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28 CFR Part 25
National Motor Vehicle Title Information System (NMVTIS); Final Rule

DEPARTMENT OF JUSTICE

28 CFR Part 25

[Docket No. FBI 117; AG Order No. 3042–2009]

RIN 1110–AA30

National Motor Vehicle Title Information System (NMVTIS)

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The National Motor Vehicle Title Information System (NMVTIS) has been established pursuant to 49 U.S.C. 30502 and has the participation, or partial participation, of at least 36 states. The purpose of NMVTIS is to assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles into interstate commerce, protect states and individual and commercial consumers from fraud, reduce the use of stolen vehicles for illicit purposes including fundraising for criminal enterprises, and provide consumer protection from unsafe vehicles. This rule implements the NMVTIS reporting requirements imposed on junk yards, salvage yards, and insurance carriers pursuant to 49 U.S.C. 30504(c). This rule also clarifies the process by which NMVTIS will be funded and clarifies the various responsibilities of the operator of NMVTIS, states, junk yards, salvage yards, and insurance carriers regarding NMVTIS.

DATES: *Effective Date:* This rule is effective March 2, 2009.

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SUPPLEMENTARY INFORMATION:

Background

The Anti-Car Theft Act of 1992, Public Law No. 102–519, 106 Stat. 3384, required the Department of Transportation (DOT) to establish an information system intended to enable states and others to access automobile titling information. As part of the Anti-Car Theft Act of 1992, DOT was authorized to designate a third party to operate the system. Since 1992, the American Association of Motor Vehicle Administrators (AAMVA) has acted in the capacity of the operator of the system. AAMVA is a nonprofit, tax exempt, educational association representing U.S. and Canadian officials who are responsible for the administration and enforcement of motor vehicle laws. The requirements of the Anti-Car Theft Act of 1992 were amended by Public Law 103–272 and the Anti-Car Theft Improvements Act of 1996, Public Law No. 104–152, 110 Stat. 1384. The Anti-Car Theft Improvements Act of 1996 renamed the automobile titling system the "National Motor Vehicle Title Information System" and transferred responsibility for implementing the system from DOT to the Department of Justice (DOJ). Hereinafter, the Anti-Car Theft Act of 1992 and the revisions made by Public Law 103–272 and the Anti-Car Theft Improvements Act of 1996, codified at 49 U.S.C. 30501–30505, are collectively referred to as the "Anti-Car Theft Act" or the "Act."

While the overall purpose of the Anti-Car Theft Act is to prevent and deter auto theft, title II of the Act, which authorizes NMVTIS, is intended to address automobile title fraud. Accordingly, the primary purpose of NMVTIS is to prevent various types of theft and fraud by providing an electronic means for verifying and exchanging title, brand, theft, and other data among motor vehicle administrators, law enforcement officials, prospective and current purchasers (individual or commercial), and insurance carriers.[1] Currently, 37 states are actively involved with NMVTIS, representing nearly 75% of the U.S. motor vehicle population. Specifically, 13 states are participating fully in NMVTIS, 14 states are regularly providing data to the system, and an additional 10 states are actively taking steps to provide data or participate fully.[2] States that participate fully in the system provide data to the system on a daily or real-time basis and make NMVTIS inquiries before issuing a new title on a vehicle from out of state and preferably before every title verification, regardless of its origin or reason. Participating states also pay user fees to support the system and the services provided to the state.

In 2006, the Integrated Justice Information Systems (IJIS) Institute, a nonprofit membership organization made up of technology companies, was asked by Department of Justice's Bureau of Justice Assistance (BJA) to conduct a full review of the NMVTIS system architecture to identify any technological barriers to NMVTIS implementation and to determine if any potential cost savings was available through emerging technology. The IJIS Institute report found that "the NMVTIS program provides an invaluable benefit to state vehicle administrators and the public community as a whole. Advantages of the program include improving the state titling process, as well as providing key information to consumers and law enforcement agencies." In addition to this study, the Government Accountability Office (GAO) also found NMVTIS to hold benefit potential for states, and a private cost-benefit study also determined that NMVTIS could provide benefits in the range of $4 to $11 billion dollars annually if fully implemented. NMVTIS and its benefits to states, law enforcement, consumers, and others have been widely touted by motor vehicle or auto-industry organizations including AAMVA and the National Automobile Dealers Association (NADA), by law enforcement organizations such as the International Association of Chiefs of Police and the National Sheriffs Association, by the North American Export Committee (NAEC), and by the International Association of Auto Theft Investigators. NMVTIS's benefits have also been recognized by national consumer advocacy organizations, and by industry-affiliated groups including the National Salvage Vehicle Reporting Program and many others, as identified in the public comments.

NMVTIS is a powerful tool for state titling agencies. Fully participating state titling agencies are able to use NMVTIS to prevent fraud by verifying the motor vehicle and title information, information on brands applied to a motor vehicle, and information on whether the motor vehicle has been reported stolen—all prior to the titling jurisdiction issuing a new title. In order to perform this check, these states run the vehicle identification number (VIN) against a national pointer file, which provides the last jurisdiction that issued a title on the motor vehicle and requests details of the motor vehicle from that jurisdiction. Using a secure connection, states then receive all required information or the complete title of record from the state of record. States can then use this information to verify information on the paper title being presented.

Verification of this data allows fully participating states to reduce the issuance of fraudulent titles and reduce

[1] Brands are descriptive labels regarding the status of a motor vehicle, such as "junk," "salvage," and "flood" vehicles.

[2] There are currently 13 states participating fully in NMVTIS: Arizona, Florida, Indiana, Iowa, Kentucky, Massachusetts, New Hampshire, Nevada, Ohio, South Dakota, Virgina, Washington, and Wisconsin. Fourteen states are providing regular data updates to NMVTIS: Alabama, California, Delaware, Georgia, Idaho, Louisiana, Nebraska, New Jersey, New York, North Carolina, Pennsylvnia, Tennessee, Texas, and Wyoming. Ten states are activoly taking steps to provide data or participate fully: Arkansas, Michigan, Minnesota, Missouri, Montaina, New Mexico, Oklahoma, South Carolina, Vermont, and West Virginia. See *www.NMVTIS.gov* for a map of current participation status.

odometer fraud. Once the inquiring jurisdiction receives the information, a state is able to decide whether to issue a title. For states fully participating through integrated, online access, if a new title is issued, NMVTIS notifies the last titling jurisdiction that another jurisdiction has issued a title. The old jurisdiction then can inactivate its title record. This action allows fully participating jurisdictions to identify and purge inactive titles on a regular basis and eliminates the need for these agencies to conduct these processes manually. This service provides a measurable benefit to states in terms of cost savings. In 2007, over 18.4 million title-update transactions were initiated and over 45 million messages were generated via NMVTIS, which allows states to work and communicate securely and to perform electronic title transactions between states.

NMVTIS also allows fully participating states to ensure that brands are not lost when a motor vehicle travels from state to state. As noted above, brands are descriptive labels regarding the status of a motor vehicle. Many brands, such as a flood vehicle brand, indicate that a motor vehicle may not be safe for use. Unfortunately, motor vehicles with brands on their titles can have their brands "washed" (*i.e.*, removed) from a title if the motor vehicle is retitled in another state that does not check with the state that issued the previous title and with other states that may have previously issued titles on the vehicle to determine if it has any existing brands not shown on the paper title. Because NMVTIS keeps a history of brands applied by any state to the motor vehicle at any time, it protects individual and corporate consumers by helping ensure full disclosure so that purchasers are not defrauded or placed at risk by purchasing an unsafe motor vehicle. Currently, there are approximately 300,000,000 VINs in NMVTIS with over 40,000,000 brands included. NMVTIS also prevents "clean title" vehicles that are actually a total loss or salvage from being used to generate a paper title that is later attached to a stolen vehicle that is "cloned" to the destroyed "clean title" vehicle. Criminal enterprises seek these "clean title" vehicles, which are low cost to them (because they are destroyed or salvage), because it increases their return when they sell a cloned stolen vehicle. It has been noted that criminal profits in such a case can more than quadruple if a "clean title" vehicle is used for cloning. Even worse, because these cloned vehicles are able to get into the titling systems of the non-participating states, they often continue to be sold to new and unsuspecting owners. There have been cases involving car dealers who had purchased stolen cloned vehicles and resold them to individual consumers. NMVTIS also provides protections from other types of related theft and fraud that ultimately place lives at risk and cost states, consumers, and the private sectors billions of dollars each year. The proceeds from these illicit activities support additional crime and fraud and even serious and violent crime. For more information on the benefits of NMVTIS, visit *www.NMVTIS.gov.*

Discussion of Comments

On September 22, 2008, the Department of Justice published a proposed rule to implement various requirements concerning NMVTIS. *See* National Motor Vehicle Title Information System (NMVTIS), 73 FR 54544 (Sept. 22, 2008). The rule proposed the imposition of reporting requirements on junk yards, salvage yards, and insurance carriers. In addition, the rule clarified the funding process for NMVTIS and the responsibilities of the operator of NMVTIS, states, junk yards, salvage yards, and insurance carriers. The comments and the Department's responses are discussed below:

1. General Comments

Comment: Several commenters suggested that NMVTIS will deter various types of crime and fraud and suggested that since the passage of the Anti-Car Theft Act, the types of crime and fraud, as well as the methods, have evolved. These commenters noted that the purpose of NMVTIS remains to address these types of crime and fraud.

Response: DOJ agrees that since the passage of the Anti-Car Theft Act, crimes and crime techniques have evolved. DOJ, therefore, has updated the stated purpose of NMVTIS to be more reflective of the crime and expansive direct and indirect fraud NMVTIS was intended to address and is addressing today.

Comment: The American Salvage Pool Association (ASPA) commented that junk and salvage yards have an exemption for reporting where and when a non-stolen verification is obtained under 49 U.S.C. 33110, which authorizes a system that has never been implemented. The ASPA commented that this exemption "is telling, however, in linking NMVTIS'[s] statutory purpose to theft prevention, as opposed to brand information."

Response: In addition to the fact that title II of the Anti-Car Theft Act addresses fraud, it is clear that brand information can be directly linked to vehicle theft in addition to fraud. Law enforcement investigations have repeatedly shown that "clean title" total loss vehicles are a preferred commodity among car cloning and car theft rings, as they bring a higher return on investment. The Anti-Car Theft Act exemption, which is in 49 U.S.C. 33111, provides that junk and salvage yards are not required to report on an automobile if they are issued a verification under 49 U.S.C. 33110 stating that the automobile or parts from the automobile are not reported as stolen.

2. Effectiveness

Comment: Several submissions questioned the effectiveness of NMVTIS in eliminating or preventing fraud and theft. Several of these commenters suggested the need for quantitative proof of the system's effectiveness before the law should be followed. At the same time, however, several submissions recognized the value of NMVTIS. As one commenter noted, "NMVTIS would undoubtedly cut down on the number of rebuilt wreck fraud cases." And the State of Texas Department of Transportation noted that "[t]he system provides numerous obvious benefits to titling agencies, law enforcement[,] and vehicle sellers, as well as consumer protection to the buying public."

Response: The Anti-Car Theft Act's participation requirements were established based on analyses presented at the time of the bill's introduction and passing. Further, an extensive cost-benefit analysis and a Government Accountability Office study both have independently determined that NMVTIS will produce a significant public benefit that greatly exceeds the costs of implementing the program. The cost-benefit study found that the system is only as effective as the number of vehicles represented in the system. Non-participating states create "loopholes" where brands can be washed, allowing further fraud in any state—participating or not. Discussions with private-vehicle-history-report providers and ongoing law enforcement investigations at the state, local, and federal levels have shown that non-participating states are targeted for exploitation because their vehicle titling information is not immediately shared with other states and because they have no efficient ability to inquire with all other states that may have previously titled the vehicle.

Feedback from participating states points to other positive outcomes of the program. One state reports a 17%

decrease in motor vehicle thefts; another reports a 99% recovery rate on vehicles identified as stolen; three states have identified cloned vehicles by working together, prior to issuing new titles; and another state reports cracking a car theft ring responsible for cloning more than 250 cars worth $8 million. Aside from these results, it is clear that if all states comply with the Anti-Car Theft Act requirements, brand washing in the way it is most commonly conducted today will be eliminated because there is no other way to title a vehicle other than going through a state titling process. The same goes for vehicle cloning, which would be virtually eliminated if every state participated as required.

Moreover, Experian Automotive reported that in the first six months of 2008 alone, there have already been more than 185,000 titles that initially were branded in one state, and were then transferred and re-titled in a second state in a way that resulted in a purportedly clean title. Given all these facts, we can be sure that NMVTIS will be effective in eliminating this type of fraud, preventing a significant number of crimes, and potentially saving the lives of citizens who would otherwise purchase unsafe vehicles.

In addition to the system's documented value in reducing theft and fraud in protecting consumers, the system also has been shown to create greater efficiencies within the titling process when the inquiry and response are integrated into the states' titling processes.

Comment: NAEC commented that "the effectiveness [of NMVTIS] can only be truly measured [when] all jurisdictions are participating, because of the holes that are currently in the system due to lack of full participation." The State of California Department of Motor Vehicles seemingly agreed with this comment when it noted that "these beneficial outcomes can only be achieved when all 50 states and the District of Columbia are participating." The Virginia Department of Motor Vehicles commented that "the system provides a great value to participating states, and that value will exponentially increase as each jurisdiction begins fully participating."

Response: DOJ agrees in part with these assessments. As discussed above, partial participation creates loopholes that criminal organizations exploit, and, therefore, measuring the full benefit of a comprehensive NMVTIS is difficult without participation by all states. However, NMVTIS provides significant benefits to participating states even when state participation is not at 100%.

Comment: One commenter asked if the information would have much "practical utility," or whether it would only serve as further documentation of a market that is only broadly related to secondary criminal enterprises. The commenter further noted that "the rule will only spur increased sophistication of organized crime. This increased sophistication must be balanced against the proposed benefits from the small contraction in the secondary criminal market that is assumed to occur under this rule. One of the benefits of the proposed rule is the documentation of salvage pool sales. But this benefit is limited: it will only require criminals to go through more steps, steps that require increased organizational skills. Hence, although the rule may push some criminals out of the market overall (the less sophisticated and organized), it will also indirectly spur increased sophistication and organization of the surviving criminal organizations. Although one of the primary goals of NMVTIS is theft deterrence, there is no data to support the conclusion that this portion of the criminal market will be affected by the proposed rule."

Response: DOJ disagrees with these comments. Substantial evidence, statements, and documentation indicate that NMVTIS will impact vehicle theft and fraud.

Comment: Several commenters, including law enforcement, consumer advocates, industry associations, and state motor vehicle administrators, including California's, noted that NMVTIS is needed and will be effective in addressing the threats of auto theft, cloning, and fraud, and in providing protection for consumers against fraud.

Response: DOJ agrees with these comments and notes that the expected benefits and positive outcomes of NMVTIS have been confirmed not only by government and private research, but also by multiple representatives of every stakeholder community affected by the system, including state titling agencies, state and local law enforcement, consumers, insurance carriers, and junk- or salvage-yard operators.

Comment: The NAEC commented that law enforcement successes to date can validate the benefits and costs associated with NMVTIS and that "the NAEC is solid in its belief that NMVTIS is a fundamentally sound approach to 'title washing,' title fraud, vehicle theft[,] and public safety related to the 'branding' of un-road worthy vehicles in this Country." The NAEC provided data from one state that uses NMVTIS and, as a result, has identified and recovered hundreds of stolen vehicles. The NAEC further commented that to suggest that the system should be cancelled "demonstrates a lack of understanding [of] the magnitude of the vehicle theft problem in North America and Public Safety issues surrounding 'branded' vehicles."

Response: DOJ agrees with the NAEC's assessment of NMVTIS.

Comment: The State of Illinois Motor Vehicle Administration commented that other services have become available since the Anti-Car Theft Act was passed and that NMVTIS should "be put on hold" while an analysis on the need for NMVTIS can be conducted. The Maine Bureau of Motor Vehicles suggested that NMVTIS was not needed because "consumers have other options for checking vehicle title status prior to purchase."

Response: While other fee-based options for checking vehicle title status are available for consumers, the ability of consumers to check NMVTIS for vehicle title status is required by federal law and a federal court order. When fully implemented, NMVTIS will provide assurances that no other option can provide—complete and timely information on all vehicles in the U.S. The Anti-Car Theft Act provided no flexibility for states, insurance carriers, or junk or salvage yards to filter information shared with NMVTIS; thus NMVTIS will be the most-reliable source of information once fully implemented. Several providers of vehicle history information have agreed to make NMVTIS data available as a way of enhancing their products, demonstrating that NMVTIS does have unique value. DOJ is not in a position to put NMVTIS on hold, as recent litigation was based on the complaint that DOJ had waited too long to issue NMVTIS regulations. A court has ordered DOJ to publish these regulations by January 30, 2009. *See Public Citizen, Inc. v. Mukasey*, No. 3:08–cv–00833–MHP, 2008 WL 4532540 (N.D. Cal. Oct. 9, 2008).

Comment: One commenter noted that "it is beyond the scope of the NMVTIS regulations to reform the process by which insurers assign title designations; however having the sales reported in a timely fashion, and by including appropriate identification of both international, domestic (out of state) and domestic (in state) buyers, it will help the Law Enforcement Community in its effort to control crime and protect the public."

Response: It is beyond the scope of NMVTIS and DOJ's intentions to alter insurance carrier policies and procedures in terms of title designations. While transfers of vehicles from insurance carriers to others would

likely be captured in the NMVTIS reporting process due to subsequent reporting by junk and salvage yards, it is unlikely that the names of buyers will be reported or captured in the system because this is not a required data field. Requiring the name of such buyers is of significant value to law enforcement for preventing and investigating automobile theft and fraud. Additionally, as is pointed out elsewhere in these comments, establishing a "chain of possession or custody" is important for effective and efficient law enforcement investigations.

Comment: One commenter noted that "[a]ccording to Experian Automotive, (PR Newswire August 25, 2008 Experian, Schaumburg, IL), in the first 6 months of 2008 alone, there have already been more than 185,000 titles that initially were branded in the first state, and were then transferred and re-titled in a second state in a way that resulted in a 'clean' title. This situation cannot be addressed without much stronger controls and full reporting. There is a great deal of abuse of the title system and we regularly observe severely damaged units that have been given clean title designations to vehicles that have massive damage. As a result, criminals regularly buy these vehicles for the paper, and steal a like vehicle and engage in cloning or VIN swapping."

Response: Once all states comply with the law, NMVTIS will protect against these types of abuses by creating a brand history (a record of the various brands associated with a particular VIN) for every vehicle, which will prevent a future title-issuing agent from being unaware of a vehicle's brand history and will eliminate the possibility of a vehicle being titled in more than one state (a common occurrence today).

Comment: Maine Bureau of Motor Vehicles commented that Maine "already has procedures in place to check for stolen status prior to issuing a title and for carrying forward out-of-state brands."

Response: NMVTIS is designed to provide more than a simple stolen-vehicle check. Further, neither carrying forward out-of-state brands based on paper titles presented, nor checking the paper documentation against a third-party data provider, eliminates brand washing. Washed brands may not appear on paper or in third-party databases. Because states are required to report title transactions to NMVTIS and to check NMVTIS prior to issuing a new title, NMVTIS is the only system that can eliminate such brand washing when fully implemented. No state, except those participating in NMVTIS when fully implemented, has any ability to fully verify brand histories and carry forward out-of-state brands without manually contacting every state and the District of Columbia prior to issuing a new title.

Comment: One commenter noted that "the benefits of NMVTIS are also not illogical simply because concrete figures do not exist concerning its limited implementation." "Given NMVTIS'[s] [implementation] status, any figures outlining the benefits would prove highly conservative even if found. It is not difficult to imagine though that illegal reselling of salvaged vehicles takes advantage [of] reporting gaps by moving across state lines. Statistics concerning such operations are well-documented even if the benefits of NMVTIS are not." "Being able to verify the success and results of NMVTIS thus depends critically on the provision of information from all states."

Response: DOJ agrees with this comment.

Comment: The Missouri Department of Revenue commented that the system is only as good as the number of jurisdictions participating, and in light of current participation levels, the state is expending resources for data that may not be inclusive or accurate.

