

REGULATION 1995-1

MOTOR VEHICLE

Odometer Disclosure Requirements

Pursuant to his authority under Act 795 of 1995, Ark. Code Ann. § 4-90-201 et seq. (1987) and Act 142 of 1949, as amended, Ark. Code Ann. § 27-14-101 et seq. (1987), the Commissioner of Revenues for the State of Arkansas does hereby promulgate the following regulations. The regulations are an adoption of NHTSA Odometer Disclosure Requirements, 49 CFR § 580.1 et seq. which were promulgated under 15 U.S.C. § 1981 et seq. as amended. This regulation supersedes Motor Vehicle Regulation 1992-1.

SECTION 1. Purpose.

The purpose of this regulation is to 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, the purpose of this regulation is to 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.

SECTION 2. Definitions.

(1) "Owner" means a person, other than a secured party, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security;

(2) "Motor vehicle" means any self-propelled vehicle not operated exclusively upon railroad tracks except snowmobiles and other devices designed and used primarily for the transportation of persons over natural terrain, snow or ice and propelled by wheels, skis, tracks, runners, or whatever other means;

(3) "Person" means an individual, firm, partnership, agent for the person, incorporated and unincorporated association, or any other legal or commercial entity;

(4) "Lessee" means any person, or the agent for any person to whom a motor vehicle has been leased for a term of at least four (4) months;

(5) "Lessor" means any person, or the agent for any person, who has leased five (5) or more motor vehicles to a lessee in the past twelve (12) months;

(6) "Mileage" means actual distance that vehicle has traveled;

(7) “Secure printing process or other secure process” means any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye;

(8) “Transferee” means any person to whom ownership of a motor vehicle is transferred by purchase, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee.

(9) “Transferor” means any person who transfers his ownership of a motor vehicle by sale, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferor.

SECTION 3. Security of Title Documents and Power of Attorney Forms.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, power of attorney forms issued pursuant to Section 9 below and documents which are used to reassign the title shall be issued by the State and shall be set forth by a secure process.

SECTION 4. Disclosure of Odometer Information.

(a) Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c), (d), (e), and (f) of this section at the time of future transfer.

(b) Any documents which are used to reassign a title shall contain a space for the information required to be disclosed under paragraphs (c), (d), (e), and (f) of this section at the time of transfer of ownership.

(c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title. This written disclosure must be signed by the transferor, including the printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the written disclosure. In addition to the signature and printed name of the transferor, the written disclosure must contain the following information:

- (1) The odometer reading at the time of transfer (not to include tenths of miles);
- (2) The date of transfer;

- (3) The transferor's name and current address;
- (4) The transferee's name and current address; and
- (5) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number.

(d) In addition to the information provided under paragraph (c) of this section, the statement shall refer to the Federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable state law.

(e) In addition to the information provided under paragraphs (c) and (d) of this section:

- (1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage, or;
- (2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or
- (3) If the transferor knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that discrepancy exists between the odometer reading and the actual mileage.

(f) The transferee shall sign the disclosure statement, print his name, and return a copy to his transferor.

(g) If the vehicle has not been titled or if the title does not contain a space for the information required, the written disclosure shall be executed as a separate document.

(h) No person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction, unless permitted by Section 9 or 10.

SECTION 5. Exemptions.

Notwithstanding the requirements of Sections 4 and 6:

(a) A transferor or a lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

- (1) A vehicle having a Gross Vehicle Weight Rating, as defined in § 571.3, of more than 16,000 pounds;
- (2) A vehicle that is not self-propelled;
- (3) A vehicle that is ten years old or older; or
- (4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

(b) A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.

(c) A lessor of any of the vehicles listed in paragraph (a) of this section need not notify the lessee of any of these vehicles of the disclosure requirements of Section 6.

SECTION 6. Disclosure of Odometer Information for Leased Motor Vehicles.

(a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing that the lessee is required to provide a written disclosure to the lessor regarding the mileage. This note shall contain a reference to the federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable state law.

(b) In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written statement regarding the mileage of the vehicle. This statement must be signed by the lessee and, in addition to the information required by paragraph (a) of this section, shall contain the following information:

- (1) The printed name of the person making the disclosure;
- (2) The current odometer reading (not to include tenths of miles);
- (3) The date of the statement;
- (4) The lessee's name and current address;
- (5) The lessor's name and current address;
- (6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;

- (7) The date that the lessor notified the lessee of disclosure requirements;
 - (8) The date that the completed disclosure statement was received by the lessor; and
 - (9) The signature of the lessor.
- (c) In addition to the information provided under paragraphs (a) and (b) of this section:
- (1) The lessee shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or
 - (2) If the lessee knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or
 - (3) If the lessee knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.
- (d) If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee under paragraphs (b) and (c) of this section, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

SECTION 7. Odometer Disclosure Statement Retention.

