

National Consumer Law Center¹
National Association of Consumer Advocates²
Consumers for Auto Reliability and Safety³

February 24, 2014

David J. Friedman, Acting Administrator
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: Comments on NHTSA Docket # 2014-0014

Dear Administrator Friedman:

These comments are submitted in response to NHTSA's request for public comment regarding NHTSA's 2014-2018 strategic plan.

We urge the agency to eliminate the exemptions currently in the Odometer Act regulations for vehicles more than 9 model years old, and for recreational vehicles with Gross Vehicle Weight Ratings above 16000 lbs. Both of these exemptions are thoroughly outdated, and, especially given the current marketplace realities, contrary to the core purposes of the Odometer Act stated in Title 49 U.S.C. § 32701.

¹ The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, providing legal expertise on consumer law issues to public and private attorneys, policy makers, and consumer advocates across the country, with a special focus on low-income consumers. NCLC publishes a series of 18 practice treatises on consumer laws, including National Consumer Law Center, Automobile Fraud § (4th ed. 2011). NCLC also has a special project focused on car ownership- Working Cars for Working Families.

² The National Association of Consumer Advocates (NACA), founded in 1992, is a non-profit association of over 1500 attorneys and consumer advocates across the country committed to representing consumers' interests. Our members include private and public sector attorneys and legal services attorneys who represent and have represented hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices (particularly including auto-related fraud cases), along with law professors and law students, all of whose primary focus is the protection and representation of consumers.

³ Consumers for Auto Reliability and Safety is a national award-winning non-profit auto safety and consumer advocacy organization dedicated to preventing motor vehicle-related fatalities, injuries and economic losses.

Some 26 years ago, in 1988, when NHTSA issued a rule reducing the age exemption for used vehicles from 25 years to 10 model years, the median age of a car on the road was only 6.8 years.⁴ According to RL Polk, as of August 2013, the average age has risen to 11.4 years, and the upward trend is expected to continue.⁵

As a result, tens of millions of vehicle purchasers are exposed to odometer fraud, with little or no meaningful recourse. Odometer fraud continues to be a serious problem, despite the switch to electronic odometers. As various news organizations have documented, all it takes is a cheap tool that is readily available over the internet for an unscrupulous dealer or other crook to alter an odometer. In fact, there is considerable evidence that odometer fraud is in resurgence, aided and abetted by the ill-advised exemptions.

Odometer fraud harms consumers in multiple ways, including:

- As noted in the Odometer Act itself, at Title 49 U.S.C. § 32701, it interferes with their ability to determine the safety and reliability of vehicles they may purchase;
- Cheating them over the purchase price, sometimes resulting in their paying thousands of dollars more than a vehicle is worth
- Saddling them with expensive, unanticipated repairs such as engine replacements and transmission replacements, which can cost more than \$4,000
- Denying them warranty coverage, or coverage by extended service contracts, that they paid extra to obtain, because in a “Catch-22” situation, warranties and contracts typically exclude coverage for vehicles with altered odometers
- Imposing additional costs upon trading in or reselling the vehicle with an accurate representation of the mileage

When NHTSA reduced the exemption age from 25 years in 1988, the agency acted with little or no input from organizations that represent the car-buying public. The exemptions were a serious concern then; they are a grave concern now, with the decided majority of cars over 11 model years of age and thus exempted from coverage.

It is important to note that odometer fraud tends to have the most devastating impact upon those who can least afford to be cheated in this way – low-income consumers who cannot afford a newer vehicle, and cannot afford the expensive repairs.

This crime also harms honest dealers, who lack the competitive advantage enjoyed by fraudsters who engage in odometer fraud.

Over the years since the imposition of the 10-model-year exemption, we have witnessed innumerable instances of vehicles sold with statements that they were “exempt” from the federal disclosure requirements, even when the selling dealers were in fact aware that the odometers were incorrect, and that the consumer purchasers were unaware of that fact. In effect, the agency has

4 U.S. Department of Energy, quoting RL Polk. Posted at: https://www1.eere.energy.gov/vehiclesandfuels/facts/2009_fotw567.html).

5 RL Polk. Posted at: https://www.polk.com/company/news/polk_finds_average_age_of_light_vehicles_continues_to_rise).

condoned and enabled criminal activity by unscrupulous dealers. Today, given the marketplace reality that the majority of cars are over 11 years old, this policy must be described as a grave regulatory failure.

Similarly, the weight exemption, in common parlance referred to as the “heavy truck” exemption, was adopted in a time when recreational vehicles were not as heavy as they are now. We believe that the NHTSA intended to exempt only heavy trucks, not recreational vehicles. But modern recreational vehicles frequently reach this weight limit. Again, updating the regulation has become essential. In some cases, consumers pay over \$250,000 for a used motor home or recreational vehicle – more than a house. There can be no justification for allowing them to be cheated by shady dealers who engage in odometer fraud.

For the above-stated reasons, we urge that the NHTSA act promptly to eliminate these profoundly anti-consumer exemptions. Should the agency have any questions regarding our position, or wish to obtain further details, please do not hesitate to contact us directly, using the contact information shown below.

Thank you for your consideration of our views.

Sincerely,

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