Response: As of December 2008, NMVTIS includes nearly 75% of the U.S. vehicle population. At the same time, several states are actively working towards participation in NMVTIS, which will take NMVTIS closer to 100% participation. With the inclusion of insurance and junk- and salvage-yard information, and given that many states report to NMVTIS in "real time," NMVTIS is likely to be as inclusive as any vehicle title history database available, even before 100% state participation. As for accuracy, the system currently includes only data from state motor vehicle administrations, and DOJ is aware of no errors in NMVTIS. As stated in this rule, procedures and safeguards will be put into place to ensure identification and correction of any errors identified. Non-participating states, on the other hand, are expending their resources based on fraudulent information when they issue titles in many situations.

3. Need and Purpose

Comment: One commenter asked "To what extent is consumer protection and the prevention of fraud in the secondary car market domestically and internationally a high priority for the agency?"

Response: The prevention of fraud that affects U.S. citizens, whether it be here or abroad, and consumer protection are priorities for DOJ and for NMVTIS. DOJ's Strategic Plan includes in its second goal "Strategic Objective 2.5: Combat public and corporate corruption, fraud, economic crime, and cybercrime." *U.S. Department of Justice Strategic Plan, Fiscal Years 2007–2012.*

Comment: One commenter noted that states often sell their vehicle history records to private, third-party organizations who then resell the data. The commenter requested that the final rule spell out that the states own the data and that the operator of the system may not resell the data to other providers without authorization of the states.

Response: While NMVTIS may contain a subset of data on vehicles titled within the U.S., it does not include all of the information a state motor vehicle administration may possess. DOJ agrees that the state-maintained vehicle history databases are the province of the states, and that the intent of the Anti-Car Theft Act was not to create a database of information for bulk resale. The operator of the system, therefore, will not resell the NMVTIS database in its entirety to anyone. Two key goals of the Anti-Car Theft Act, however, are consumer access to the data and a self-funded system. For these reasons, the operator will be allowed to charge consumers for use.

Comment: The State of Illinois motor vehicle administration questioned how NMVTIS will interface with law enforcement data systems within the state that are used to identify and "flag" stolen vehicles.

Response: NMVTIS is not expected to "interface" with law enforcement systems within the state. Information in NMVTIS related to a vehicle's "theft status" or history emanates from one of two places—state brands and the theft file of the National Insurance Crime Bureau (NICB), which is derived from the FBI's National Crime Information Center (NCIC). Law enforcement systems will be able to link or connect to the NMVTIS law enforcement access site, however, which will include all NMVTIS information without restriction. NCIC will always be the primary repository of active theft files for law enforcement. Stolen vehicle information in NMVTIS is provided only for state titling purposes for those states that cannot access NCIC or state-based law enforcement systems.

4. Prospective Purchaser Inquiries

Comment: The Idaho Transportation Department commented that the proposed rules included several data elements in the requirement for prospective-purchaser inquiry responses

or consumer access reports that would effectively eliminate the need for an actual state record to be requested by a consumer or prospective purchaser, thereby reducing state revenues realized from the sale of motor vehicle records.

Response: At a minimum, NMVTIS will provide the following pieces of information in response to an inquiry, if that data is present in NMVTIS: (a) The current state of title; (b) the brand history of the vehicle; (c) the latest reported odometer reading; and (d) information about the vehicle's reported appearance in the inventory of a covered junk or salvage yard or on any insurance carrier determination of total loss related to that vehicle. There are several reasons, however, why states are likely to continue to experience demand for their full title records. First, states often possess additional information that is not anticipated to be within NMVTIS but that is of interest to many purchasers. This information may include ownership information, lien-holder information, registration information, safety-inspection data, and other details that the states may have but are not required to report to NMVTIS. Second, by providing consumers with the current state of title, NMVTIS actually serves as a nationwide pointer that will result in an increase in requests for state records. And DOJ will direct the operator to ensure that all consumer access portal providers provide consumers with a link to the state's site or to the state's designated vehicle history report access point, enabling consumers to purchase the full state record. Third, states are eligible to become portal providers, thereby capturing an opportunity to increase revenues by providing access to NMVTIS data and to the states' records for a state-determined fee.

Comment: The State of Nevada Department of Motor Vehicles commented that "Nevada will not allow the unauthorized release of the title data we send to NMVTIS. Nevada statutes limit what data can be released and to whom. Will AAMVA have the capability and assume the responsibility of prescreening those who want to access Nevada title data to ensure the disclosure complies with Nevada statutes? Will AAMVA have the capability of collecting and forwarding the fees currently charged for accessing and receiving Nevada's title records without Nevada becoming a third party?"

Response: Neither NMVTIS nor the operator will be releasing any state's vehicle title records. The information that will be shared via NMVTIS is not a state's vehicle title record and is generated from the index maintained by NMVTIS, with limited information on the identified vehicle, as authorized and directed by the Anti-Car Theft Act. This federal statute provides the necessary authorization and direction concerning what information will be shared, how it will be shared, and to whom it can be shared. After providing the NMVTIS information in response to a consumer inquiry, NMVTIS, through the third-party portal providers, will offer consumers the ability to be directed to the state of record's Web site in order to purchase the state's full vehicle title record from the current state of record. Once that "handoff" occurs, any decision by consumers to purchase the state's title record will be governed by applicable state statutes, policies, and processes, and by the state's vehicle-history-report provider's policies and processes. NMVTIS prospective purchaser inquiry was designed in this way in an effort to point consumers to state Web sites for state vehicle title histories from that state should they be desired and available, thus enabling consumers to purchase the full record and generating revenues for the states.

Comment: Several motor vehicle administration agencies and other organizations commented that if personal information is released by NMVTIS to non-government organizations, it may be in conflict with the provisions of the Driver's Privacy Protection Act of 1994 (DPPA). Several of these commenters recommended that this information only be available to law enforcement or government organizations, while others indicated that they would be prohibited from sharing personal information with prospective purchasers.

Response: According to the DPPA, 18 U.S.C. 2721(b)(2), permitted uses of information protected by the DPPA include "[f]or use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers." In addition, 18 U.S.C. 2721(b)(3) provides additional authorizations "[f]or use in the normal course of business by a legitimate business or its agents, employees, [or] contractors." These exceptions include sufficient authorization for states to provide access to personal identifying information, and many commenters agreed. Nonetheless, NMVTIS includes personal information primarily for the benefit of law enforcement agencies, including governmental regulatory and compliance-monitoring agencies that may not have immediate access to such data or to state motor vehicle history files. NMVTIS will not provide personal information in the NMVTIS central file to individual prospective purchasers and may not provide access to any other type of user without securing DOJ approval of such access.

Comment: Several commenters, notably from the consumer-advocacy community, encouraged DOJ to "minimize, to the greatest extent possible[,] any cost to consumers for accessing the data base."

Response: By statute, the fees NMVTIS charges will not be more than the costs of operating the system. Although NMVTIS does not control what portal providers will charge for consumer access to the data, by making that data available to all potential portal providers at the same price, it will be difficult for any provider to charge too high a premium for access to that data.

Comment: One commenter noted that NMVTIS will make it possible for users to understand either what a state-issued brand (*i.e.*, statement of the condition or prior use of a vehicle) means or to which state they need to go to understand the brand's meaning. "Even if in some circumstances NMVTIS can say nothing more than 'branded in jurisdiction X,' at least the NMVTIS user will know which [state] jurisdiction to consult."

Response: Because neither the Anti-Car Theft Act nor NMVTIS creates universal brands, DOJ will direct the NMVTIS operator to ensure that consumer-access portal providers provide a link to brand definitions and any available related explanations, so that consumers can be aware of how brands may be defined. One of NMVTIS's benefits is that it will identify which states have branded a vehicle, informing consumers of which jurisdiction to consult for further information.

Comment: The State of Alaska commented that neither DOJ nor the NMVTIS operator should be permitted to discount transaction fees for volume purchasers. This commenter stated that not discounting the price will maximize revenue collected to offset NMVTIS operational costs, resulting in reduced rates charged to the states.

Response: The volume discounts established by the current operator have been more effective in securing consumer-access portal providers than the non-discounted rates. DOJ will continue to monitor the fee structure to

ensure that it is effective in securing participating providers without increasing reliance on state fees. Fees generated through the portal providers will offset the financial impact on states.

Comment: One commenter noted that the NMVTIS prospective-purchaser inquiry is redundant of similar services that already exist.

Response: A significant number of consumer advocacy, law enforcement, and other organizations submitted comments arguing that NMVTIS's prospective-purchaser inquiry is not redundant with existing services. For example, NMVTIS receives certain state data more frequently than some of the third-party databases, and the data NMVTIS receives includes information that some of the third-party databases do not have.

Comment: The Institute of Scrap Recycling Industries, Inc. (ISRI) argued that the law does not give DOJ the authority to expand NMVTIS data collection to further the interests of a particular group of stakeholders. The ISRI expressed concern that certain stakeholders would promise smooth and easy implementation of the rule if DOJ were to demand collection of additional data for NMVTIS.

Response: No individual or entity has made such claims or promises, and DOJ has not expanded the scope of data to be collected beyond that which was intended or demonstrated to be necessary to accomplish the program's goals as set forth in statute.

5. Privacy

Comment: One commenter noted that "[t]here are provisions in law in regards to privacy of individual identity that do not appear to be satisfactorily addressed in this document." Another commenter noted that it will not send any names to NMVTIS because names do not validate a title and because of concerns over compliance with the DPPA. The Virginia Department of Motor Vehicles commented that NMVTIS was intended as a pointer system, and it is not necessary for that pointer system to include all data fields, particularly private information. AAMVA also recommended against requiring owner name in the NMVTIS central file for privacy and cost reasons.

Response: DOJ takes these concerns very seriously and agrees that privacy interests must be protected. While names may not be needed to validate a title, names are relevant and necessary from a law enforcement perspective, and in certain other situations. To ensure the protection of privacy, however, DOJ has amended the rule to provide that no privacy fields shall be available without DOJ approval to any NMVTIS user, other than state-titling, law enforcement, or other government agency. Additionally, the operator shall ensure that no individual prospective purchaser has access to any personal information. DOJ will require that the operator of NMVTIS have an approved privacy policy in place that describes how the operator will ensure adequate privacy protections, consistent with the DPPA and other relevant statutes.

Comment: NAEC noted that data privacy fields should be available for law enforcement purposes.

Response: DOJ agrees with this comment.

Comment: The Automotive Recyclers Association (ARA) and ISRI both emphasized that confidential business information, such as the number and type of automobiles processed by individual junk and salvage yards in a given period of time, the sources of those vehicles, and related information, should not be released to the public or other data providers.

Response: The operator will not disseminate this type of information to any non-governmental entity or individual, and this information will not be available to prospective purchasers. DOJ will closely monitor this aspect of the system to ensure that access to sensitive or personal data only proceeds with DOJ approval.

Comment: Several commenters requested clarification in the final rule on any liability or immunity for providing data to NMVTIS as the Anti-Car Theft Act requires.

Response: The Anti-Car Theft Act grants certain immunity for those reporting data to the system. The scope of this immunity is described in the Act at 49 U.S.C. 30502(f) and does not require clarification.

Comment: Several commenters recommended maintaining provisions for accessing personal information to qualified DPPA commercial consumers, so that entities that currently work with the states to access this information could continue to do so, which would benefit the states and NMVTIS.

Response: Providing continued access to these entities may facilitate effective and efficient service to the states, but such access may only occur with DOJ approval, and may also require compliance with state application and certification processes and procedures. In most cases, these entities will only use NMVTIS as a pointer to connect with and access the state's data, including personal information, if the state provides for that access.

6. Timely Reporting

Comment: Several commenters, including several national consumer-advocacy organizations, requested that dispositions by insurance, junk, or salvage sales to other entities be reported at the time of the sale and include the identity of the buyer, which would support law enforcement investigations into fraud and theft. The National Salvage Vehicle Reporting Program also commented that salvage pools should be required to report sales within one business day of the sale in order to reduce fraud and theft.

Response: The reporting of dispositional information is critical and needs to be timely, but the DOJ cannot require that the reporting be anything other than monthly in accordance with the requirements of the Anti-Car Theft Act. DOJ has added a requirement for such entities to report the name of the primary buyer of such vehicles.

Comment: ARA and ISRI commented that junk- and salvage-yard operators have an interest in reporting efficiency and recommended that such entities be permitted to report the ultimate intended disposition of the vehicle at the time of initial reporting. ASPA also reported that requiring an entity to continuously report that a vehicle is in its inventory is inefficient and pointless.

Response: In cases where the ultimate disposition is known with certainty, junk- and salvage-yard operators now will be permitted to report disposition in their initial report. The reporting entity is responsible for ensuring that the vehicle is disposed of in the manner reported or for filing an updated report to account for a different disposition. In response to concerns of reporting inefficiency, DOJ notes that entities report once when the vehicle enters the inventory and are only required to report again on that vehicle if they need to update the record. Should the disposition be known at the time of initial reporting (*e.g.*, "sale"), the entity would only be reporting once on each vehicle.

Comment: One state motor vehicle administration and other commenters asked that insurance carriers report more frequently. That state motor vehicle administration noted that "if a vehicle is damaged on the 5th day of the month and the insurance carrier has already sent [its] file for the month, the state will not know of the damage until the following month's update." Several commenters representing nearly every stakeholder group noted that it was important for the reporting into NMVTIS to be timely, ideally in "real time." Experian Automotive commented

that a monthly reporting requirement would be slower than the current industry practice for insurers.

Response: The 16-year-old language of the Anti-Car Theft Act is no longer consistent with business practices in an electronic age. Nonetheless, the language of the Anti-Car Theft Act provides no flexibility with regard to this reporting requirement. DOJ does strongly encourage, however, that all reporters provide data to the system as quickly as possible, preferably within 24 hours of acquisition, determination, or other reporting trigger. DOJ expects to highlight such reporting efficiencies and stakeholder participation on its official NMVTIS site, *www.NMVTIS.gov.*

7. Third-Party Reporting and Reporting Exceptions

Comment: Two commenters argued that an exception allowing junk- and salvage-yard reporting to occur through a state titling agency was flawed. One of these commenters suggested that all junk and salvage yards should be required to report directly into NMVTIS. The NADA also commented that allowing this exemption would only serve to create a loophole, particularly in cases of conflicting definitions among the states and between states and the Anti-Car Theft Act. Instead, NADA suggested allowing an exemption in cases where an insurance carrier reports to a third party that has no definitional restrictions, such as the NICB, that can transmit the information to NMVTIS without concern for conflicting definitions.

Response: While DOJ will take steps to ensure data integrity and quality, it would be unreasonable to prevent third-party reporting. Ultimately, insurance carriers and junk and salvage yards are responsible for their compliance with the Act, including the reporting of required information. These reporters must ensure that they are compliant with the reporting requirements for every vehicle handled. If such reporters cannot be certain of a third party's ability to provide the required information into NMVTIS, the reporter must report through a different third-party provider. Additionally, certain states require this reporting, and therefore, a duplicate reporting structure would continue to exist even if DOJ did not allow junk or salvage yards to report through states. For purposes of clarification, however, the Anti-Car Theft Act does not provide a specific exemption for insurance carriers to report through states, as it does for junk- and salvage-yard operators. Instead, DOJ has provided an exemption for insurance carriers to report to NMVTIS through an identified third party that is approved by the system operator. DOJ and the operator have attempted to identify potential third parties that can report to NMVTIS who already receive this type of information from insurance carriers and junk- and salvage-yard operators.

Comment: ARA commented that pursuant to the Act, "junk and salvage yard operators are not required to report on a vehicle when they are issued a verification stating that the automobile or parts from the automobile are not reported as stolen." ARA argued against the exemption's implement on the grounds that the exemption is "completely unworkable" without time limits on the verification and other controls, and because the exemption creates a "significant loophole that could foster additional illegal activity."

Response: Pursuant to the Anti-Car Theft Act, a junk or salvage yard that is issued a verification under 49 U.S.C. 33110 stating that an automobile or parts from that automobile are not reported as stolen is not required to report to NMVTIS. Therefore, the Department has retained this exemption from NMVTIS reporting in these regulations.

Comment: The ARA commented that it appreciates attempts to exempt reporting by junk and salvage yards that already report to a third-party organization that is sharing its information with NMVTIS. The ARA further commented, however, that yards not currently participating with a cooperating third party will need a separate reporting mechanism that is labor efficient and economical in order to report NMVTIS information.

Response: DOJ agrees. The operator will designate at least three third-party organizations that have expressed a willingness to share with NMVTIS information that they receive from insurers and junk and salvage yards. In addition, DOJ will endeavor to identify a reporting mechanism that is "sector" and "stakeholder" neutral. Third-party providers need to be identified who will provide the information to the stakeholders or allow such third-party providers to charge a nominal fee for collecting and reporting the information on behalf of junk and salvage yards. DOJ hopes to identify providers that do not charge fees, but this is difficult with sector-or stakeholder-neutral providers.

Comment: Several state motor vehicle administrations commented on the third-party exemptions provided in the proposed rule. One state motor vehicle administration commented that it currently has some but not all of the information required for junk and salvage reporting. The state suggested that it does not have the resources available to accept and report all of the information required from junk and salvage yards. Another state motor vehicle administration made a similar point and stated that the requirements effectively establish an inefficient dual-reporting requirement. Another suggested that the phrase "or cause to be provided on its behalf" be clarified so that it is clear that states do not have a responsibility to report insurance, junk, or salvage information to NMVTIS on behalf of these organizations. The State of New York commented that it receives reports from junk and salvage yards in paper, that it does not process all of the reports received, and that the processing time may be beyond the reporting timeframes required of junk and salvage yards. Another asked that entities reporting to states as their chosen method of compliance be required to certify that they are meeting their reporting requirements by reporting to a specific state or states.

Response: A state's willingness to make such alterations to accommodate third-party reporting is strictly voluntary. Junk and salvage yards in states that cannot accommodate third-party reporting as required by the Anti-Car Theft Act and the rules will have other options for compliance reporting. While DOJ is committed to avoiding inefficient processes, DOJ is not able to eliminate data fields for the sake of efficiency alone and is not willing to impose additional requirements on the states to expand data collection and reporting on behalf of junk- and salvage-yard operators.

Comment: ASPA commented that while the proposed rule allows states to share junk and salvage information with NMVTIS, the inclusion of this data in state title information systems would be based on the state's definition of "salvage" and "junk" vehicles. ASPA questioned how the state would report data that it may not have because that state does not require submission of that data.

Response: The rule requires that junk- and salvage-yard reporting by or through states must include all of the data that junk- and salvage-yard operators are required to report. State definitions of "salvage" or "junk" do not alter a junk-or salvage-yard operator's responsibility to report vehicles in its inventory. If junk- and salvage-yard operators are not reporting all of the required data to the state, or the state is not able to report all of the data to NMVTIS as required of the yard, the junk or salvage yard must report independently of the state.

Comment: ASPA contended that the provisions of the proposed rule with regard to the direct-reporting exemptions for junk or salvage yards that already report inventories to the states appear to conflict with the wording of the statute that ASPA described as "only requir[ing] the reporting of acquisition" of such vehicles.

Response: The Act specifically spells out what information is to be reported by junk and salvage yards and requires junk and salvage yards to report more than the mere acquisition of the vehicle.

8. Total Loss Definition/Fair Salvage Value

Comment: One commenter expressed concern at the reference to "fair salvage value." Any vehicle with a high salvage value will be totaled with a lower damage appraisal, and any vehicle with a low salvage value will be totaled with a high damage appraisal. The commenter noted that without uniformity as to the assignment of the salvage declaration, consumer protection cannot be guaranteed. The commenter argued for a more uniform definition of total loss that is not driven by the salvage value, noting that "[t]his proposed market assessment of the vehicle value can either make or break the rule." Others commented positively on the use of a "value-based" definition.

Response: DOJ used this reference because it was required by the Anti-Car Theft Act. DOJ understands that there are different ways or bases for determining total loss, and that different stakeholders may argue for different standards based on their interests.

Comment: Nationwide Mutual Insurance Company commented that Congress specifically granted the DOJ authority to collect information from insurers on vehicles that such insurers have "obtained possession of" and determined to be "junk automobiles or salvage automobiles." Nationwide further commented that "[i]t is not logical that declaring a vehicle a total loss should trigger reporting of the total loss automobiles as salvage and/or junk. The determination of [a] vehicle as a total loss can be based upon other economic considerations not reflective solely on the actual cost of reporting the vehicle. Therefore, we assert that the inclusion of total loss information in the proposed rule is inconsistent with our understanding of the intent of the statute."