(a) Dealers and distributors of motor vehicles who are required to execute an odometer disclosure statement shall retain for five years a photostat, carbon, or other facsimile copy of each odometer mileage statement, which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(b) Lessors shall retain for five years following the date they transfer ownership of the leased vehicle, each odometer disclosure statement which they received from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(c) Dealers and distributors of motor vehicles who are granted a power of attorney by their transferor pursuant to Section 9, or by their transferee pursuant to Section 10, shall retain for five years a photostat, carbon, or other facsimile copy of each power of attorney that they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

SECTION 8. Odometer Record Retention for Auction Companies.

Each auction company shall establish and retain at its primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval, for five years following the date of the sale of each motor vehicle, the following records:

- (a) The name of the most recent owner (other than the auction company);
- (b) The name of the buyer;
- (c) The vehicle identification number; and
- (d) The odometer reading on the date which the auction company took possession of the motor vehicle.

SECTION 9. Disclosure of Odometer Information by Power of Attorney.

(a) If the transferor's title is physically held by a lienholder, or if the transferor to whom the title was issued by the state has lost his title and the transferee obtains a duplicate title on behalf of the transferor, and if otherwise permitted by state law, the transferor may give a power of attorney to his transferee for the purpose of mileage disclosure. The power of attorney shall be on a form issued by the state to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in part A, a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section. If a state permits the use of a power of attorney in the situation described in Section 10 (a), the form must also contain, in part B, a space for the information required to be disclosed under Section 10 and, in part C, a space for the certification required to be made under Section 11.

(b) In connection with the transfer of ownership of a motor vehicle, each transferor to whom a title was issued by the state whose title is physically held by a lienholder or whose title has been lost, and who elects to give his transferee a power of attorney for the purpose of mileage disclosure, must appoint the transferee his attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the power of attorney form issued by the state. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

- (1) The odometer reading at the time of transfer (not to include tenths of miles);
- (2) The date of transfer;
- (3) The transferor's name and current address;

- (4) The transferee's name and current address; and
- (5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section;

- (1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or
- (2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or
- (3) If the transferor knows that the odometer reading differs from the mileage and that the difference is greater than that caused by a calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print his name, and return a copy of the power of attorney form to the transferor.

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State that issued it, with the application for new title and the transferor's title. If the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title.

SECTION 10. Power of Attorney to Review Title Documents and Acknowledge Disclosure.

(a) In circumstances where part A of a secure power of attorney form has been used pursuant to Section 9 of this part, and if otherwise permitted by state law, a transferee may give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge

disclosure on the title. The power of attorney shall be on part B of the form referred to in Section 9(a), which shall contain a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section and, in part C, a space for the certification required to be made under Section 11.

(b) The power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

- (1) The odometer reading at the time of transfer (not to include tenths of miles);
- (2) The date of transfer;
- (3) The transferor's name and current address;
- (4) The transferee's name and current address; and
- (5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section;

- (1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or
- (2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or
- (3) If the transferor knows that the odometer reading differs from the mileage and that the difference is greater than that caused by a calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form and print his name.

- (f) The transferor shall give a copy of the power of attorney from to his transferee.

SECTION 11. Certification by Person Exercising Powers of Attorney.

(a) A person who exercises a power of attorney under both Section 9 and Section 10 must complete a certification that he has disclosed on the title document the mileage as it was provided to him on the power of attorney form, and that upon examination of the title and any reassignment documents, the mileage disclosure he has made on the title pursuant to the power of attorney is greater than that previously stated on the title and reassignment documents. This certification shall be under part C of the same form as the power of attorney executed under Section 9 and Section 10 and shall include:

- (1) The signature and printed name of the person exercising the power of attorney;
- (2) The address of the person exercising the power of attorney; and
- (3) The date of the certification.

(b) If the mileage reflected by the transferor on the power of attorney is less than that previously stated on the title and any reassignment documents, the power of attorney shall be void.

SECTION 12. Access of Transferee to Prior Title and Power of Attorney Documents.

(a) In circumstances in which a power of attorney has been used pursuant to Section 9 of this part, if a subsequent transferee elects to return to his transferor to sign the disclosure on the title when the transferor obtains the title and does not give his transferor a power of attorney to review the title and reassignment documents, upon the transferee's request, the transferor shall show to the transferee a copy of the power of attorney that he received from transferor.

(b) Upon request of a purchaser, a transferor who was granted a power of attorney by his transferor and who hold the title to the vehicle in his own name, must show to the purchaser the copy of the previous owner's title and the power of attorney form.

IN WITNESS WHEREOF, we have hereunto set out (*sic*) hands this 6th day of November, 1995.

Richard A. Weiss
Director
Department of Finance
and Administration

Timothy J. Leathers
Deputy Director and
Commissioner of Revenue,
Department of Finance

and Administration