative or other action." NMVTIS helps fill the other critical function of identifying previously damaged, insurance total-loss and previously branded vehicles.

NMVTIS is designed to protect consumers from fraud and unsafe vehicles and to keep stolen vehicles from being resold, while also assisting states and law enforcement in deterring and preventing title fraud and other crimes. Insurers, salvage pools, junkyards and recyclers in all 50 states are required to

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directly report all total loss vehicles they handle into NMVTIS. This information is combined with data reported from 42 states (remaining states and District of Columbia expected to participate soon) to create a repository that is then used by states and consumers to ensure that junk or salvage vehicles are not later re-sold, and ensures that the VINs from destroyed vehicles can never be used for a stolen vehicle.

TIMA also provides critical consumer protections but, unlike NMVTIS, it is coupled with even greater investigative authority and criminal penalties for violations of the Act. In addition to protecting consumers from the under-reporting or misreporting of mileage when vehicles are sold or ownership is transferred, TIMA includes a proscription on the seller to provide a written disclosure in addition to mileage, namely a declaration by the seller as to the identity of the seller and of the buyer, and the date of the transfer. As NSVRP noted in a letter sent to David Strickland on this issue in May of 2011 ([included](#)), making this failure to disclose by way of not declaring the transfer of ownership on the vehicle a federal violation is an extremely important tool in identifying, investigating and prosecuting title skipping and other exploitations of commerce in used and salvage vehicles that can support subsequent resale fraud upon the public.

In fulfilling its mission, NSVRP routinely monitors the sale of used and salvage vehicles, tracking vehicles that are inappropriately and sometimes illegally offered for sale with unbranded or 'clean' titles, vehicles whose titles are 'skipped' when owners take possession through purchase and fail to retitle the vehicles in their name, when sellers avoid required reporting, or when titles are cleared of their prior branded status by 'title washing' through forgery or abuse of state loopholes that often involve interstate transfers.

In our monitoring of hundreds of thousands of vehicles damaged in Hurricane Sandy and in the late summer/early fall 2013 Colorado floods, among others, NSVRP has found that transparency in title transfers is essential to protecting the public from vehicle-related fraud. Our monitoring reveals that fraud is likely to occur when total loss vehicles do not get classified as salvage by insurers and other sellers or are not appropriately branded, and are not properly and swiftly reported into the appropriate state and federal databases by those entities such as auto auctions that are handling the vehicles prior to their being offered for resale. Some unscrupulous buyers are taking advantage of an undocumented damage status to then offer these cars for resale to an unsuspecting public.

In some cases this involves title skipping, where the seller – which may be a major insurance company but also can include Internet focused 'junk-my-car' solicitation companies, tow-to-acquire companies, charity organizations and other companies that buy used and salvage vehicles from the public for resale – hides its part in the chain of ownership of the total loss vehicle.

NHTSA recognizes this problem and the critical role that TIMA can play in barring this behavior. Following Hurricane Sandy, NHTSA's Office of General Council quite properly issued a warning to the top insurance companies that such title skipping activity is a violation of the Federal Odometer

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Act. Those letters were sent to insurers on December 20, 2012, and were publicly posted by NHTSA on February 7, 2013. An example of just the sort of title skipping NHTSA's letter to insurers referenced was identified in an ABC "Nightline"/"The Lookout" expose entitled 'Flood Cars', where a major salvage auction chain resold a Hurricane Sandy total loss for an insurer without that insurer having transferred the title into their name, and it was resold with the vehicle still recorded as being in the name of the prior insured. Upon further investigation, that insurer admitted to ABC that it had many other such Hurricane Sandy title skip examples in its records, and vowed to contact the unknowing consumers who purchased these salt-water damaged clean title vehicles to rectify the situation. Our investigations point to a broad problem of such title transfer abuse involving many players involved in the disposal and resale of these flood loss vehicles.

Adding to the challenge of transparency in vehicle transfers is the fact that, in today's environment, a significant number of large-scale vehicle transactions take place over the Internet. Many of these sales involve repeat bulk resellers such as auction houses, insurers, fleets and brokers, and it is becoming apparent that in many cases the transactions are not well regulated or transparently reported. Others are transacted over exchanges such as EBay Motors and Craigslist. 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 vehicle. As part of these acts a violation of TIMA 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 to help all to apply stronger controls on the marketplace to protect consumers and reduce fraud and auto theft. Transparency is also a vital tool in reducing the ability of criminal groups to paper over illegal sales transactions to the public and to help cut a source of funding to criminal groups and terror organizations, an issue which NSVRP can address with NHTSA in a less public forum.

When NSVRP transmitted its May 2011 letter to Administrator Strickland, the average age of a vehicle on the road in the U.S. was 11.1 years. In 2013, the average age increased to 11.4 years of age, and the upward trend is expected to continue. Unfortunately, with the Odometer Act's exemption of reporting on vehicles ten years of age and older, the majority of vehicles on the road today are not covered by the Act's protections, and the Act's proscription for transparency in the vehicle transfer process is not in place as an investigative and prosecutorial tool.

NSVRP's monitoring of Hurricane Sandy vehicles supports this assertion. In reviewing several hundred thousand Sandy transactions, it is clear that many of the vehicles that were sold at salvage auction, and that are likely to have been resold or exported as clean title vehicles despite significant

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salt-water damage, were vehicles ten years of age or older.

The Odometer Act's exemption of vehicles ten years of age and older was put into place in 1988, a time when vehicles were much less durable and the average vehicle on the road was less than seven years old. Cars today last much longer and, due to economic and other factors, they are staying on the road and in service for much longer. Furthermore, digital odometers that have been tampered with are even harder to detect than traditional mechanical odometers.

The value of the odometer declaration is in its protection to the second and subsequent purchasers of a vehicle. Therefore, TIMA is not a factor in consumer protection until the first secondary sale, which is likely to be several years into the vehicle's life. The current exemption means that vital Odometer Act protections may be in place for a very short span, from the time the vehicle is first sold as a used car until the vehicle reaches ten years of age. With the average age of vehicles on the road today reaching 11.4 years and only expected to rise, most current secondary sales and those in the foreseeable future are not being protected.

NSVRP recognizes that TIMA is uniquely situated as a tool to help regulate the marketplace – electronic and traditional – for the resale of vehicles and to help protect the public by providing tools to help ensure that suppliers and purchasers of vehicles in the used and salvage marketplace report completely and operate transparently. NSVRP urges NHTSA to consider delivering the force of TIMA to all vehicle transactions, not just those involving vehicles nine years of age and newer. There are other compelling reasons for restoring the rule to its original scope of coverage of 0-24 year models. We would be willing to provide further documentation and other materials to your agency to support the basis for our recommendations.

Submitted respectfully on behalf of the NSVRP Board,

A handwritten signature in black ink, appearing to be 'H. Nusbaum', written in a cursive style.

Howard Nusbaum

Administrator

National Salvage Vehicle Reporting Program (NSVRP)

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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

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Odometer statutes, the 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 FMVCSA 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. 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.

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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