Response: DOJ disagrees. DOJ is mandated to require reporting of "salvage" vehicles, which DOJ has determined to include those vehicles determined to be a "total loss." DOJ recognizes that, in certain circumstances, the decision to declare a vehicle a "total loss" may be based on other determinations, such as the fact that a vehicle has been stolen. To address this issue, insurance carriers are strongly encouraged to include with "total loss" reporting the primary reason for the determination. Doing so not only would provide a better position for insurance carriers, but it also would allow the consumer to be aware of the specific circumstances for the determination. DOJ does not agree that "obtained" should be defined in such a limited way to include only ownership.

Comment: Nationwide Mutual Insurance Company commented that DOJ should clarify the definitions of junk and salvage by requiring insurers to report on those automobiles titled as "junk" or "salvage" under the laws of the state where the insurer obtains title to the motor vehicle.

Response: DOJ disagrees and notes that not even half of the states require such titles or brands (see Texas's comment below). Such a definition, therefore, would create a significant loophole that would be counter to the consumer-protection intentions of the Anti-Car Theft Act.

Comment: The State of Texas Department of Transportation commented that " 'Total loss' is not a term used in Texas salvage motor vehicle law and has no bearing on whether a vehicle is determined to be a salvage vehicle. A vehicle can be considered a 'total loss' by an insurance company, but not be branded as salvage because the vehicle does not meet the definition of salvage in the title state. * * * Use of this term could be problematic if NMVTIS shows a vehicle as a total loss and the Texas records indicate nothing."

Response: The requirement for insurance carriers to report "total loss" information is put in place for exactly this reason—vehicles that are salvage may not be branded as salvage by many states. To resolve this discrepancy, NMVTIS blends reported information from multiple sources so that prospective purchasers are aware of the vehicle's true history and can avoid being defrauded and placed in an unsafe vehicle. The presence of "total loss" information in the absence of a state salvage brand will need to be explained by portal providers, so that prospective purchasers (and others) are aware of what the apparent discrepancy means, and how it occurs. DOJ does not expect states to take any action based on this information that is not authorized in state law and does not believe that it was the intention of the Anti-Car Theft Act to require them to do so.

Comment: Several insurance-related associations commented that "[t]he statute requires that insurers report junk and salvage automobiles, yet the regulation would require reporting of 'total losses,' a term that would include some automobiles that are not junk or salvage. It is axiomatic that a regulation cannot expand the limits of a statute, and especially if in doing so, the regulation imposes added burdens and costs. Not only is such expansion inconsistent with the underlying statute but there is also nothing in the Court's order in *Public Citizen et al.* v. *Michael Mukasey* that mandates or authorizes any such expansion of the statutory definition of automobiles to be reported."

These commenters further noted "that the statutory definitions of 'junk' and 'salvage' in 49 U.S.C. 30501 are not used by most state or insurance carriers. To enable consistency with the existing state laws and data systems and thereby to expeditiously implement NMVTIS, we request that the last sentence of Section 25.55(a) be amended to read in the final regulation: 'An insurance carrier shall report on any automobile that it has determined to be a junk or salvage automobile under the law of the applicable jurisdiction.' This approach makes sense because since the Congress enacted this statute in 1992, most states have defined the meaning of 'junk' or 'salvage.' These state laws represent the best understanding of these terms today. Requiring their use by regulation would implement the spirit of the law in a practical way. Data reported by insurers in this manner will also be consistent with data reported by the states."

Opposing this view, consumer-advocate litigators commented that "[t]he Insurers comment that 'any expansion via regulation of the categories of automobiles for which reporting is mandated * * * would be unauthorized. * * *' However, they do not suggest that it is outside the scope of the Department's authority to provide construction for such terms in the statutes. It is obviously the duty and the province of the Department to use its broad discretion in construing these terms." The consumer-advocate litigators further commented that the rule's enabling of electronic reporting through third parties that may already have access to the data addresses the need for reporting in the least-burdensome and least-costly fashion. These commenters further argued that "[t]he Insurers take issue with the Department's proposal to provide that a vehicle treated as a total loss is deemed

a salvage vehicle. However, it is squarely with the Department's province to make the determination that the fact that a vehicle has been treated as a total loss indeed is evidence that it is a 'salvage' vehicle, and that both legally and practically the vehicle is a 'salvage' vehicle. Similarly, it is necessary, in carrying out the clear protective purposes of the statutes, that this construction be given to these terms. * * * The Insurers next propose amending the last line of § 25.55(a) to state 'An insurance carrier shall report on any automobile that it has determined to be a junk or salvage automobile under the law of the applicable jurisdiction.' Such a change would incorporate the limitation they seek of disregarding total loss vehicles. It also appears to be an attempt to require that state definitions of 'junk' or 'salvage' be *substituted* for the definitions in the statutes, rather than *additional to* and supplementary of them. That would be entirely improper, of course, defeating the central purpose of providing a national definition of 'salvage' that sets a *floor* for reporting, not a *ceiling*." These commenters further noted the "extraordinary patchwork of state laws regarding title 'brands' and even the terms used for labeling 'salvage' or 'total loss' vehicles. The uniform minimal reporting standard provided by the NMVTIS statutes is of critical importance."

Response: DOJ agrees that it possesses authority and responsibility to provide the definition of these terms. Additionally, in order to meet the requirements of the Act with regard to providing prospective purchasers with the information needed to make an informed purchase decision, and in order to inform state title administrations and law enforcement of that vehicle's history, full disclosure of total-loss information is needed regardless of a state's action or inaction on that vehicle.

Comment: Several insurance-related organizations and associations commented that "[s]ection 25.55(a) states that the insurer must report automobiles that it has obtained 'possession of *and* has decided are junk automobiles or salvage automobiles.' The term possession is not clear. To be workable, 'possession' should be construed as 'the titled owner' as represented on the certificate of title, because insurers would only be able to report on those automobiles to which they are titled owners. Otherwise, they do not record 'possession' of automobiles and could not report them."

The insurance-related organizations further commented that "[r]eplacing 'possession' in the regulation with 'titled owner' would also be workable and consistent with the remainder of the sentence which requires that insurers must report automobiles which they possess *and* have decided they are junk or salvage automobiles. Both the 'possession' and 'decision' are manifested by re-titling, which is reportable by insurers in an efficient manner. Therefore, the language would read, 'a report that contains an inventory of all automobiles of the current model year or any of the four prior model years, that the carrier during the past month is the titled owner and has decided are junk automobiles or salvage automobiles.'"

Opposing this view, several consumer-advocate litigators commented that while the term is not clear and needs construction in furtherance of the protective purposes of the statute, they disagreed with the insurers' proposed substitution of "is the titled owner of" for "has obtained possession of" in section 25.55(a). These commenters further noted that the effect of the insurers' comments would be to "eliminate any reporting requirement of salvage vehicles by insurance carriers whatsoever for all but those vehicles that they do in fact actually title in their name. There are innumerable reasons why, and methods by which, they may legally in many instances not obtain titles to salvage vehicles in their names under the existing hole-laden patchwork of state laws. In addition, if this change were made, and if they blatantly violated a state law by failing to get a salvage title issued in their names, they would appear not to be in violation of the federal law by not reporting to NMVTIS, because they would not have been the 'titled owner.' The opposite construction of 'possession' is crucial. In fact, the very example they provide of a salvage vehicle that comes into their possession but that they do not title shows how NMVTIS *should* work to be effective: They should report such vehicles. If there are multiple reports on the same vehicle, there is no harm done; but if such salvage vehicles are not reported, there is every harm done." Other consumer advocates commented that "possession" should be defined to include both actual and constructive possession and should include exercising control over an automobile directly or indirectly.

Response: Limiting insurance reporting to those vehicles owned by insurance companies would create a large loophole through which total-loss or salvage vehicles would remain under "clean title." Such a loophole was clearly not intended to exist under NMVTIS, and in order to provide consumer protection against fraud, insurance carriers must be required to report on all vehicles that they determine to be a total loss.

Comment: Several insurance-related organizations and associations commented that "[s]ection 25.55(b) sets forth the mandatory data elements. We believe that applying the following interpretations will allow a reporting system to be put in place that complies with all aspects of the statute, including the 'least burdensome and costly' directive and that can reasonably meet the Court's deadline in *Public Citizen et al.* v. *Mukasey*.

"a. VIN. This can be reported.

"b. The date on which the automobile was obtained or designated as a junk or salvage automobile. Again, interpreting this requirement to mean the date on which the automobile was re-titled 'junk' or 'salvage' comports with legal and practical considerations and would be most cost effective.

"c. The name of the individual or entity from whom the automobile was obtained or who possessed it when the automobile was designated as a junk or salvage automobile. Again, as set forth above, the only cost effective way for insurers to meet this obligation is to construe it to mean the name of the insurer when the automobile was re-titled. Providing the name of the individual or entity from whom the automobile was obtained does not provide useful information to law enforcement or consumers.

"d. The name of the owner of the automobile at the time of the filing of the report. In most instances, this will be the buyer of the salvage or junk automobile, or the insurance company when the insurance company retains ownership, for instance to crush a junk vehicle."

Opposing this view, several consumer-advocate litigators commented that the insurers suggest 'that the regulations should provide that they do *not* have to report the name of the person from whom a salvage vehicle was obtained. This is directly contrary to 49 U.S.C. 30504(b)(3). The ownership trail of all of these vehicles is critical for law enforcement and consumer investigative purposes, and Congress noted that by writing it into law.'"

The consumer-advocate litigators further commented that "[t]he Insurers also suggest that the 'owner of the automobile at the time of the filing of the report' would normally be the buyer of the salvage vehicle, and would only be the insurance carrier if it retained

ownership to crush a vehicle. I submit that it is important that both the buyer and the insurance carrier be identified under the regulations."

Response: DOJ agrees with the comments of the consumer-advocacy organizations and has retained the total-loss reporting requirements that were included in the proposed rule.

Comment: Several commenters, including the NADA, ARA, Experian Automotive, the National Salvage Vehicle Reporting Program, insurance services organizations, consumer advocate attorneys, and others, expressed strong support for DOJ's "modernization and clarification of language found in the Anti-Car Theft Act related to salvage and junk vehicles, to include within this the requirement to report on all total loss vehicles, including those recognized by the state and those not recognized by the state but determined a total loss by an insurance carrier." Several of these commenters also pointed out that many total-loss vehicles do not receive salvage brands due to varied and unreliable state definitions and criteria. Relying on state definitions of "salvage," therefore, would be highly inconsistent, would perpetuate fraud and theft, and would fail to accomplish the objective. Comments submitted by Amica Mutual Insurance Co. underscore the need to collect "total loss" data. Such data provides additional consumer protection, potentially decreases fraudulent activity, and reduces the number of unsafe vehicles in the marketplace.

Response: DOJ agrees with these comments.

Comment: The NADA, ARA, National Salvage Vehicle Reporting Program, several national consumer-advocacy organizations, and other organizations commented that the proposed rules fail to require insurance carriers to report all vehicles that they declare a total loss, including those retained by insureds. Often, individuals who retain possession of their "total loss" vehicle can avoid disclosure, or they may not apply for salvage titles. The NADA commented that the final rule should be revised to eliminate the concept of possession and instead focus on those insured motor vehicles that the insurance company declares, or the applicable jurisdiction defines, to be a "total loss."

Response: DOJ disagrees that the proposed rule puts such a limitation in place. DOJ requires that insurance carriers who declare a vehicle a total loss and allow the insured to retain the vehicle must still be required to report such declarations.

Comment: The NADA commented that "total loss" should be defined broadly to capture all total-loss vehicles. "The final rule should not define 'total loss' in Section 25.52, but rather should define 'total loss motor vehicle' as 'those motor vehicles determined to be a total loss under the laws of the applicable jurisdictions and those designated as a total loss by each insurance company under the terms of its policies.'"

Response: DOJ appreciates this clarification and agrees that "total loss" includes all total-loss vehicles.

Comment: ASPA commented that "[w]hen an automobile is classified as a total loss by an insurance company, it does not necessarily mean that the automobile is a 'salvage automobile.' On page 54546 of the **Federal Register**, in Section 2 'Insurance Carriers,' the explanation of the Proposed Rule expands the definition of 'salvage automobiles' when it states: 'For purposes of clarification, the Department of Justice has determined that this definition [salvage automobiles] includes all automobiles found to be a total loss under the laws of the applicable jurisdiction or designated as a total loss by the insurance carrier under the terms of its policies.'"

"In common usage, 'salvage' is not synonymous with 'total loss.' There are many circumstances in which an insurance company may declare a vehicle a 'total loss,' but the vehicle does not meet the 'salvage' definition of the relevant state. If a stolen vehicle is not recovered quickly, the insured may be paid for the missing vehicle. If the vehicle is later recovered in a largely undamaged condition, the vehicle, although a 'total loss' due to its late recovery, may not meet the relevant 'salvage' definition and, often, is sold by the insurer with a 'clear' (*i.e.*, not branded) title. The definition in the Proposed Rule lumps this undamaged theft recovery into the 'salvage' definition, thus devaluing the vehicle and, again, creating confusion about the applicability of the laws of the relevant state."

ASPA further commented that "[m]ore generally, pursuant to 49 U.S.C. 30501(7), 'salvage automobile' is clearly defined as 'an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage.' This definition is both clear and unambiguous on its face and, therefore, requires no 'clarification.'"

"In the Proposed Rule, the DOJ is attempting to expand the definition of salvage automobile '[f]or purposes of clarification' to include automobiles determined to be a total loss under the law of the applicable jurisdiction or designated as a total loss by the insurer under the terms of its policies. We contend that this significant expansion of the definition is not necessary, and that the proposed definition actually contradicts accepted custom and usage within the insurance and salvage industries.

"The DOJ's proposed amendment to the definition of salvage automobile would subject many clear title automobiles to the reporting requirements of NMVTIS. This is problematic, and is clearly not what Congress envisioned when it created the definition for salvage automobile. In *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Court implemented a two-part analysis to determine the appropriate standard of review towards a government agency that attempts to amend statutory language. Here, since the current definition of salvage automobile is not ambiguous, the proposed 'clarification' by the DOJ is not based on a permissible construction of the statute and should not be allowed."

Response: DOJ disagrees. Total-loss vehicles are just that—a total loss—at the time the determination is made. Total-loss vehicles fall within the definition of "salvage" and must be reported. In response to other comments, DOJ notes that insurance carriers are strongly encouraged by the final rule to report to NMVTIS the primary reason for the determination of total loss, addressing this commenter's concerns specifically and providing much-improved disclosure for consumers.

Comment: One submission argues for "the necessity of all states to adhere to the Uniform Certificate of Title Act." "If the state has a different definition of a Salvage vehicle the branding now becomes an arbitrary issue."

Response: The Uniform Certificate of Title Act and the benefits of uniform titling procedures aside, the Anti-Car Theft Act does not require States to adopt standard brand labels or definitions. NMVTIS has a process in place to record each state's unique brand label and to relate it to one of the 78 brand types used in the NMVTIS database. The state's brand labels and definitions remain unchanged in NMVTIS.

9. Chain of Custody/Names of Those Who Provided/Those Who Purchased

Comment: One commenter noted that "[t]he reporting requirement of the junk and salvage yards may need some change. There are many different routes for a vehicle to come into a yard, very often it is not by the 'owner of record' or the titled owner. A more definitive approach to recording the information of the entity placing the vehicle into the salvage yard should be taken, more identifying information regarding the entity placing the vehicle into the salvage yard should be captured. * * * How does the system handle this in a manner that will notify the title State of a cancel record and provide a bona-fide chain of events leading to the yard?"

Response: The reporting requirement for junk and salvage yards applies to every vehicle regardless of what "route" it took into the yard or who brought in the vehicle. Further, it is the responsibility of the junk or salvage yard to provide, among other data, the name of the individual or entity from whom the automobile was obtained. The NMVITIS reporting requirements do not affect existing state-level requirements for junk- and salvage-yard operators to provide states with a notice of title or record cancellation and any data fields required in such notifications. NMVTIS will not issue such notifications to states, but states will be able to view the reported salvage- or junk-yard status of any vehicle at any time. With the cumulative vehicle histories constructed in NMVTIS, states and law enforcement can identify the "chain of events" with reliability once there is full system participation.

Comment: One commenter noted that "stolen" designations or notifications sometimes are not made when a vehicle is first reported stolen. In these instances, the commenter suggested that law enforcement may receive a false negative response on a stolen check due to this delay. The commenter suggested that the system provide a notification to law enforcement officers filing a report on a stolen vehicle that a prior stop and "stolen" check was made on the vehicle, providing notification and an investigative lead to the reporting officer of where the vehicle was stopped and who made the stolen inquiry. Another commenter noted that stolen-vehicle information is not required to be in NMVTIS, and nothing in the regulations requires a state to check NCIC before issuing a title.

Response: NMVTIS is not intended or expected to replace the information or services available to law enforcement through NCIC. NCIC is and will remain the primary system used and relied upon by local law enforcement to check the "stolen" status of a vehicle. NMVTIS's capturing of "stolen" status and history information is to inform state titling agencies and others who may not have access to NCIC that a vehicle was at one time reported as "stolen." Stolen vehicle information is included in NMVTIS via NICB so that states that do not have access to NCIC can be apprised of a vehicle's questionable status before issuing a new title.

Comment: The National Auto Auction Association commented that "NMVTIS should include lien holder names and license plate numbers" for various reasons.

Response: While DOJ will authorize the operator to seek additional information for NMVTIS as may be necessary to accomplish program goals, DOJ will not require these data fields to be included in NMVTIS.

Comment: The National Auto Auction Association commented that DOJ should clarify in the final rule whether data maintained in the NMVTIS central file is to be considered the official legal record of a jurisdiction's data.

Response: The official record for any vehicle will be determined by the state. However, NMVTIS is expected to be a reliable source of title information that users can rely on to make decisions.

10. Brand Definitions

Comment: One commenter asked, "[h]ow is the branding procedure determined? Is there a preexisting national standard for what brands exist and how a vehicle is classified under such brands or is the determination made on a state-by-state basis? If the standard is national (which would make sense given the national objective), maybe a list of definitions of the applicable brands should be placed in the rule's definition section." Another commenter noted that the development of standardized definitions and brands for all states would be extremely beneficial in ensuring that the intent of NMVTIS is fully recognized. Several state motor vehicle administrations pointed out that the definitions of "salvage" and "total loss" in the proposed rule are different from state definitions. Another commenter noted that to add information based on the definitions in the proposed rule will conflict with State definitions of brands, compromise the integrity of the NMVTIS database, and reduce the value of the information in the database.

Response: NMVTIS does not affect state branding procedures, and the Anti-Car Theft Act did not require a national standard for branding. Although differing definitions may create complexity in deciphering a vehicle's brand history, NMVTIS will accept any official state brand and will share that brand with other states, thereby relating that brand to a brand type or "NMVTIS Brand." Users of NMVTIS will notice state brands as well as a separate category for insurance, junk, and salvage information, if any is available. The differences in these reporting streams also will be defined so that users will know if a vehicle has been or is a junk or salvage automobile by virtue of a state brand indicating such, or by an insurer's determination that the vehicle was a total loss. Consumers and others also will be advised if a vehicle has been in the possession of a junk or salvage yard. Information is reported by multiple data sources and is reported in a segregated fashion with links for explanations.

Comment: ASPA provided the following example as evidence of the problems that would be created by the proposed rule: "Michigan's salvage law covers current model year passenger vehicles and those of the preceding five model years. Therefore, a 2002 passenger motor vehicle does not become a 'salvage vehicle' or a 'scrap vehicle' in Michigan, regardless of the fact that the vehicle has been damaged and 'totaled' by an insurance carrier. In this situation, Michigan, when reporting to NMVTIS, presumably would not include the car in the state's branded title submissions. An insurance carrier reporting to NMVTIS presumably would not include the car because it is outside of the age limitations applicable to insurance carriers. However, a salvage yard or junk yard, using the definitions in the Proposed Rule, presumably would report the vehicle as a 'salvage automobile' or a 'junk automobile,' when reporting to NMVTIS. So, for a state or other inquirer of NMVTIS, NMVTIS will show that the vehicle has a salvage or junk history. This occurs regardless of the fact that the relevant state did not deem the vehicle salvage or scrap."

Response: This comment offers an excellent example of how NMVTIS reporting will fill the holes that currently allow salvage or junk vehicles to remain unbranded, creating opportunities for theft and consumer fraud.

11. Brand Washing

Comment: One commenter asked "if brand information is already collected by states, how exactly would brand 'washing' occur? If the retitling state

checks the title of the previous state wouldn't that information be included with the title?" Another commenter recommended that NMVTIS retain a prior state's brand history even when a state does not accept a previous state's brand.

Response: Brand histories or designations are not always carried forward by the states. Retitling states do not necessarily check with the previous states before issuing a new title. In some states, the paper title from the previous state of record is accepted as the basis for the new title to be issued. Because of the reliance in some states on paper titles as evidence of prior titling history, and because not all states check with the prior states of record, brand washing occurs regularly. NMVTIS will create a nationwide brand history for every vehicle, requiring that all states check with NMVTIS rather than simply relying on paper documentation. Brand washing will be significantly reduced, if not eliminated. A state's decision not to acknowledge a prior state's branding will not affect the NMVTIS brand history.

12. Self Insurers Included in the Definition

Comment: Several commenters expressed disappointment that self insurers were left out of the rule. One commenter noted that the definitions should encompass a "self insurer," be it a municipality, lease company, or large corporation, and that this is a current "hole" in the system.

Response: DOJ agrees that the Anti-Car Theft Act's definition of "insurance carrier" includes entities that underwrite their own insurance, such as certain rental car companies. The definition, however, excludes any organization that does not underwrite its own insurance.

13. Salvage Automobile Defined

Comment: One commentator noted that the definition of a "salvage automobile" should also include any automobile that an insurance company has taken ownership of in settlement of a claim and any vehicle that a state has issued a title to an insurer for. Another commenter noted that "[t]he responsibilities of the insurance carriers should include, in the area of the reporting, if the insurance company obtained a title from the state in their name, the state in which they obtained it and the type of title." Several consumer-advocacy organizations commented that every automobile obtained by a salvage yard or junk yard that the salvage yard or junk yard knows, or has reason to know, has come from an insurance carrier, or from any person or entity in connection with the resolution of insurance claims, should be deemed as a salvage automobile or junk automobile and must be reported as such. These commenters suggested that the rules should provide for a presumption that any automobile obtained or sold by a salvage or junk yard, and that has known unrepaired wreck or flood damage, is either a salvage automobile or junk automobile, and that such a vehicle must be reported as such. Similarly, the rules should include a presumption that any automobile obtained or sold by a salvage yard or junk yard, without knowledge as to the automobile's physical condition, is either a salvage automobile or junk automobile, and must be reported as such. This would prevent salvage yards or junk yards from maintaining an "empty head" to avoid compliance. The commenters suggested that "these presumptions (as to automobiles not obtained from insurers) can be overcome if and only if the salvage or junk yard has qualified appraisal personnel employees or others acting solely on its behalf, entirely independent of any other persons or entities, perform a good-faith physical and value appraisal of the automobile and determine that the automobile does not meet the definition of 'salvage' or 'junk.'"

Response: Based on the proposed rule, a "salvage auto" is defined as "an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage." 49 U.S.C. 30501(7).

For purposes of clarification, the Department of Justice has determined that this definition *includes* all automobiles found to be a total loss under the laws of the applicable jurisdiction or designated as a total loss by the insurance carrier under the terms of its policies. By definition, this would mean that every automobile obtained by a salvage yard or junk yard that the salvage yard or junk yard knows, or has reason to know, has come from an insurance carrier, or from any person or entity in connection with the resolution of insurance claims, should be deemed as a salvage automobile or junk automobile and must be reported as such. DOJ does not agree that any automobile with unknown damage or any automobile obtained without knowledge of its physical condition should be considered a junk or salvage automobile. DOJ agrees that a junk or salvage yard may be excepted from reporting any vehicle that a qualified independent appraiser determines does not meet the definition of a salvage or junk automobile. This determination by the appraiser must be in writing and made after performing a good-faith physical and value appraisal. Although not required, the Department recommends that junk and salvage yards retain the reports and written appraisals for a period of ten years from the date of the report. Additionally, a salvage auction or salvage pool that does not handle any vehicles from or on behalf of insurance carriers is categorically exempted from this rule until such time as they may handle a vehicle from an insurance carrier.

Comment: One commenter noted that the lack of common terms will undermine the clarity and usefulness of the information provided: "How will NMVTIS reconcile the differences in law as to what constitutes a 'total loss?' How will this undermine or effect achievement of NMVTIS'[s] goals? How will NMVTIS reconcile the differences amongst insurance company policies as to what constitutes a 'total loss?' How will this undermine or effect achievement of NMVTIS'[s] goals?" The West Virginia Department of Transportation also commented that the rule should establish a standard for establishing total loss as opposed to relying on the rules of insurance carriers and states.

Response: NMVTIS will not attempt to "reconcile" differences in definitions. Rather, NMVTIS recognizes that different definitions and criteria are in place within different insurance companies and states. NMVTIS accepts these "native" determinations and notifies users that "X company" or "X state" has made a determination that the vehicle is a "total loss," "salvage vehicle," etc. NMVTIS will provide all users with full disclosure and explanation on the differences in definitions and determinations and how this may or may not affect a vehicle. NMVTIS's mandate is to notify users of the determinations made in a vehicle's history, not to make such determinations uniform or conforming.

14. Junk Yard Definition

Comment: ISRI commented that it objects to the presumption in the rule that vehicle recyclers operate only one of two things, a "junk yard" or a "salvage yard," and suggests that DOJ clarify the full scope of entities to be included under the general heading of "junk or salvage yards."

Response: While DOJ relied upon the language in the Anti-Car Theft Act to describe the category of required entities, DOJ acknowledges that the terms do not adequately reflect the professional and varied nature of the vehicle-recycling industry. In general terms, any entity that owns, controls, handles, or acquires salvage vehicles is included in the reporting requirements of this rule, which is consistent with current business practices. Similarly, scrap-vehicle shredders, scrap-metal processors, "pull- or pick-apart yards," salvage pools, salvage auctions, and other types of auctions handling salvage vehicles (including vehicles declared a "total loss") are included in the definition of "junk or salvage yards."

Comment: ISRI also requested that new definitions of "scrap vehicle," "scrap-vehicle shredder," and "scrap-metal processor" be added to the rule to exclude these entities from the reporting requirement.

Response: DOJ has clarified the rule, but rather than eliminate the reporting requirements for these entities, DOJ revised the regulations to establish an exemption that would cover prohibitive reporting circumstances that these entities face.

Comment: One commenter argued that the definition of "junk yard" is too broad and may unnecessarily include used car dealers and others who may rebuild vehicles with the intention of reselling them. The commenter suggested that having such entities report these vehicles into NMVTIS would potentially label these vehicles as "junk or salvage" and preclude the vehicles from being retitled in some states.

Response: One of the main purposes of NMVTIS is to provide prospective purchasers and others with reliable histories of a vehicle's previous and current condition as it relates to salvage and loss. Vehicles reported as having been in the possession of a "junk" or "salvage yard" may not be viewed in the same way that vehicles with a "junk" or "salvage" brand may be viewed in state titling processes. Each state will continue to make its own determinations regarding vehicle titling based on state law. Although any individual or business engaged in the business of acquiring "junk" or "salvage" automobiles (which includes motor vehicles determined by an insurance carrier to be a "total loss") generally must by law report such vehicles to NMVTIS, there are two exceptions to this requirement. First, an automobile that is determined to not meet the definition of salvage or junk after a good-faith physical and value appraisal conducted by a qualified independent appraiser is not required to be reported. Second, DOJ has added a clarification that individuals and entities that handle less than five salvage or total-loss vehicles per year need not report under the salvage-yard requirements, which is consistent with existing standards that used car dealers are familiar with.

Comment: Many commenters, including Iowa Attorney General Thomas J. Miller, noted that the inclusion of salvage pools in the reporting requirements for junk and salvage yards "will help close a significant loophole" and will "further deter fraudulent used car sales, vehicle theft," and other crimes.

Response: Requiring salvage pools or auto auctions to report on salvage or insurance claim vehicles will increase the effectiveness of the program, ensuring that consumers and others are not defrauded by sellers who conceal salvage or "total loss" histories.

Comment: Several commenters, including the ISRI, the Virginia Department of Motor Vehicle Administrators, and other industry associations and representatives, commented that the proposed rules do not clearly indicate that scrap-metal processors, shredders, pull-apart yards, and others who often receive and demolish many end-of-life vehicles are included in the reporting requirements.

Response: The regulations have been revised to clarify that the definition of junk and salvage yards includes not only salvage pools, but also scrap-metal processors, shredders, pull-apart yards, and others who handle or control total-loss, junk, or salvage automobiles, otherwise described as end-of-life vehicles.

Comment: ASPA commented that DOJ should recognize that VIN inspections conducted in most states would make a salvage automobile an unattractive choice for criminals, and that cloning a salvage vehicle would result in the cloned vehicle having a "salvage" branded title.

Response: DOJ recognizes that some states require vehicle inspections upon retitling, and some states place a "brand" on salvage vehicles. In these states, a salvage vehicle may not make an attractive choice for VIN cloning. However, not every state has these requirements, and VIN inspections typically do not inspect or verify hidden VINs. As a result, cloned vehicles go undetected. Even electronic diagnostic modules that would otherwise display the VIN can be defeated, allowing the clone to be virtually undetectable. Most often, the criminal activity that DOJ referred to in the proposed rule is related to total-loss or "end-of-life" vehicles that are purchased because they have a "clean title" that is then fraudulently connected with a stolen vehicle, which "clones" the stolen vehicle to the non-stolen, "clean title" vehicle. Because the non-stolen vehicle was destroyed and sold to an individual, it no longer appears on the road and no notification of its destruction may be made to the current state of title.

Comment: Copart, Inc. argued that because salvage pools do not own the vehicles sold at salvage pools or auto auctions, and therefore by definition do not "resell" them, they do not meet the definition of salvage yard and are therefore not required to report. Copart further contended that salvage pools should be required to report only those vehicles that they purchase for resale, and that any other interpretation goes beyond the plain language of the statute.

Response: DOJ disagrees with this interpretation and notes that salvage pools do in fact handle and cause to be resold (on behalf of their current owner, who "bought" the vehicle from another) salvage and total-loss vehicles.

Comment: Copart, Inc. argued that salvage pools do not typically have access to the information needed to determine whether a vehicle meets the NMVTIS definition of junk vehicle or salvage vehicle. Copart further contended that junk and salvage yards should only be required to report to NMVTIS those vehicles sold on a salvage or junk certificate under applicable state law.

Response: Allowing junk and salvage yards to report only on vehicles with salvage titles would perpetuate the problems described elsewhere, including fraud and theft. Nonetheless, DOJ has addressed this issue in the definition of a "salvage auto" that now includes exceptions for vehicles that are not salvage, including total-loss vehicles.

Comment: Copart, Inc. argued that requiring salvage pools to report to NMVTIS is wasteful and duplicative because they function as an intermediary between other entities that are required to report, such as insurance carriers, dismantlers, and scrap-metal processors.

Response: Criminal organizations exploit salvage-pool services, purchasing total-loss vehicles with "clean titles" to facilitate the cloning and resale of stolen vehicles. To address this issue, law enforcement and other organizations require information on the vehicles handled by salvage pools. Additionally, many if not most vehicles

sold by salvage pools do not end up in a junk or salvage yard, and not all vehicles sold by salvage pools, including those with significant damage, are determined to be a total loss by insurance carriers. For these reasons, it is essential that salvage pools report to NMVTIS.

Comment: Copart, Inc. argued that DOJ should interpret "junk yard" and "salvage yard" to include all vehicle auction companies so as not to discriminate against "salvage pools" that sell both clean-titled and salvage vehicles.

Response: All vehicle auction companies should not be required to report on all vehicles handled or in their inventory. Instead, those organizations that handle or resell vehicles on behalf of insurance carriers after a determination of total loss, regardless of salvage title, should be required to report. This should hold true regardless of whether the entity operates as a "salvage pool" or refers to itself as an "auto auction," "salvage auction," "abandoned-vehicle auction," "tow-lot auction," "scratch-and-dent" sale or auction, etc. As the National Salvage Vehicle Reporting Program noted, "the recommended guideline for determining that an entity is required to report * * * should be if the entity owns or acquires, [or handles] total loss/salvage vehicles in whole or in part." Under such circumstances, it should be required to report all vehicles to NMVTIS. DOJ will clarify this requirement in the final rule.

15. Salvage Brand

Comment: One commenter noted that "[i]f the NMVTIS project is to succeed it would be a reasonable assumption to require a uniform approach to the assignment of the 'salvage' brand by any member state. The system is only as good as the data in it, if the data is not applicable to uniform situations there will always be discrepancies."

Response: A uniform approach to branding would be advantageous in many respects. The Anti-Car Theft Act, however, does not provide the authority for DOJ to develop or mandate uniform branding, which would be a significant and potentially costly change for states to implement. As each state makes its own determinations, and NMVTIS relates state brands to an aggregated brand or brand category within NMVTIS, the non-uniform approach does not create an insurmountable problem. DOJ will ensure that those who access NMVTIS information have the opportunity to learn about the different state brands that exist and the impact of other reporting on these brands to create greater awareness and understanding of their meaning.

16. Definition of Automobile

Comment: NAEC argued that the rule should require the inclusion of "trucks, SUVs and other non-automobiles as prescribed by the Federal Anti-Car Theft Act for Parts Marking" because of their popularity with vehicle thieves. Other organizations, including the Idaho Transportation Department, contended that "NMVTIS records should also include all vehicles that a state may title, and not be limited to standard types of vehicles." The Minnesota Department of Public Safety stated that if it is required to report on all vehicles in its database, "it might well grind to a halt," and costs would increase considerably.

Response: Although DOJ cannot extend the Act's definition to include all motor vehicles, it is important to note that many states currently include such vehicles in their reporting to NMVTIS. DOJ strongly encourages this continued reporting practice in light of supporting comments, the value to law enforcement, and the need to protect citizens against fraud and theft. Moreover, it may be more costly or burdensome for states to filter out those vehicles not meeting the statutory requirement than to submit all motor vehicles to NMVTIS.

Comment: One commenter recommended that DOJ clarify when a vehicle is no longer a vehicle for purposes of reporting, especially in junk or salvage yards that often do not receive a complete vehicle.

Response: DOJ offers two clarifications in response to this comment. First, a vehicle is thought to be present for reporting purposes when a vehicle frame is present. Similarly, in cases where questions as to the "true VIN" of a vehicle arise, DOJ has determined that the true VIN for NMVTIS's purposes is the VIN on the frame of the vehicle.

State Responsibilities

17. Start Dates

Comment: In reference to the proposed June 1, 2009, start date for state reporting and inquiries into the system, several states and AAMVA noted that the states would have difficulty meeting this date. One state commented that "[t]he requirement to budget, upgrade and work to complete compliance requirements for NMVTIS cannot be met by this timeline—it is simply not doable even with the political will and funds available. To arbitrarily select a date that is not workable in any manner is unfair and unrealistic." Other commenters noted that it would take time to accomplish the necessary statutory and regulatory changes that may be required, and that their states had not budgeted for NMVTIS and could not pay NMVTIS fees in light of current economic circumstances. AAMVA further commented that DOJ should establish a process for approving "temporary exemptions from the deadline where a reasonable timeline for compliance is presented and approved by the Department." The State of California proposed a "phasing in" of participants. The dates proposed by states as alternative start dates ranged from 2010 to "1 year from the date funding is secured" by the state.

Response: Although DOJ has worked closely with the system operator to reduce the need for state system modifications, and although the requirements of the Act have been in place since 1992, DOJ understands that it will take time for states to implement some provisions of the regulation. To provide relief in this regard, DOJ has elected to extend the compliance date for states not yet participating to January 1, 2010. By this date, all states and the District of Columbia will be required to provide daily title transaction updates to NMVTIS, make inquiries into NMVTIS before issuing a title on a vehicle coming in from out-of-state, and paying any user fees that may be billed by the operator. The Department believes that the states can comply by that date. Similarly, DOJ has decided against a "phasing in" approach to state participation commencement because there is no equitable way of selecting phasing dates and participants in each phase. DOJ points out that most of the provisions required to be implemented by January 1, 2010, are essentially the same requirements that have been a part of the Anti-Car Theft Act since either 1992 or 1996, and states, therefore, have had at least 12 years to implement the provisions of the Act. Thirteen states have already done so without regulations in place.

Comment: One commenter noted that the proposed start date is just prior to an AAMVA-announced decision to continue as the operator of the system and therefore creates a conflict for states should AAMVA decide not to continue as the operator.

Response: AAMVA has assured DOJ that should a decision be made in August of 2009 to discontinue its role as the operator, AAMVA will continue to provide transition services and continuity until a new operator is identified and is able to assist states that

rely on NMVTIS in their daily operations.

Comment: One commenter asked how the proposed start date had been determined and has requested justification for the date. The commented wrote that in the absence of this justification, the date appears arbitrary. The State of Illinois motor vehicle administration maintained that "the proposed timeframe for implementing the NMVTIS program under these rules is unrealistic to the point of being absurd." Although that Illinois agency conceded that the start date was likely driven by ongoing litigation and a court order, the commenter noted "that [the] order is either currently under appeal and a stay of enforcement should be sought pending appeal, or the Department of Justice [may have] chose[n] not to seek an appeal."

Response: The proposed start date was chosen after an analysis of historical timelines to provide batch data to the system, the number of states that currently have implementation funding from DOJ either directly or through AAMVA, the number of states that have indicated previously that they were working towards implementation already, and an expected release of stand-alone access to facilitate title verifications. As noted previously, however, the Anti-Car Theft Act has been in place for over 16 years, and many states have already implemented the provisions beyond the minimum specifications. Finally, the court order does not affect the state-implementation date in any way, and in fact is not even mentioned in that order.

Comment: Several state motor vehicle administrations asked what penalties are in place for states that do not implement prior to the required start date and what provisions will be made for jurisdictions that are in process or intend to implement at a later date.

Response: While DOJ will place its priority on supporting state implementation, DOJ would review state refusals to participate to determine the proper response. DOJ also will work with state officials in support of NMVTIS to encourage state compliance. This outreach could include contacts with state legislatures, governors, consumer-action networks, and law enforcement associations.

Comment: One commenter suggested that DOJ publish a map of participating and non-participating states, so that citizens can observe the participation status of every state.

Response: DOJ will make this map available on *www.NMVTIS.gov* and also will notify every consumer that accesses the site which states are not participating.

Comment: The State of Alaska commented that "there should be a process in place that allows states to continue to issue titles when NMVTIS is not operational during states' normal business days and hours." Alaska recommended that states be permitted to "issue titles when NMVTIS is not operational, hold the inquiries in a queue and submit the queued inquiries when NMVTIS is operational. If a problem is detected with a title, it would be revoked." The State of Illinois commented that standards of performance should be established to address these issues.

Response: While NMVTIS is typically only down for various reasons between 1 a.m. and 6 a.m. Eastern Time and one Sunday morning each month, there are processes in place for unexpected down time during state business hours. While specific processes vary by state according to state business processes, there are methods of continuing offline, such as mailing the new title at a later time, issuing a temporary title, etc. DOJ cannot alter the Anti-Car Theft Act's requirement to make a NMVTIS inquiry prior to issuing a new title. Therefore, new titles should not issue when NMVTIS is unavailable. Current system response time is less than three seconds per inquiry, and the number of unexpected system down times has been minimal. DOJ notes that the NMVTIS connection has not been "down" for 30 minutes or more at any time during the last three years, demonstrating that it is a reliable connection and service.

Comment: A state motor vehicle administration agency suggested that the requirement for an "instant title verification check" is problematic for states that do not issue titles over-the-counter. The commenter suggested that the word "instant" be removed from the final rule.

Response: Some states do not issue titles "instantly." The "instant title verification check," therefore, may take place after the customer has left the title administration agency but before a new title is issued. In these cases, states may make the NMVTIS inquiry when appropriate in the titling process, so long as the inquiry is made and title verified before a new permanent title issues.

Comment: One commenter asked if a title-verification check would need to be performed on a state title that was being reassigned after being purchased from an out-of-state dealer.

Response: It is unclear from the comment if the commenter was referring to a title being transferred out-of-state or into the state. States are required to check incoming titles related to vehicles from out-of-state. States are not required to check titles being transferred out of the state. With regard to the need to verify titles during dealer reassignment or the transfer of vehicles from one dealer to another, the Act requires that states verify the title of any automobile coming from another state, which DOJ has determined includes dealer reassignments when involving dealers in different states.

Comment: One commenter argued that the system should provide state motor vehicle titling agencies with sufficient information to resolve discrepancies during the title-verification process.

Response: NMVTIS provides state motor vehicle-title administrations with all relevant data in the system and a seamless and secure electronic connection to other online state title records. NMVTIS will make available any additional information within NMVTIS that may be needed to resolve such discrepancies. In the last year alone, the system generated 45 million secure messages and notifications and made 18.4 million update transactions.

Comment: One commenter noted that information gleaned from a state's "instant title verification," such as reports of prior removal of a vehicle from the vehicle population by export, destruction, reported existence in a salvage or junk yard, or other indication that the vehicle should not be present, should result in a physical inspection of the vehicle to determine the validity of the title and the vehicle.

Response: While DOJ agrees that such reports or results will flag for states the title transactions and vehicles that should be further reviewed prior to undertaking a new title transaction, DOJ cannot require such inspections. It is each state's responsibility to institute policies and procedures for resolving such concerns. This comment does illustrate how NMVTIS can "flag" for states those vehicles and transactions that should be carefully reviewed to prevent fraud and theft.

Comment: One state motor vehicle administration asked how NMVTIS will obtain data from the insurance companies and junk and salvage yards.

Response: Insurance carriers, junk yards, and salvage yards are required to report the data enumerated in the Act and regulations. The operator will identify more than one reporting mechanism for electronic reporting, in a format prescribed by the operator. AAMVA and DOJ will identify the

official reporting mechanisms and processes via *www.NMVTIS.gov.*

Comment: The Nevada Department of Motor Vehicles complained that requiring states to provide "the date the vehicle was obtained is an expensive and time consuming process" and that states should be permitted to continue sending the title-issue date instead.

Response: There is no requirement proposed for states to submit the date a vehicle was obtained. This requirement is in relation to insurance carrier and junk and salvage reporting.

Comment: The Oregon Department of Motor Vehicles commented that it currently only collects odometer information on those vehicles subject to federal odometer requirements and would be burdened to collect such information on all vehicles. The National Salvage Vehicle Reporting Program argued that states and insurers should be required to include mileage reporting in their data provided to NMVTIS.

Response: States are only required to provide odometer information on those vehicles subject to federal odometer requirements, 49 U.S.C. 32705, and not on all vehicles unless already recorded by the state. States are required to provide to NMVTIS the most recent odometer reading for such vehicles and any later odometer information contained within state title records. DOJ strongly encourages all reporting entities to include odometer readings where available.

Comment: One commenter recommended that the final rules spell out what is actually required from the states and how (*i.e.*, in which format) this information is to be provided. Another commenter, the California State Motor Vehicle Title Administration, recommended that the rule be revised to require information that is consistently available across all states and that only information held by state titling agencies be subject to reporting requirements.

Response: DOJ will clarify what is required of each state and will describe format issues to the extent practical and appropriate. DOJ cannot simply choose to use only information that is available in every state consistently for purposes of populating the system, as doing so would limit the included data and significantly reduce the system's value.

Comment: One commenter recommended that DOJ require that the operator be responsible for developing at least two approaches for NMVTIS inquiries and that DOJ should prepare a cost study relating to the expenses associated with the fully integrated, online approach to compliance.

Response: There are already at least two approaches for state compliance with NMVTIS: (1) A fully integrated, online approach, whereby a state's title information system automatically queries NMVTIS, and NMVTIS provides real-time updates to both states involved in the transaction; and (2) a stand-alone approach, whereby title clerks send inquiries to NMVTIS via a web access point, and their state sends daily updates through a batch upload. A third option, serving central site states, entailing a process whereby verifications are performed via batch inquiry, will be explored and may be implemented soon. However, DOJ disagrees with the need to prepare a cost study because an extensive cost-benefit study of this issue already exists, and cost data from other state implementations is already available for estimation purposes.

Comment: The NADA and at least one state motor vehicle administration commented that DOJ should clarify that states are required to submit all brands to NMVTIS for all automobiles titled within the state.

Response: DOJ agrees and has clarified this requirement under 25.54(a)(2), consistent with statutory requirements.

Comment: The Minnesota Department of Public Safety argued that states should be required to provide title numbers, "since it would be nearly impossible to establish the 'validity and status' of purported titles without them."

Response: Participating states already have access through NMVTIS to observe the full title of record, including the title numbers and other information needed to establish the validity and status of titles presented. However, DOJ encourages the states to voluntarily submit that information to NMVTIS with the approval of the operator and the Department.

Comment: The Minnesota Department of Public Safety commented that "the proposed rule also would require states to provide ['t]he name of the state that issued the most recent certificate of title' and '[t]he name of the individual or entity to whom [it] was issued' when making an inquiry to NMVTIS. This information is not, and cannot be, recorded in MnDVS' current title information system."

Response: This language was taken from the Anti-Car Theft Act to describe what information would be needed in order for states to make an inquiry into NMVTIS. Since the passage of the Anti-Car Theft Act, and with the very recent development of a standalone access model that only requires a VIN to search, these requirements have changed and this information is no longer needed. At the present time, only the VIN is needed to make an inquiry. This update will be reflected in the final rule.

Comment: The West Virginia Department of Transportation argued that some states exempt vehicles that reach a certain age from the requirements of titling, and that these vehicles should be exempt from reporting.

Response: The rule requires states to report on all automobiles included in the states' titling systems, regardless of age. However, if state law exempts certain vehicles from titling, those vehicles need not be reported to NMVTIS. The state should make the operator aware of these exceptions, however, so that consumers in the state and in other states are advised of this exception, which they may take into account when checking the history of vehicles through NMVTIS.

18. Unfunded Mandate

Comment: Commenters argued that the mandate for NMVTIS has not been funded, and that the requirement for compliance has not been applied or enforced for the 15 years of this process. On the other hand, one commenter noted that NMVTIS is not an unfunded mandate in view of DOJ's investment of over $15 million in the system since its inception and in view of DOJ grants to states to support system participation.

Response: The Anti-Car Theft Act explicitly requires that user fees, rather than federal funding, sustain NMVTIS. Although no funds have been appropriated to DOJ for NMVTIS, DOJ has invested over $15 million in NMVTIS, with a substantial portion going to states to assist them with compliance. The U.S. Department of Transportation previously provided funding during the period it was responsible for the system, which ended in 1996.

Comment: One commenter noted that DOJ's determination that the rule does not meet the threshold cost or burden requirements of the Unfunded Mandate Reform Act of 1995 is not sufficient in and of itself to satisfy the legal responsibilities. Specifically, the commenter noted that "[t]he fact that the Department of Justice (DOJ) has decided that it is a small enough amount of money that the Unfunded Mandate Reform Act of 1995 does not apply, or that the DOJ has determined that per Executive Order 13132, the cost imposed does not provide sufficient cause for a Federalism issue, is not sufficient."

Response: The Department of Justice, based on its own analysis, made appropriate determinations based on law and regulation. The White House Office of Management and Budget reviewed and approved this analysis.

Comment: The City and County of Honolulu Division of Motor Vehicle, Licensing and Permits disagreed with the aggregate amount estimated by DOJ in the "Unfunded Mandates Reform Act of 1995" section of the proposed rule "because their estimate is based on the less expensive standalone web solution which operationally degrades customer service and increases the work of our over-the-counter staff." The commenter further noted that the aggregate amount should "factor in the development and deployment of the much more costly integrated on-line solution option that will ultimately be the final solution that states will move towards" and should include the additional costs that will result "from the increased load on the system to each jurisdiction when all jurisdictions, insurance companies, salvage yards, consumers, law enforcement, etc. are given access to the system." The commenter concluded by stating that using this methodology, the aggregate costs will "easily exceed the $100 million resulting in the applicability of the Unfunded Mandates Reform Act."

Response: The methodology employed to calculate the aggregate costs of the program uses the minimum requirements for system participation. DOJ sees no purpose in using a level of participation not required by DOJ as the basis for the cost calculations. While states ultimately may move towards an integrated, online solution for efficiency, and although this method of participation does benefit NMVTIS, DOJ does not require it for compliance. It is DOJ's responsibility to determine the least-costly, most-effective way for implementing the solution, and that is the methodology used in the proposed rule. Further, a fully implemented system, with all jurisdictions, insurance carriers, junk and salvage yards, consumers, and law enforcement personnel accessing and reporting, does not translate directly into an increase in costs for states. In fact, it could very well decrease state costs through offset fees.

Comment: The City and County of Honolulu Division of Motor Vehicle, Licensing and Permits further maintained that because the combined city/county government is a "small" government, it is uniquely impacted by the regulations and is entitled to relief. Additionally, this commenter contended that the operator's requirements for extracting and mapping the required data are burdensome, and that should the operator undertake these responsibilities, batch data submission would be much easier to achieve.

Response: The Unfunded Mandates Reform Act and 5 U.S.C. 601(5) define "small governmental jurisdiction" generally as rural jurisdictions, those with populations under 50,000, and areas of limited revenues. Based on this definition, the city/county identified by the commenter would not appear to qualify as a "small governmental jurisdiction." In terms of the operator's requirements and the burden associated with such requirements, DOJ will continue to direct the operator to provide as much flexibility in requirements as is feasible, and DOJ will continue to provide technical assistance upon request to identify alternative solutions where necessary.

19. Inquiring Into NMVTIS Versus Other Systems

Comment: More than one state motor vehicle administration commented that NMVTIS will not provide a more substantial benefit than checking third-party vehicle history databases which some states already check. One state motor vehicle administration suggested that the law was unclear as to whether the Anti-Car Theft Act required states to check NMVTIS or another third-party database, stating that "[t]he previous intent was to provide a system that a state may utilize to verify title before titling a vehicle. This left open the use of other systems, such as Carfax, to research titles. The requirement to mandate use of NMVTIS to verify titles is unrealistic, unworkable and unfair. The intent of the process is to protect citizens against fraud. NMVTIS is not the only system that supports this intent. Limiting research to this system could also lead to misinformation and misapplication of process."

Response: The Anti-Car Theft Act requires states to verify titles through NMVTIS. No other system, public or private, can provide the same level of assurance as NMVTIS once full compliance is reached. DOJ also points to comments submitted by several organizations that highlighted concerns with the reliability of third-party databases. States wishing to provide increased protections for consumers are encouraged to continue to check such private databases in addition to making the NMVTIS inquiry as required by federal law.

Comment: One commenter noted that "the fully implemented system * * * will also provide consumers with a source of comprehensive information. Current services such as Carfax have partially filled the need for information, but these providers do not offer as current and complete titling information as the proposed NMVTIS system."

Response: NMVTIS provides a unique service in terms of the source of its data, its comprehensiveness, and its timeliness. Services such as CARFAX will continue to provide information to the public that is not intended to be included in NMVTIS, such as vehicle repair histories, etc. For this reason, these private services will continue to offer unique and beneficial services.

20. Time Lags

Comment: Several commenters noted that allowing states to upload data (*e.g.*, batch uploading) may create a "time lag" that could impact law enforcement investigations and impede the ability of the system to accomplish its goals. One commenter suggested that it would be better to wait until states secure the necessary funding before proceeding with implementation.

Response: DOJ has examined this issue closely with the system operator and with third-party vehicle-history providers. While many third-party databases experience lag time of several weeks or months in getting state updated data, NMVTIS is designed to significantly reduce or eliminate the lag time entirely to provide reliable information to users. For this reason, states choosing the stand-alone method of participation and batch uploads will be required after initial set-up to establish batch updates *at least* every 24 hours. This requirement will greatly diminish the possibility of exploitation of lag time and provide a more up-to-date vehicle history check than is currently available. States do have the option of implementing in fully online mode where data transmission is in real time. DOJ does not have the flexibility to delay implementation until states have funding to implement the fully online mode. Pursuant to a federal district court order, DOJ is required to have the rules published and system available by January 30, 2009.

Comment: One state motor vehicle administration noted that when using the stand-alone method of making inquiries before issuing a new title on out-of-state vehicles, an impact on customer service is expected. Specifically, the commenter stated that an additional "three to five minutes of processing time" is expected due to the fact that title clerks in this administration are using a mainframe that does not allow simultaneous internet access, and that to make such

a check, the clerk would have to log out, make the NMVTIS inquiry, and log back in to the mainframe for each out-of-state title transfer.

Response: The lower cost stand-alone method of participation is not as timely as the fully integrated online method. DOJ is committed to working with states and the operator to identify new alternative methods to reduce or eliminate such inefficiencies, such as dedicating one internet-capable PC that could be available to all clerks with the NMVTIS page continuously running. With system response time currently at three seconds or less, this alternative may impact customer service less. Ultimately, however, although the stand-alone method of making inquiries is far less costly for states to implement, it may be less efficient than the fully integrated, online method.

Comment: One state motor vehicle administration recommended that "all surrendered titles should be verified when being transferred[,] and the rule should not limit this requirement only to 'purchased' vehicles. Without verifying all surrendered titles it is not known whether the title surrendered is the latest title issued[,] and there are many reasons titles are transferred other than through a sale."

Response: DOJ agrees with this recommendation and notes that the final rule clarifies that the requirement to make verifications pertains to any title or vehicle coming in from another state, including transfers. States are also strongly encouraged to perform such verifications on every title transaction, which is most effective when implementing via the online, integrated approach.

Comment: One state motor vehicle administrator asked if manufacturers' certificates of origin (MCOs) must be verified as well.

Response: Because MCOs are not vehicle titles per se, states are not required to verify MCOs in NMVTIS. However, DOJ strongly recommends that state motor vehicle administrators make inquiries on all title transactions, including initial registration of an MCO, to identify and eliminate fraud and to protect consumers.

Insurance Carriers

21. Reporting on Recent-Year Vehicles

Comment: One commenter asked "[w]hat is the reason to require insurance carriers to report only vehicles manufactured within the past five model years that they consider junk or salvage? If these vehicles will always go directly to junk or salvage yards, won't the vehicle be reported there anyway? Conversely if there is an opportunity for other disposal of the vehicles, shouldn't the insurance carriers be required to report all vehicles since the VINs could still be stolen for swapping?" Other commenters noted that vehicles older than five years are often involved in consumer fraud and encouraged provisions for the database to cover the same ten-year age range as is used for odometer reporting.

Response: The Anti-Car Theft Act only required insurance carriers to report vehicles in the current and four prior model years. DOJ is not able to reverse or alter this limitation by increasing the reporting parameters. Junk and salvage yards later may report some vehicles that insurance carriers are not required to report. The Department, however, encourages insurance carriers to report older vehicles.

Comment: ASPA commented that section 25.55(b)(3) of the proposed rule requires insurance carriers to report "the name of the individual or entity from whom the automobile was obtained or who possessed it when the automobile was designated as a junk or salvage automobile," which would seem to be two different individuals or entities in most cases. Further, ASPA notes that it is unclear if the insurance carrier would know the name of the owner when it files the report.

Response: Although the proposed rule required reporting of the name of the individual or entity either from whom the automobile was obtained or who possessed it when the automobile was designated as a junk, salvage, or total-loss automobile, the Anti-Car Theft Act specifically states that both names are required. Reporting both names is necessary to establish a "chain of custody" and for other law enforcement and consumer-protection purposes. DOJ changed this language in the final rule to require both names pursuant to the Anti-Car Theft Act. In reference to the concern that insurers may not know the name of the owner, most carriers do possess this information, as this would be the owner of the automobile at the time the vehicle was determined a total loss, salvage, or junk.

Comment: Farmers Insurance commented that the "trigger" for insurance-carrier reporting should be when the insurance carrier sells the vehicle or when the customer determines it will retain ownership of the vehicle, because such dispositions may not be known for as much as 90 days after the loss occurs.

Response: Because disposition may not be known at the time of initial reporting, this rule allows the insurance carrier to file a supplemental disposition or update. Many comments emphasized the importance of timely reporting, even when the named owner in the initial report is the insurance company.

Comment: Farmers Insurance suggested that a 12-month grace period should be granted for insurance reporting to begin in light of "proper system upgrades" that may be required.

Response: DOJ is not able to provide a grace period, as the court has ordered the reporting to begin by March 31, 2009. Additionally, because DOJ aims to enable third-party reporting through organizations that may already receive such data from insurance carriers, the burden of any system changes should be minimal.

22. Non-Required Data

Comment: One commenter argued that "[t]he proposed rule overstates the benefits provided to consumers. Particularly, the fact that insurance carriers are only 'strongly encouraged to provide * * * other information relevant to a motor vehicle's title' undermines the broad benefits implied by the rule." "The type of information not reported includes the reason why the insurance carrier may have obtained possession of the motor vehicle—flood, water, collision, fire damage, or theft." The NADA further recommended that the rule should require insurers to report the reasons they obtained possession of the vehicle to prevent brand washing and fraud. Additionally, this information would assist in cases where a vehicle is considered a total loss for purely economic reasons (*e.g.*, theft). Several insurance-related organizations contended that for any voluntary reporting that may be contemplated, immunity provisions must apply to this voluntary reporting as well.

Response: DOJ disagrees that the rule overstates the benefits of NMVTIS. DOJ does agree, however, that the reason for the total-loss or salvage designation by insurance carriers may be of importance to a prospective purchaser and to others. Not only does this protect the consumer's interest, but the additional reporting criteria also benefit insurance carriers. Therefore, the Department strongly encourages insurance carriers to report this data element.

Comment: AAMVA commented that unless the rule requires "junk and salvage dealers" to report the percentage of damage sustained by each vehicle in their inventories to the states, the states would not be able to consider applying a state junk or salvage brand on these vehicles.

Response: States will not be in a position to make such judgments based on junk- and salvage-yard operator reporting. Insurance carriers have ready access to this information, which is the typical basis for a state's designation. Although the reporting of junk- and salvage-yard inventories was likely not intended to support state-branding decisions, reporting of junk- and salvage-yard inventories may be helpful to states in making brand decisions, but likely not conclusive. Although such vehicles may not end up branded by the states, consumers and other states have the benefit of knowing that the vehicle was in the possession of a junk or salvage yard and therefore may wish to inspect the vehicle or to require an inspection before making purchase or titling decisions. DOJ is not in a position to require reporting of the percentage of damage. However, insurance carriers and others are encouraged to report this information.

Comment: One commenter asked "[h]ow will DOJ know which states, junk, salvage, and insurance companies are reporting information and reporting all the information that is required? Will someone audit their reports? I recommend that the system operator and the DOJ both make a list of who is reporting and publish that list * * * and audit reporting compliance." The commenter also suggested that DOJ require entities to report the company name, address, and phone number for any reports submitted. Another commenter asked who would inform insurance carriers and junk and salvage yards of the requirement to report information to NMVTIS, and who would identify those organizations required to report.

Response: DOJ will instruct the operator to publish and maintain a list of the entities reporting information to NMVTIS. The list will include the name of the reporting entity, city and state of the reporting entity, the date that data was last submitted by the entity, and any contact information for the reporting entity. With regard to who would inform reporting entities of the requirements, DOJ will work with the operator, state-licensing authorities, and affected associations and advocacy organizations to ensure proper outreach and education.

Comment: Several state motor vehicle administrations argued that DOJ should limit what non-required data the operator could ask for and receive (*e.g.*, address of the vehicle owner). Another believed that the value of encouraging non-required data is unknown, and that reporting may only increase the number of discrepancies or errors. ISRI contended that DOJ should limit the ability of the operator to request additional, non-required data, because the current operator would be encouraged to request additional information that would generate revenues to the benefit of the association and its members, creating a conflict of interest. The Minnesota Department of Vehicle Services (MnDVS) argued that the provisions of section 25.53(c), which allow the providers of non-required data to query the system if beneficial in addressing motor vehicle theft, "exceeds the authority conferred by Congress, is overly broad, and as such represents an arbitrary and capricious exercise of rulemaking power." Other commenters, however, reported that other data may be needed for specific purposes and argued in support of this flexibility.

Response: It would be difficult to describe what data the operator is restricted from asking for or accepting, other than social security number, dates of birth, and addresses. DOJ points out that states need not provide data that is not specifically required in these regulations or the Act, and DOJ will need to approve the acceptance of non-required data. Moreover, the non-required data that is readily available would add great value to some consumers, to law enforcement, and to others (*e.g.*, NICB flood vehicle database, vehicle export data, other North American vehicle history records, NICB theft file, etc.). While more data always increases the chances of discrepancies, DOJ does not want to discourage this voluntary reporting. While the current operator does have the best interests of its membership in mind, however, it also has expressed concern for others affected by the rule and will represent the concerns of all stakeholders, not as a trade association, but as the operator of a DOJ system. In response to MnDVS's comment, DOJ is of the opinion that if not in violation of the Anti-Car Theft Act or other federal privacy statutes, such cooperation is necessary and not arbitrary or capricious.

Comment: Several commenters, including at least one from the state motor vehicle administration community, encouraged the inclusion of lien-holder information in the data provided to NMVTIS in light of the difficulty of obtaining this information on out-of-state titles and the associated budget impact on states. Other commenters, including insurance-related organizations, Assurant Solutions, and the NADA, suggested that additional data (including lien-holder information) will provide a crosscheck of information, close up loopholes, and improve NMVTIS.

Response: This comment demonstrates the importance of allowing the operator of the system to request and accept additional information beyond the NMVTIS requirements. While states and others are not required to comply, there may be good reason to do so that would result in cost savings among the stakeholders. In terms of lien-holder information, while DOJ is not in a position to require that lien-holder information be included in the central file, DOJ notes that the existing secure network could be used in conjunction with the NMVTIS central-file information to query the current state of record and to access lien-holder information in that state's title record through the secure network provided by the current operator. Queries of and access to the actual state records should only be permitted when a state has agreed to provide such access, when any state application or certification procedures are completed, and when such access is in conformance with the Anti-Car Theft Act, the DPPA, etc.

Comment: One commenter suggested that DOJ include registration information in the list of required data as a means to ensure accurate tracking of vehicle ownership.

Response: Including registration information is beyond the scope of NMVTIS. Although it may be useful, DOJ cannot require such information.

Comment: The National Salvage Vehicle Reporting Program commented that insurance-carrier reporting should commence on or before March 31, 2009, as required by the federal district court, and that initial reporting by all covered entities should include historical data to the extent available, so that NMVTIS is complete beginning on March 31. Several insurance-related organizations or associations reported that "[t]he start date for insurers should be clarified. We believe the best approach is to provide that the system applies to automobiles declared junk or salvage on or after April 1, 2009, [and that] the system must be established by March 31, 2009. However, we prefer that more time is provided for insurers to comply."

Response: DOJ will require that all vehicles declared junk or salvage (including "total loss") on or after April 1, 2009, be reported to NMVTIS. However, DOJ strongly encourages insurance carriers and junk- and salvage-yard operators to provide data on vehicles that were declared junk, salvage, or total loss before that date and as far back as 1992, if such data is available.

Comment: The National Salvage Vehicle Reporting Program commented that "NSVRP strongly endorses the inclusion in the rules of 3rd party enhanced standards that allow for data generators to report to NMVTIS more completely and more frequently than minimally specified in the rules."

Response: While DOJ is not in a position to articulate data-reporting requirements or standards regarding data that is not statutorily or otherwise required, DOJ notes that the National Salvage Vehicle Reporting Program has worked with nearly every stakeholder group affected by NMVTIS to develop standards for voluntary reporting to NMVTIS that would benefit states, law enforcement, consumers, and others. DOJ applauds the National Salvage Vehicle Reporting Program and strongly encourages the operator to adopt these standards as suggested voluntary compliance standards. While the standards cannot be mandated on any reporting entity, those entities that adopt the standards and report voluntarily in a manner that is consistent with the standards will be providing a significant public benefit.

Comment: The National Salvage Vehicle Reporting Program commented that NMVTIS must support the electronic MCO process and should serve as a catalyst for implementation of the electronic MCO system nationwide.

Response: DOJ is in favor of supporting an electronic MCO process as a way of eliminating and preventing fraud and reducing theft. In addition to NMVTIS, the use of the secure AAMVAnet communications network for states would likely be necessary, and it would be AAMVA's responsibility to authorize its use for this purpose.

Junk Yards and Salvage Yards

23. Salvage Pools

Comment: Several law enforcement and related commenters strongly agreed with the assessment that Salvage Pools are one of the most significant sources used by criminal groups as a source of paperwork and as a way to fund their operations. These commenters agree that Salvage Pools must report vehicles to NMVTIS both when they receive vehicles for sale, and when they sell those vehicles. These commenters further noted that such salvage pools have sophisticated technological capabilities and should not have any problem meeting the reporting requirements. Several of these commenters noted that in some cases, individuals purchase severely damaged units at or via these pools and then steal a similar make and model for cloning purposes. For this reason, these commenters also recommended reporting the buyer's name for these vehicles. Several national consumer-advocacy organizations also supported the constructive definition including salvage pools and the requirement to add buyer name in the reporting requirements.

Response: DOJ reaffirms its determination to include "salvage pools" and "salvage auctions" in the definition of junk or salvage yards, thereby requiring them to comply with the corresponding reporting requirements. The name of the buyer is not reported elsewhere despite being very valuable for law enforcement and other purposes. DOJ, therefore, added the name of the buyer as required data to report. Because many of the purchasers are reportedly international buyers, some of whom have been linked to fraud and theft rings that purchase such vehicles for clean paper to use on stolen vehicles in the U.S., DOJ also will add to the requirements an indication whether the vehicle is intended for export.

Comment: The Nevada Department of Motor Vehicles commented that by statute, Nevada requires wreckers and salvage pools to apply and transfer their salvage titles, junk certificates, and non-repairable certificates within 10 to 30 days. Nevada suggested that these organizations should be exempt from reporting because the DMV already sends this data to NMVTIS.

Response: Junk and salvage yards, including salvage pools, are not required to report data to NMVTIS if the state already reports the required junk- and salvage-yard information to NMVTIS pursuant to this regulation.

Comment: One commenter asked whether "the definitions of junk yard and salvage yard, which include even a single individual, [are] a substantial overstep?" Several consumer-protection organizations also suggested that, with respect to the definition of "in the business of," junk and salvage yards should be defined as any entity or individual meeting the description in the definition that acquires or owns five or more salvage or junk automobiles within the preceding 12 months, which is analogous to other similar reporting standards.

Response: DOJ modified the final rule consistent with the comment from the consumer-protection organizations. The qualifier of five or more vehicles is taken from federal odometer law, and its definition of "car dealers" from 49 U.S.C. 32702(2).

Comment: One commenter (CARS of Wisconsin) argued that "information about who owned the vehicle prior to it being junked is unnecessary." The Wisconsin Department of Transportation contended that requiring junk and salvage yards to report the name of the vehicle supplier is unnecessary, as is the disposition of such vehicles. Wisconsin DOT commented that because these vehicles are scrapped or destroyed by these entities and cannot be returned to road use, it is unnecessary to report this information.

Response: Comments from law enforcement entities on the proposed rule demonstrates that this information is of significant value. Additionally, even when a vehicle cannot return to the road, the VIN can be used to clone a stolen vehicle. In states that do not have the same junk-branding requirements as Wisconsin, a junked vehicle can "live on" through a cloned stolen vehicle, which will only cease once NMVTIS is fully implemented.

Comment: The Virginia Department of Motor Vehicles expressed concern that the proposed rule seemed to encourage junk- and salvage-yard operators to submit data via FTP or facsimile that potentially would include personal identifying information.

Response: DOJ encourages all reporters to report electronically whenever possible. In cases where electronic reporting is not an option, DOJ will direct the operator to identify a reporting procedure to accommodate the situation. Regardless of the reporting method, DOJ and the operator will ensure that all possible safeguard measures are taken, including secure FTP wherever possible.

Comment: One commenter requested that DOJ require the operator to accept junk- and salvage-yard data from any junk or salvage yard directly or through a third party on their behalf to minimize administrative burden.

Response: DOJ has provided the operator with flexibility in identifying the specific methods of reporting to NMVTIS. It is not in the system's best interest for all required reporters to report directly into the system, due to technical and business reasons. The operator is expected to identify three or more different methods of transmitting information to NMVTIS and will make this information available via its Web site, as will DOJ via *www.NMVTIS.gov.*

Comment: Several commenters have noted that, similar to insurance-carrier reporting, junk and salvage reporting of vehicle presence in inventory on a 30-day basis leaves a significant amount of time for fraud and theft to occur. These commenters recommended that DOJ require reporting of not only presence in

inventory, but also disposition of the vehicle. The recommendations for the revised reporting timeline varied in the recommendations from immediately to several business days.

Response: The Anti-Car Theft Act defines the reporting timeline, and, therefore, DOJ can only require reporting on a monthly basis. DOJ does strongly encourage all reporters to report data as soon as possible or on a daily basis.

Comment: ASPA commented that ''while 'salvage pools' were not included by Congress in the 'Anti-Car Theft Act of 1992' as an entity with reporting requirements, the DOJ sweeps our industry into the group which has these reporting requirements. * * * The salvage pool industry wants to be helpful in combating vehicle theft, but we want to insure that any reporting requirements imposed on our industry are reasonable, in light of the fact that Congress did not specifically place reporting requirements on salvage pools.''

Response: DOJ appreciates ASPA's declaration and will work to ensure that reporting requirements on every industry are reasonable. The reporting requirements proposed for salvage pools are the same requirements placed on salvage yards, which also handle salvage vehicles. Because a salvage pool is in the business of acquiring (constructively defined to include handling or controlling on behalf of) salvage automobiles for resale, it fits well within the statutory definition of salvage yards.

Comment: ASPA commented that because salvage pools generally serve as ''agents'' for insurance carriers, salvage pools should only be subject to the reporting requirements of insurance carriers as they relate to the age of automobile to be reported.

Response: DOJ disagrees with this recommendation because salvage pools are included in the definition of salvage yards, as opposed to insurance carriers.

Comment: ISRI and the National Salvage Vehicle Reporting Program both suggested an exemption from reporting for vehicles acquired from an entity that is obligated to meet the reporting requirements of the Act and rule. They argued that this exemption is necessary, not because of the burden of double reporting, but because, in the case of the scrap-metal-recycling industry, many vehicles are acquired after being flattened or crushed to an extent that a VIN cannot be reasonably obtained.

Response: Many scrap-metal processors and shredders do receive flattened and bundled vehicles and vehicle parts. In those cases, recording a VIN for every vehicle is nearly impossible. Both ISRI and the National Salvage Vehicle Reporting Program assert that such entities are at the ''end of the line'' in handling end-of-life vehicles, and almost always receive vehicles from those who are required to report on the vehicle before it is crushed or bundled. Additionally, with scrap-metal processors and shredders, there is no possibility that the vehicle will be subsequently purchased for operation on public roads by an unsuspecting consumer. However, cloning and destruction of stolen vehicles remain a threat. For these reasons, DOJ created an exception for reporting to NMVTIS in cases where a scrap-metal processor or shredder confirms that the vehicle supplier reported the required data to NMVTIS. Scrap-metal processors and shredders that receive automobiles for recycling in a condition that prevents identification of the VINs need not report the vehicles to the operator if the source of each vehicle has already reported the vehicle to NMVTIS. In cases where a supplier's compliance with NMVTIS cannot be ascertained, however, scrap-metal processors and shredders must report these vehicles to the operator based on a visual inspection, if possible. If the VIN cannot be determined based on this inspection, scrap-metal processors and shredders may rely on primary documentation (*i.e.*, title documents) provided by the vehicle supplier.

Lenders and Automobile Dealers

Comment: Iowa Attorney General Thomas J. Miller supported the DOJ proposal that lenders and auto dealers have access to NMVTIS in order to further NMVTIS's goals of reducing crime, especially fraud.

Response: Commercial consumers will have access to NMVTIS.

Comment: Assurant Solutions argued that lenders and dealers need not only the ability to query NMVTIS for information, but also need the ability to communicate and electronically exchange motor vehicle information to achieve greater efficiencies in title processing, and to limit the number and type of paper-based transactions as a strategy to significantly decrease fraud. Specifically, the commenter suggested that lenders and dealers communicate errors or changes to NMVTIS.

Response: Communication to and from NMVTIS is currently facilitated through the use of the current operator's secure and proprietary network, AAMVANet. This network is not a component of NMVTIS *per se*, and therefore the operator governs use of this network for communication between NMVTIS and its users. In terms of providing lenders and dealers with the ability to make corrections and changes, DOJ notes that it has concerns with authorizing any user other than a state motor vehicle administration or its agents (where applicable) to make corrections directly or changes to NMVTIS data. However, DOJ directed the operator to develop a process for reporting possible errors and requesting changes that may also be used by lenders and dealers.

Responsibilities of the Operator of NMVTIS

24. Consumer Access Methods

Comment: One commenter argued that ''[t]he Web-based access should be open to private individuals who wish to check the status of a prospective purchase.'' And the NADA supported the provisions in the proposed rule allowing dealers to access NMVTIS as prospective purchasers, which is likely to help thwart motor vehicle-title fraud. A consumer-advocate attorney commented that if this information becomes widely and readily available, the vehicle-fraud industry will be significantly reduced.

Response: Prospective purchasers (including dealers who purchase vehicles for resale) are required to have access to information necessary to make an informed purchase decision, and DOJ will require that consumer access be available by January 30, 2009.

Comment: Experian Automotive argued that DOJ should not overlook the significant costs involved in marketing and distributing vehicle-history information, and suggested that these costs are beyond what the operator can provide.

Response: These costs are significant. Under the model of third-party portal providers (as opposed to a single, operator-provided consumer access model), the third parties, not the operator or DOJ, will bear the most significant marketing and distribution costs. It is partly because of these costs that the third-party model was selected.

Comment: Experian Automotive argued that NMVTIS is not chartered to provide the level of information and support that Experian or other private vehicle-history report companies provide.

Response: DOJ has no intention of competing with private vehicle-history-report companies. Those private services possess data that NMVTIS does not intend to provide (*e.g.*, vehicle repair and service histories). NMVTIS is simply intended as a government-sponsored service to verify the title and

brand history of a vehicle reliably, thereby preventing fraud and theft.

Comment: Several motor vehicle administrations and one services organization argued that the operator should not be permitted to sell bulk vehicle data from any state, which would effectively allow private information resellers to bypass contractual agreements and seek the state's database from the NMVTIS operator. Additionally, at least one state motor vehicle administration suggested that the operator should conduct regular program and security audits and should screen potential access providers.

Response: The operator will not sell the NMVTIS central file or any particular state's dataset (*i.e.*, all VINs from a particular state). All information provided will be in response to VIN queries, except in cases of law enforcement queries, which could include searches of NMVTIS by reporting entity name, names associated with reports, location, etc. Data provided to NMVTIS will remain in the possession of the operator and any contractors supporting the operator (*i.e.*, data center hosting or backup). Consumer-access providers are restricted from downloading and storing bulk NMVTIS data for resale or reuse and must use data in accordance with the Anti-Car Theft Act. Any entity using NMVTIS data in a manner inconsistent with these regulations may not be covered under the Act's immunity provisions. The operator shall conduct regular reviews and audits of security arrangements and program compliance and shall work with DOJ to establish access-provider standards to ensure that the access providers are professional and reputable, and that information and access are provided according to the Act.

Comment: One commenter argued that "[t]he responsibilities of the operator of the NMVTIS system are confusing in subsection (b)(3) and (b)(5), [as] they appear to have the same meaning and impact."

Response: These subsections describe what the operator of NMVTIS is statutorily required to provide to users of the system, including information regarding a vehicle's current or past status as a junk or salvage vehicle. In other words, NMVTIS will make information about vehicle history available to consumers, state titling agencies, law enforcement, and others through an electronic (*e.g.*, Web-based) inquiry. Although subsections (b)(3) and (b)(5) overlap somewhat, it is possible that the operator may have information indicating that a vehicle has been branded a junk or salvage that did not arise from a report submitted by a junk or salvage yard or insurance carrier.

Comment: One commenter noted that "[w]ith the expected low implementation costs for this consumer system, there are major benefits to centralizing the system within a government Web site in order to reduce further consumer misinformation. In the alternative, a detailed scheme prohibiting third-parties from charging certain fees for accessing the system" would be desirable. The commenter further emphasized the importance of regulating third-party involvement.

Response: Third-party involvement will be regulated and monitored by the operator and DOJ. DOJ believes that this is the most sensible manner of implementing consumer access. DOJ has established *www.NMVTIS.gov* as a central source of reliable information concerning NMVTIS, providers, requirements, etc.

Comment: One commenter suggested that the operator be required to establish a data-quality plan that may rely on technological tools to scan for and flag errors in VINs that may be reported to the system.

Response: DOJ agrees with this comment and will direct the operator to adopt all reasonable strategies and techniques for ensuring data quality.

Comment: In response to DOJ's request for comments on methods of NMVTIS access, several commenters agreed that third-party providers may be better suited for handling information access than a single provider. The Minnesota Department of Public Safety argued, however, that private third parties should not be permitted to have access to NMVTIS data in the manner proposed, with little oversight, or to generate profit from the data contributed by the states. Additionally, the commenter stated that this would violate the provisions of the Anti-Car Theft Act that restrict the operator from taking a profit from its role as the NMVTIS operator.

Response: The third-party providers are not given open access to NMVTIS data. Rather, they are only provided access to that data that the Anti-Car Theft Act requires to be available to prospective purchasers. Additionally, the operator will maintain much more than "little" oversight over these contractors. Last, while the Anti-Car Theft Act restricts the operator from making a profit, the Anti-Car Theft Act provides no restrictions on third-party contractors, including states that wish to be a portal provider. DOJ will move forward with a third-party provider approach to consumer access.

Comment: The NADA commented on the importance of providing access to NMVTIS information for the wholesale vehicle market: "If wholesale auctions have access to NMVTIS data, fraudulently titled vehicles could be easily flagged and reported to law enforcement officials expeditiously and efficiently. * * * Transparency at the wholesale level will only help to deter motor vehicle title fraud and enhance the NMVTIS system."

Response: DOJ agrees and notes that enabling this type of access also will assist in generating revenues to sustain the system and possibly offset or eliminate state fees. So long as this access is on an inquiry basis, and NMVTIS data is not sold in bulk as previously described, DOJ will authorize and direct the operator to provide such access to dealers and other commercial consumers, consistent with the Anti-Car Theft Act.

Comment: Several commenters expressed concern that the operator must provide robust security protections for the information to be included in NMVTIS.

Response: DOJ will ensure that the operator relies on industry-standard security and related protections, including any relevant policy recommendations of the Global Justice Information Sharing Initiative that relate to security and privacy protections of information systems used in the criminal-justice environment.

Comment: ISRI argued that DOJ's authorization for the operator to identify third-party organizations to receive and provide data to NMVTIS in lieu of allowing all required entities to report directly to NMVTIS is problematic. ISRI believes that allowing third-party organizations to handle the information creates a security risk, provides an opportunity for market participants to access confidential business information, and could create a cost burden for reporting entities. ISRI recommended additional security protections and restrictions that would prevent these potential problems.

Response: The current operator's information architecture is not designed to allow hundreds, and possibly thousands, of reporting entities to report directly to NMVTIS. In light of this, and because many of the covered reporting entities are already reporting to third-party entities, such as the Insurance Services Office (ISO), allowing a third party to receive and provide the required information is effective and reduces burden on reporting entities by allowing their current reporting to be used in NMVTIS compliance. DOJ will require the operator to designate at least

three third-party organizations for reporting purposes, so that covered entities can choose which third party they are most comfortable with. Additionally, any third-party organization that develops a reporting application at the operator's request will agree to terms and conditions restricting the sale or use of the data, consistent with the Anti-Car Theft Act.

Comment: Auto Data Direct, Inc. suggested creating a policy to prevent free dissemination of prospective-purchaser-inquiry data by any entity and suggested charging all consumer-access providers the same fees in order to maintain a level playing field.

Response: DOJ agrees and will direct the operator to ensure that all consumer-access portal providers are charged the same fees for NMVTIS information, notwithstanding volume discounts. Consumer-access providers, however, are currently not restricted in what they can charge the end user (prospective purchaser) for an inquiry, as DOJ has determined that the "market" can determine this better than any artificial caps or minimums.

Comment: The Minnesota Department of Public Safety commented that section 30504 of the Act requires DOJ to prescribe by regulation the procedures and practices to facilitate reporting to NMVTIS. The commenter suggests that DOJ is merely placing this burden on the operator to circumvent the DOJ's own responsibilities.

Response: DOJ strongly disagrees with this assessment. Requiring that these procedures, which are subject to change and modification as technology advances, be published in federal regulations is unwise and inefficient and would only serve to restrict the states and other covered participants from working with the operator to improve reporting practices. It is in everyone's best interest that such detailed procedures are not codified in regulation beyond the procedures and practices that are described herein (*i.e.*, third-party reporting, reporting via batch upload or realtime, etc.).

Comment: AAMVA asserted that it cannot support the development and implementation of a third-party reporting mechanism to support insurance, junk, and salvage reporting. AAMVA reports that to establish this connection with the required two or three third-party organizations would require $1 million to $1.5 million in development costs and up to $400,000 in annual operating costs from federal funds to implement this provision.

Response: DOJ is under court order to establish this mechanism by March 31, 2009. DOJ has recently provided AAMVA with federal funds of nearly $300,000, and AAMVA expects to receive approximately $1,500,000 in user fees by end of year 2008. Much of these funds are spent on other activities, including and especially support for currently participating states. DOJ expects to work with AAMVA on cost controls and to intervene to ensure that the basic connection is established as required by the court. The Anti-Car Theft Act specifies that NMVTIS will not depend on federal funds and is to be supported by user fees.

Comment: The National Salvage Vehicle Reporting Program commented that commercial consumers such as auto dealers would desire the ability to inquire on multiple VINs at the same time in a "batch" format at an appropriate cost. Consumer-advocate attorney Bernard Brown commented that "such broad access to NMVTIS data should be provided for all of these businesses and entities to level the playing field" in the competitive market place. Other consumer-advocacy organizations commented that such commercial consumers should not be permitted to provide the NMVTIS vehicle history to other consumers without also notifying such consumers of the NMVTIS disclaimers and warnings.

Response: Similar to the need for central-issue states to inquire against multiple VINs at the same time, commercial consumers should have the same service available at a cost commensurate with the service. Because DOJ is directing the operator to make such a batch-inquiry process available for central-issue states, this same service should be available to dealers and other commercial consumers. DOJ points out, however, that these searches will require a VIN for each vehicle to be searched. That is, no bulk data will be made available to any consumers. DOJ will require the operator to require all third-party portal providers to make a NMVTIS Notice and Disclaimer available to all consumers accessing the system. Additionally, DOJ has collaborated with the Federal Trade Commission on its Used Car Buyers Guide regulations to ensure that the FTC is aware of NMVTIS and the accompanying notice and disclaimer.

Comment: Several commenters, including the National Salvage Vehicle Reporting Program, stated that the inclusion of specific disclaimers for limitations to the data reported by the system is essential for consumer protection purposes.

Response: DOJ agrees and will work collaboratively with the operator and others to ensure that appropriate notices and disclaimers are in place.

Comment: One commenter noted the need for proactive efforts by DOJ and the operator in the areas of public awareness and education on NMVTIS and the issues it addresses.

Response: DOJ will work with the operator and the various stakeholder communities to develop and distribute information through *www.NMVTIS.gov* and other means.

Comment: Several consumer-advocacy organizations argued that consumers should be provided access either at no cost or nominal cost without onerous access requirements and allowed to make multiple inquiries for a fixed price. Similarly, these organizations contended that consumers who have completed vehicle purchases should be able to verify their vehicles' history, and that the Department should take into account consumers' lack of access to credit and the "digital divide."

Response: DOJ agrees that consumers should be able to access NMVTIS at nominal cost, that there should be no onerous access requirements, and that any consumer—including those who recently purchased a vehicle and those who may be considering purchasing a vehicle in the future—should be permitted access. DOJ will take into account the comments on pricing structures and the issues of credit access and "digital divide" while working with the operator to establish the consumer-access provisions.

25. Operator Accountability

Comment: Several state departments of Motor Vehicle Administration argued that the operator must provide a reasonable and timely process for correction and amendment of records that contain errors, and that the operator must take responsibility for notifying users of the erroneous information. Another asked who would be responsible for working with insurance carriers and junk and salvage yards when their data is questionable or incorrect. The commenter also asked how the data would be corrected.

Response: DOJ agrees that an error-verification and correction process is vital to the success of the program. However, in some circumstances, it may be impossible to fully verify the facts of some situations (*e.g.*, vehicles disposed of). The operator will be required to work with data reporters to identify and resolve potential data errors, to note within the central file any discrepancies reported or the findings of any investigations of errors, and to notify those who accessed the information of any confirmed erroneous information.

No entity, including the operator, may remove any data reported by another organization, and only state motor vehicle-title administrations can unilaterally change their data, which will update in NMVTIS. Insurance carriers and junk- and salvage-yard operators do not have access to modify data in the system, but are required to notify the operator immediately of erroneous information that they previously reported and to immediately report corrected information, which will be flagged or noted in the system as an update. Although the erroneous information may be retained in the file, it will be noted as corrected via update, and the updated, correct information will be available. In releasing insurance, junk, or salvage information, the operator may include the name of the reporting organization and its contact information, so that anyone questioning the validity of the report can go directly to the source of the information. It is important to point out that while NMVTIS is authorized to serve as a data repository and data provider, NMVTIS was not expected to serve as an arbitrator of questionable or even conflicting information. It is the responsibility of the data reporters (including states and insurance, junk, and salvage organizations) to provide correct information, and to provide updates and corrections as soon as they are identified. Although the operator should not remove previously reported information, the operator can add a "note" to the record regarding the corrected information, along with the corrected information. Additionally, DOJ added a section to the regulation (section 25.57) that provides for error correction in exceptional circumstances.

Comment: One commenter stated that "[t]he GAO report stated that there have been problems with funding NMVTIS through AAMVA, including: excessive consultant fees; lack of documentation for payments; failing to maintain records supporting financial reports; and failing to adequately administer contractual arrangements with the states. *GAO report at 10.* How has the track record for management of NMVTIS improved since then? What type of financial oversight is expected for the system? And what type of compensation structure does NMVTIS propose for its labor costs?"

Response: Because the current operator (AAMVA) has received grant funding from DOJ, the operator is responsible for complying with all grant requirements, including financial and programmatic requirements relating to contracting, documentation, and performance. Also, DOJ will play an active role in overseeing the administration of the system. DOJ also has added requirements for the operator to publish an annual report to include revenues and expenses by category. DOJ leaves operator labor cost structures up to the operator to determine what is most advantageous and cost-effective while complying with DOJ financial requirements. DOJ also has added a requirement (should DOJ not be the operator) for an annual independent audit of NMVTIS revenues and expenses, the results of which will be publicly available. DOJ also may terminate the operator status of any organization (if not the Department of Justice) for cause, should that be necessary. DOJ also has coordinated with another federal agency, the Office of the Inspector General (OIG), which recently completed audits of the operator's financial recordkeeping and practices and will continue to monitor these issues. DOJ also notes that the GAO study was completed many years ago, and that AAMVA has undergone many changes since that time.

Comment: One commenter asked "to what extent is the potential for corruption of those who manage the system a concern? What internal controls will be implemented? Is this why access provided by the operator to users of NMVTIS must be approved by the Department of Justice? § 25.53(d)."

Response: DOJ has no basis for any concerns of corruption. The internal controls in place to protect the integrity of the system are many and varied, including technological controls, transparency, and oversight from a variety of stakeholders.

Comment: One commenter noted that "[t]he estimates in the regulations give the impression that the operator doesn't know exactly how much the system costs to operate[.] The estimates provided all seem pretty high. Why does it cost so much to operate the system? Is DOJ sure that the operator has the experience and ability to run the system well?"

Response: DOJ is very concerned about current system costs. DOJ will continue to monitor and encourage cost-saving options and will look to the annual independent audits to inform the operator and DOJ of additional cost-saving strategies. DOJ notes that the current operator, AAMVA, already administers other federal-state systems successfully. DOJ will continue to encourage AAMVA to seek cost savings by outsourcing technological solutions as appropriate and by adopting current and less-costly technological solutions.

Comment: One commenter asked "[h]ow will DOJ oversee the program and the operator? Because these questions are obvious and because others have already asked questions about the same issues, I recommend that DOJ create some kind of governance model to oversee the project. The current operator has close ties to the states, but other groups required to participate don't have a seat at the table. A board of governors that has people from the groups that use the system or need the system is definitely needed." Similarly, one state motor vehicle administration noted that "the proposed rules and the options AAMVA is willing to provide do not match. The lack of flexibility on the part of AAMVA results in many options set forth in the proposed rule not actually being available to the states." The California motor vehicle administration commented that a board or commission made up of state representatives, DOJ, and the operator should be engaged to discuss and agree upon the requirements relating to consumer access. Other commenters also recommended the establishment of a steering committee to govern operation of NMVTIS outside of the rules.

Response: It is DOJ's responsibility to oversee the program and make or approve all policy decisions regarding the implementation of NMVTIS. To ensure input from all stakeholders, the Department may establish a NMVTIS Advisory Board to make recommendations to DOJ regarding the system and its operation.

Comment: Several commenters recommended that DOJ publish the NMVTIS system budget on an annual basis for review as a part of an annual report, and another commented that the operator should be required to provide quarterly reports on the number of vehicles reported on during each quarter, along with dispositional information, in order to give better insight into the effectiveness and compliance rates within the system. Another state motor vehicle-title administration recommended that the operator be required to have procured an independent audit of the fees generated and expenses incurred on an annual basis.

Response: DOJ will require the operator (if not the Department of Justice) to prepare and publish electronically a detailed annual report that includes many of these items, and DOJ also will require an annual independent audit of NMVTIS revenues, costs, expenditures, and financial controls and practices, which shall also be available.

Comment: The California motor vehicle administration suggested that

DOJ should identify its responsibility for oversight of the system and operator performance, and that specific performance measures should be established along with a minimum-performance period such as a year. The commenter further suggested that the review of operator performance should include solicited comments from the various system stakeholders.

Response: As previously stated in these comments, the Anti-Car Theft Act provides that NMVTIS is a DOJ system over which DOJ has sole responsibility and control. As necessary, DOJ will enter into an Memorandum of Understanding (MOU) with the operator that addresses these issues in greater detail.

Comment: Several commenters noted the need to require the operator to provide information to reporters and others on its compliance and the compliance of others in the program.

Response: DOJ will work with the operator to establish the specific compliance monitoring, management-control functions, and administrative-dashboard features that will be required. In its annual report, the operator will provide compliance data and information on which states, insurance carriers, and junk- and salvage-yard entities are reporting to the system and participating, if available.

User Fees

26. Per Transaction

Comment: Several commenters noted that the user fees should be based on a "per transaction" basis: "The fee structure based on a pro-rata share to states based on the number of registered vehicles is not an equitable structure. States put information into the system and all the states involved in the system benefit from this. Under a pro-rata system, states that have a low number of title transfers but a high number of vehicles ha[ve] to pay in more for the system for marginal benefit. Other states, for example states that act as dealer hubs and have a large number of title transfers but a small number of registered vehicles[,] would be benefitting disproportionately. For those reasons, the fees should be applied on a per transaction basis."

Response: Several commenters, including state motor vehicle-title administrations, noted that fees based on a "transaction" basis could serve as a disincentive for states to participate and to make NMVTIS inquiries, which would leave consumers and others vulnerable. Additionally, several commenters noted that fees based on a *pro rata* basis provided the ability to know fees in advance, which would assist in budget planning and requests. Finally, a transaction-based fee structure would require the operator of NMVTIS to revise its billing process and would likely be more costly to implement. For these reasons primarily, DOJ has determined that state user fees will be based on the number of motor vehicles titled or registered as reported by the U.S. Department of Transportation's Federal Highway Administration through its Highway Statistics Program and reports. With full state participation mandated beginning January 1, 2010, the operator will invoice all states regardless of their level of participation. State fees shall be reviewed biennially and announced to the states as soon as possible, preferably more than one year in advance of becoming effective.

Comment: Experian Automotive commented that some aspects of the proposed rule could be read to allow the establishment of a fee beyond what would be reasonable for the records, which would be essentially the same as prohibiting the disclosure of information outright.

Response: The current inquiry fee used in consumer-access pricing is based on market assessments, and with volume discounts included, has been effective in securing consumer-access provider-organization agreements. However, DOJ will carefully monitor consumer access pricing to ensure that the average consumer is not "priced out."

Comment: AAMVA and the States of California, New York, and Alaska commented that user fees based on the number of vehicles registered in the state are the preferred basis, as this will enable states to determine the fees in advance, which will support budget planning. At the same time, states such as Texas, Oregon, South Carolina, and Hawaii have recommended a fee structure other than the number of registered vehicles because of the high number of registered vehicles in some states. The State of California recommended that the fees be the subject of a separate, future rulemaking, that the operator be required to make its expenses publicly available, and that a stakeholder group comprising the operator, DOJ, and states provide input into the fees.

Response: DOJ agrees with AAMVA and several states in making the basis for state fees the number of vehicles registered or titled. DOJ cannot defer rulemaking on fees because the operator has indicated extensively that funding for NMVTIS is critical. In fact, in the operator's public comments on this rule, it acknowledges that it cannot implement key aspects of NMVTIS in accordance with a federal court's order without critical funding. For these reasons, DOJ must resolve this issue now. DOJ agrees that all expenses and revenues for NMVTIS be made publicly available annually.

Comment: More than one commenter argued that "[c]harging a 'user fee' to a state for the information they are required to upload to the system is simply unfair. If anything, the states are providing this information as a courtesy to enable the NMVTIS process to function. As such, a state should not be charged a fee for providing data. Rather, anyone, including a state, which uses the system to process requests, should pay fees for system use."

Response: The user fee is not charged to a state solely for sharing its data with the system and other states. The user fees are assessed in light of the states' use of the system overall as is required by law, including making inquiries into the system, relying on the system to maintain a national brand history, and facilitating the secure exchange of title information and updates between states to protect the states' consumers. Additionally, all states receive a level of added protection from fraud via participation by other states.

Comment: The State of South Carolina Department of Motor Vehicles suggested that "states could be charged for inquiries prior to the issuance of a new jurisdictional title based on an out-of-state title; however, states should be reimbursed for these charges based on the number of third-party inquiries that the system receives. If such a model is not developed, then states will take a double hit: the cost of full participation in the program, as well as the loss of revenue resulting from third parties being able to obtain current jurisdictional data through alternative means."

Response: Regardless of the fee model, DOJ has taken steps with the operator of the system to ensure that impact on states is minimized. In fact, the model that South Carolina proposes is very similar to the model being considered by DOJ and the operator. The model DOJ is proposing for generating revenue includes a component designed to "point" consumers to the full title history in the state of record, thereby potentially generating additional revenues for the state, and the model includes a strategy of using revenue to cover system operational costs as well as offsetting state user fees. Once system operational costs are covered, DOJ anticipates offsetting or eliminating state fees entirely with revenues generated by the

system. Should NMVTIS ever reach the point where an unexpected surplus of user fee revenue exists, DOJ could direct the operator to reduce user fees the following year or could use the funds to support state upgrades to motor vehicle title information systems. This latter use of funds would be directed by DOJ exclusively.

Comment: The State of Illinois motor vehicle administration commented that in order for NMVTIS to be effective, NMVTIS should purchase vehicle-history data from the state, "mark up" the price of the data, and sell the data to third parties. Illinois suggested that "with this model, everyone wins," and that "consumers win because they can rely on the complete, consistent, and efficient flow of information about motor vehicles."

Response: While this concept may be appealing to some, the concept has several major flaws. First, the Anti-Car Theft Act does not authorize or even suggest that DOJ should purchase state data. Had this been contemplated by Congress, funds would have to have been appropriated or at least authorized to make the purchases. Additionally, government agencies are not in a position to engage in speculative purchases. Consumers would not win under this scenario because they would be left to pay high prices for vehicle-history information, which many cannot afford and should not have to do to be protected. Last, this is not what is required under the Anti-Car Theft Act.

Comment: The State of California recommended that the states be charged a flat fee for participation that would cover NMVTIS operating expenses, and that all revenues generated from consumer access be returned to the states.

Response: DOJ believes that, based on the arguments presented by the states in response to the proposed rule, there is no equitable way to charge a flat fee due to variances in the number of vehicles in the states, number of title transactions, number of out-of-state transfers into the states, etc. DOJ believes that the fees must be based on a factor that is correlated to a state's required use of the system. In terms of returning revenues generated from consumer access to the states, this is not too dissimilar to what DOJ has proposed—offsetting state fees (potentially entirely) with revenues from consumer access once system operating costs are covered.

Comment: One commenter stated that "states should not be charged simply for submitting their title data to NMVTIS. States that choose to use NMVTIS should not be charged for assisting the DOJ."

Response: States are not charged for simply submitting data to NMVTIS. States are required to use NMVTIS for inquiries prior to issuing new titles for out-of-state vehicles, and NMVTIS can provide real-time updates and corrections as well as a secure method of sharing title information between states. In fact, for the 13 states currently online, 45 million messages or exchanges have been processed by NMVTIS, and the State of California has commented that NMVTIS is an "integral part of state operational activities," demonstrating that NMVTIS does provide services to the states. The purpose of NMVTIS is not to assist DOJ, and DOJ has limited use for the data in NMVTIS. NMVTIS is a service to states that provides greater consumer protection, reduces crime, and can improve titling process efficiencies, all three of which ultimately reduce costs to the states overall as well as to consumers.

Comment: One commenter noted that "the Department of Justice does possess a legitimate interest in incentivizing full state participation in NMVTIS." All states receive a benefit from NMVTIS. "Title washing and rebranding of vehicles remain a national problem, not somehow confined merely within state borders. Providing information to NMVTIS allows law enforcement agencies to confront crimes that may have originated or affected states outside of their jurisdiction."

Response: DOJ agrees with this comment.

Commenter: One commenter expressed disappointment regarding state concerns over user fees and system costs and recommended that DOJ pursue enforcement against non-participating states.

Response: DOJ appreciates the concern and will monitor state compliance with the Anti-Car Theft Act and the NMVTIS rules.

Comment: One commenter noted that the fee structure should be based on the activities generating the most costs, such as storing vehicle data, performing verifications, etc.

Response: DOJ agrees that the fees should match the costs of the system. In asking for comments on the fee structure, however, DOJ was attempting to solicit input from the field regarding the most equitable manner of developing the fees and applying them to all states. As for costs, the majority of current expenses are for supporting online states and states in the process of implementation and data storage.

Comment: The State of New York Department of Motor Vehicles commented that a transaction-based fee could serve as a disincentive to states to query the system often. The state further commented that a flat fee may be more effective.

Response: DOJ appreciates this input and assumes that the commenters' reference to a "flat fee" could include a tiered fee structure, such as what is in place today, as this results in a flat fee for the states in each tier.

Comment: One commenter noted that "[w]e remain convinced that if this is a program that is as effective as it is pronounced to be, if it will truly accomplish all of the goals it is said to have, then it should be fully funded and supported by the Department of Justice. Otherwise, it should be funded by fees charged for those states, individuals and organizations who request data from the system, based on a transaction fee as determined by AAMVA to sustain the system. If that is not possible and the DOJ will not fund it, it should be cancelled."

Response: The Anti-Car Theft Act explicitly states that NMVTIS should not be dependent on federal funds for operation. DOJ has awarded over $15 million to NMVTIS and participating states, in addition to the funds awarded by the Department of Transportation prior to 1996. Since 1992, no more than $2 million has been collected in user fees by the operator. DOJ will comply with the Anti-Car Theft Act in requiring a system of user fees to support system development, operation, and maintenance. Because the Anti-Car Theft Act requires that DOJ implement the system so that it is sustained by user fees, DOJ has no ability to "cancel" the program.

27. Tier Structure

Comment: Several commenters, including AAMVA, noted that a tiered structure is the most workable structure from a budgeting perspective, given that this type of basis or structure will lessen the need for annual changes to fees, which are unworkable for states with biennial budgets. However, some states, such as Oregon, Virginia, Alaska, Minnesota, and others, noted that a non-tiered structure is preferred.

Response: DOJ appreciates this input and has elected to keep the tier structure in place. While there is still disparity between small and large states, and between those states that have significant differences in the number of titled vehicles, the tiered structure does help in reducing disparities between states of similar size. Additionally, the tier structure allows the per-vehicle

basis fee structure to remain relatively stable, rather than fluctuating constantly, and because it acts as a stabilizer, it results in a stable fee that states can budget for appropriately. Last, the tier structure is the structure that the AAMVA Board has adopted as a workable method for establishing fees.

Comment: AAMVA commented that in addition to retaining the tiered fee structure, DOJ should modify the final rule to allow changes to the fee structure to be determined through a mutual agreement between DOJ and the operator.

Response: DOJ firmly believes that issues such as the structure of mandatory fee systems should be addressed in a public manner, as opposed to handled informally and without input from stakeholders.

28. Per Vehicle

Comment: More than one commenter noted that user fees should be based on the number of "automobiles" titled versus the number of "motor vehicles" titled in a particular state.

Response: While DOJ understands the comment and agrees in principle, the "basis" for calculating such fees has no impact when fees are adjusted to cover system costs. In other words, charging a user fee of $0.02 based on the number of "motor vehicles," versus $0.04 based on number of "automobiles," is academic. Because NMVTIS already includes and services titles on all motor vehicles that a state may provide data on, many stakeholders and DOJ encourage states to make verifications on all motor vehicle transactions. States have been paying fees based on number of motor vehicles, and because the number of motor vehicles (a more comprehensive figure) is easier to calculate for states and the operator, DOJ authorizes the operator to continue the practice of charging user fees based on the number of motor vehicles titled in the states.

29. Charging Non-Participants

Comment: Several commenters, including the current operator, expressed concern with charging fees to all states regardless of participation. The North Dakota Department of Transportation noted that the proposal to allow the operator to charge the user fee to all states, even if a state is not a current participant in NMVTIS, is "unfair" and that there has been no evidence provided that demonstrates the enhanced effectiveness of NMVTIS when all states participate. That commenter also argued that there is no evidence that criminals have targeted non-participating states. The commenter noted that "paying for the privilege of participating * * * is patently unfair and simply ludicrous." Another commenter stating the same conclusion described the system as "an unfunded mandate where the particular costs to states are vague, and the total costs ill-defined." The State of Texas commented that this would not represent a true "user fee," and the State raised the possibility of "constitutional problems" in paying such a fee.

Response: DOJ disagrees with each of these comments. Because all states are required to participate fully in NMVTIS and all states receive benefits from the system, all states must pay the user fees. There is no option for states to not participate in NMVTIS, which includes paying user fees to support the system as required by the Anti-Car Theft Act. Existing research demonstrates NMVTIS's effectiveness. Moreover, state and local law enforcement organizations, as well as automotive insurance experts, agree that non-participating states are being targeted for exploitation. It is important to note that the operator of the system has no discretion with regard to charging user fees, as this is the economic model established by the Anti-Car Theft Act. The operator has been steadfast in ensuring that DOJ understands and appreciates the perspective of its members and has worked closely with DOJ to identify ways of lessening the burden of implementation on state agencies. Additionally, states have multiple options for implementation in order to best manage the costs of participation, and certain cost-saving and potential state-revenue-enhancing features have been established or planned.

Comment: The State of California commented that "we agree with the recommendation to charge all states. If the fee is charged to all states regardless of participation, there will likely be greater participation by all states. This could increase the value of the database, generating additional consumer transactions, which can then be used to offset the user fees charged to states."

Response: DOJ agrees that by charging all states a user fee in light of the requirement for all states to participate and the benefits all receive, any disincentive to make title verifications or use the system in the manner required is eliminated.

Comment: One commenter noted that his or her state "will not voluntarily pay user fees."

Response: User fees will not be voluntary. Because the Anti-Car Theft Act requires that NMVTIS be self-sustaining through user fees, the final rule requires the operator to issue invoices and charge users of the system a user fee based on system operating costs and other factors that affect the costs, such as necessary upgrades or enhancements. Payment of the user fee is required for compliance with Federal law.

Comment: One commenter noted that all users of the system should be charged user fees, including entities reporting data.

Response: At this time, DOJ is not in favor of this recommendation because of the increased financial burden it would place on junk and salvage yards and insurance carriers, and the disincentive it would impose on their reporting of data.

30. Enforcement

Comment: Several commenters from various stakeholder groups asked who would be responsible for enforcement of the provisions of the rule and how enforcement responsibilities will be conducted.

Response: Responsibility for enforcement of this rule resides with the Department of Justice overall. Within DOJ, several component organizations (including the Bureau of Justice Assistance, the Federal Bureau of Investigation, and the Civil Division's Federal Programs Branch) will collaborate with each other, with the operator, and with state and local law enforcement to ensure compliance and to respond to allegations of non-compliance.

Comment: ARA commented that an "amnesty period" should be provided because most automotive recyclers will depend on inventory-management vendors to provide a reporting mechanism.

Response: While an "amnesty period" *per se* is not established, DOJ will work closely with the ARA and other organizations including the operator (if not the Department of Justice) to ensure that the commencement of reporting is not impeded. During the initial period of reporting, DOJ will be focused on implementation as opposed to purely enforcement.

Comment: Several insurance carriers suggested language for clarifying the enforcement aspects of the rule, recommending that a "violation" be defined as "an act in flagrantly and in conscious disregard of this chapter" and that the rule include a statement limiting liability of insurance carriers for what is reported and not reported.

Response: DOJ will not define "violation" in this regulation because such a definition is unnecessary. The Anti-Car Theft Act provides DOJ with

sufficient discretion to seek and assess penalties, including a requirement that DOJ consider the size of the business of the person charged and the gravity of the violation.

Comment: The National Salvage Vehicle Reporting Program commented that any penalties levied against a required reporter should be determined in a way that will result in a material fine that could force a modification in behavior. This comment was supported by comments from consumer-advocate attorneys who noted that "[t]he Department should construe the enforcement provisions of the statutes to make them as strong as possible with respect to any potential deliberate violations by insurance carriers or salvage yards."

Response: DOJ will carefully consider any penalties applied as required by the Anti-Car Theft Act.

Comment: The National Salvage Vehicle Reporting Program commented that "the establishment of regular document procedures by an entity to provide compliance should be considered a mitigating factor to demonstrate good intent."

Response: The Department did not propose any regulations governing its enforcement efforts in the proposed rule. At this time, the Department believes that enforcement concerns are adequately addressed by the Anti-Car Theft Act and other applicable statutes and regulations.

Comment: Several insurance-related organizations or associations commented that "49 U.S.C. 40505 sets forth a $1000 civil penalty for 'each violation of the chapter.' With millions of data points reported from and to many sources, there needs to be an interpretation of this provision that makes clear that good faith efforts to comply would be enough to avoid the penalty. For example, we request that the Department include language along these lines in the final regulation: 'A violation for purposes of 49 U.S.C. 30505 means an act that is committed flagrantly and in conscious disregard of this chapter.'"

Opposing this view, several national consumer organizations commented that "the Department should flatly reject the American Insurance Association's proposal that its enforcement authority be limited by a 'flagrant disregard' standard. Nothing in the Anti-Car Theft Act authorizes or contemplates such a standard, and the AIA does not adequately explain why such a standard is necessary, or how it would be satisfied. Consistent with congressional intent, the Department should preserve its full enforcement authority with respect to the reporting requirements of the Anti-Car Theft Act and its implementing regulations."

Response: As a matter of policy, DOJ will preserve its full enforcement authority and discretion, including the ability to determine what constitutes a violation of the Act. As noted above, the Department believes that enforcement concerns are adequately addressed by the Anti-Car Theft Act and other applicable statutes and regulations.

31. Liability

Comment: Several commenters requested that DOJ clarify liability and immunity protections for all users of the system—those using the data to make decisions and those providing the data to the NMVTIS. At least one of these commenters indicated that without such clarification, some data reporters may be hesitant to comply. Some commenters requested that DOJ clarify protections from both criminal and civil liability.

Response: DOJ does not believe that the applicable immunity provisions require clarification. Pursuant to 49 U.S.C. 30502(f): "Any person performing any activity under this section or sections 30503 or 30504 in good faith and with the reasonable belief that such activity was in accordance with this section or section 30503 or 30504, as the case may be, shall be immune from any civil action respecting such activity which is seeking money damages or equitable relief in any court of the United States or a State."

32. System Operating Costs

Comment: One commenter noted that the operator should examine its financial records and projections more closely in order to narrow the estimated system operating cost projections of $3,000,000 to $5,000,000 annually. Such examination would create greater reliability and equity in determining user fees. The commenter further suggested that "an outside bidding process should be enacted to shift the entire program onto a contractor."

Response: Because the system has not yet been fully implemented, and because costs are driven in part by system usage, the annual operating costs vary annually and therefore are estimates at this time. DOJ agrees, however, that it is imperative that more robust and tighter financial procedures and controls be put in place, and that transparency be encouraged through an annual publication of an operator report of progress and costs, as well as budget projections for the coming years. DOJ will ensure that these goals are reflected in the requirements of the system operator. While the operator is free to consider outsourcing opportunities for operational components (*e.g.*, technology, financial oversight, etc.), the Anti-Car Theft Act requires that the operator of the system, if it is not the DOJ, be an organization that represents the interests of the states. The Act also restricts the ability of the operator to make any profit from the operation of the system. Based on the current operator's statements regarding continued participation as the operator, DOJ is currently exploring outside bidding processes that could result in moving the program to another operator or to DOJ.

33. Concerns With Cost-Benefit Study

Comment: Several commenters noted concerns with the cost-benefit study cited in the proposed rule and completed by Logistics Management Institute (LMI). Concerns include overstatement of the benefits of NMVTIS, lack of details regarding the study's methodology, vague presentation of findings and issues, and a noted possibility that underreported costs were not well addressed. One commenter argued that "the LMI study is thoroughly unconvincing, and its methodology is not sufficiently revealed as to permit rebuttal."

Response: The LMI study was commissioned in 1999 by the National Institute of Justice (NIJ). The reports cited are the only reports available to DOJ at this time. Although more details may be desirable, the LMI study's findings clearly indicate that NMVTIS's benefits outweigh the costs. Comparing an individual state's cost estimates for implementation with the financial benefits of eliminating even a modest number of thefts and brand washings demonstrates the same thing. Moreover, the LMI study likely overestimated the costs of participation because the only method of participation known at the time of the study was the fully integrated method, which required a state to reconfigure title information systems to integrate NMVTIS inquiries and updates into their automated title processes. With a new "stand alone" method of participation available, the most costly aspect of known participation at that time (*i.e.*, major modifications to title information systems) has been eliminated as a requirement.

Comment: One commenter noted that "many improvements will remain theoretical without full participation. The expected benefits however are not illogical; states will only fully gain from NMVTIS once most states are full participants." "The best interests of

states, through their consumers, lies with full participation in NMVTIS." In agreement with this, the Virginia Department of Motor Vehicles commented that "the system provides a great value to participating states and that value will exponentially increase as each jurisdiction begins fully participating."

Response: NMVTIS will not achieve its full value until there is 100% state participation. However, some states, such as California, have commented very favorably on the benefits of the system, even though all states do not yet participate.

34. Cost Calculations

Comment: One commenter noted that "[t]here are specific examples of laxity in the cost-accounting figures for this rule. For instance, although the proposed rule states that average fees charged to states by the operator should be less than 3 cents per vehicle, it goes on to say that 'states that choose to integrate the NMVTIS processes of data provision and inquiry into their titling process generally incur one-time upgrade costs to establish these connections.' It would seem that * * * a ballpark figure for this 'onetime upgrade' is needed. Further, the cost of this 'one-time upgrade' may not be insignificant, as suggested by the fact that 'states can lower their upgrade costs by choosing to integrate the NMVTIS reporting and inquiry requirements into their business rules but not into their electronic titling processes.' This would bring with it, however, a definite loss in efficiency."

Response: It is important to note that there is no requirement in this rule or otherwise that states integrate NMVTIS processes into their title-information systems. Because doing so would be strictly and totally voluntary on the part of the states, DOJ does not see the need to attempt to estimate the costs for this type of implementation. Requests from states for DOJ grant funds have ranged from $17,000 to nearly $500,000 to implement various aspects of NMVTIS, *e.g.*, data provision only, full implementation, etc. While implementing NMVTIS through the stand-alone method eliminates the need for nearly all system modifications, DOJ agrees that this approach may still affect business processes and could therefore impact overall operating costs. However, given that NMVTIS inquiries are only required on out-of-state vehicles coming into the state, and given that system response time is less than three seconds on average, we can reasonably estimate that the cost is minimal for a title clerk to enter the VIN, wait approximately 3 seconds for the response, and review the response (a process estimated to take as little as 60 seconds or as much as 3 minutes). DOJ has included this estimation in the costs described in the proposed rule. Clearly, if discrepancies are found, the time required to process the transaction could increase substantially. However, DOJ notes that this is not a new cost, but a cost that states already have today.

Comment: One commenter asked "has the agency considered the day-to-day cost of requiring a title clerk to 'switch to an internet enabled PC to perform a Web search of NMVTIS via a secure virtual private network' for every single title check of every single day? (Section 25.54(c) requires that each state shall perform an instant title verification check through NMVTIS before issuing a certificate of title.) Is this additional cost something an underfunded state is supposed to bear simply because it is underfunded? What is the actual cost of having a clerk provide such a search based on the total number of title checks that a state will do in a year?" A state motor vehicle administration commented on the need to provide a "batch" verification method via stand-alone access, so that many title verifications can be conducted as part of a "back room" operation.

Response: The estimated costs for this function have been included in the overall cost calculations for the system as described in the response above. It is important to point out, however, that a state is only *required* to check NMVTIS when an out-of-state title is presented. Although states are encouraged to make NMVTIS inquiries before all transactions, it is only *required* in these limited instances. Additionally, states that determine that this process is unworkable may make a one-time system modification to automate the NMVTIS inquiry function. While most states may opt to use the individual title-verification method for over-the-counter operations, DOJ will encourage the operator to make available a "batch" verification method as quickly as possible to make compliance more flexible for central-issue states.

Comment: One commenter asked "what are the anticipated costs of causing an insurance carrier to provide the requested information 'in a format acceptable to the operator?' § 25.55(a). Where is the study indicating this cost? How was this cost determined? And was this cost balanced against the benefit of consumer protection? This rule will increase insurance costs." The commenter also asked why insurance carriers should have to provide the information at its own cost. If the information was being collected under the "guise" of consumer protection, when it will provide "any real benefit?"

Response: DOJ estimated the costs to insurance companies and presented these costs and a description of how they were determined in the proposed rule. These costs were not balanced against the benefit of consumer protection. For insurance carriers already reporting to a third party that provides the required information to NMVTIS, no additional costs will be incurred. Amica Mutual Insurance and other insurance organizations that have begun reporting this information on their own have publicly stated the benefits of such reporting. The benefits of NMVTIS in terms of consumer protection are well founded and common sense.

Comment: The State of Illinois motor vehicle administration commented that compliance in the first year of the program would cost the state an estimate $3,700,000, including start-up costs, user fees, and the loss of approximately $2,600,000 in annual sales of vehicle information. Illinois commented that these costs and the model being implemented by the operator is "nonsensical." Other states estimated their costs at approximately $200,000. The NADA added that "[a]ny state claims of excessive reporting costs should be weighed against the huge costs associated with vehicles with hidden histories entering the stream of used vehicle commerce."

Response: DOJ disagrees with Illinois's assessment of start-up costs. Because the proposed rule did not prescribe a specific user-fee model, Illinois's estimate of $700,000 in user fees is not reliable. Additionally, organizations that typically purchase state motor vehicle records have signaled that they will continue to purchase state data, as they are unable to purchase the bulk state data from or through NMVTIS. For this reason, Illinois's assertion that it will loose $2,600,000 in revenues likely is unfounded. The only place these organizations can purchase bulk vehicle data from Illinois is from Illinois—NMVTIS will not sell data in this manner. While DOJ is not in a position to address Illinois's estimate of start-up costs, DOJ issued a solicitation in fiscal years 2007 and 2008 to provide funds to states to support NMVTIS start-up costs and encouraged states to apply under other unrestricted, eligible funding programs as well. For many years between FY 1997 and FY 2004, AAMVA also offered funding support to states based on DOJ grant awards to the operator.

Comment: AAMVA contended that although the Anti-Car Theft Act states that NMVTIS should be self sustaining, NMVTIS represents an unfunded mandate that has serious impact on states. AAMVA went on to assert that to achieve full implementation and long-term success, federal funding of the remaining development work and support for system operation is needed.

Response: The Anti-Car Theft Act requires NMVTIS to be self-sustaining and "not dependent on federal funds" for its operation. To date, DOJ has invested more than $15 million in NMVTIS development, combined with investments from the U.S. Department of Transportation, as well as a reported $30 million investment from AAMVA. Since 1992, less than $2 million has been collected from user fees. DOJ is concerned that additional investments of federal funds will be used to support the required "services to states" and will not lead to additional development of the system. Additionally, DOJ notes that much of the federal funds provided to states through AAMVA remains unexpended even years after being provided to facilitate participation. From 2003 to date, AAMVA and the states have strongly encouraged DOJ to implement the rules for NMVTIS as a necessary step to system implementation. With rules now published, system operation and user fees established, and third-party providers generating additional user fees, it is DOJ's hope that additional federal funding may not be needed, and that the system can begin to be self sustaining as originally envisioned.

Comment: AAMVA commented that its Board of Directors recently concluded that AAMVA will not be able to continue as the system operator if it must subsidize the ongoing development and operation costs of NMVTIS. As a result, AAMVA expects a decision by August 2009 from its Board of Directors as to its continued participation as the operator of the system.

Response: DOJ acknowledges AAMVA's position and, in response, developed a Request for Information (RFI) that was published to identify prospective new operators and organizations that could support DOJ should DOJ become the operator. DOJ expects that any new operator, if not DOJ, will comply with the same provisions of this rule and will work with DOJ, AAMVA, and the NMVTIS stakeholders to perform a seamless transition. The results from the RFI are being used to identify new ideas and capabilities to accomplish the program objectives while minimizing the burden on states.

Provisions of This Rule

The continued implementation of NMVTIS and its effectiveness depend on the participation and cooperation of a number of parties. According to the cost-benefit study conducted by the Logistics Management Institute: "The way NMVTIS is implemented—piecemeal, regionally, or nationally—will affect how criminals respond. Criminals are highly mobile and may avoid NMVTIS states until most of the country is covered by the system. Criminals use technology to their advantage, both to identify potential theft targets and to camouflage stolen vehicles." As a result, any states not fully participating in NMVTIS and their citizens may be disproportionately targeted by criminals committing vehicle crimes. This finding has been repeatedly confirmed by law enforcement at the local, state, and federal levels, and by national anti-theft organizations based on experience and active investigations. Even private vehicle-history providers have agreed that criminals exploit these and similar weaknesses in the vehicle-titling system in the U.S., particularly the lack of communication between state motor vehicle title and registration agencies. The Anti-Car Theft Act also referred to the "weakest link" in referring to this problem as it relates to brand washing. *See* Public Law No. 102–519, section 140(a)(1).

Participation in NMVTIS must be expanded to all states. In addition, insurance carriers, junk yards, and salvage yards also need to provide certain information relevant to the life-cycle of an automobile in order for NMVTIS to function properly and achieve the intended benefits. The Anti-Car Theft Act requires junk yards, salvage yards, and insurance carriers to report at least monthly to NMVTIS on all junk and salvage automobiles they obtain. Pursuant to 49 U.S.C. 30504(c), the Attorney General is authorized to issue regulations establishing procedures and practices to facilitate reporting the required information in the least-burdensome and costly fashion.

Accordingly, this rule implements the reporting requirements imposed on junk yards, salvage yards, and insurance carriers pursuant to 49 U.S.C. 30504(c). In addition, this rule clarifies, consistent with section 202(a)(1) of the Act, the title and related information to be included in the system to determine its adequacy, timeliness, reliability, and capability of aiding in efforts to prevent theft and fraud. The rule also clarifies the various responsibilities of the operator of NMVTIS, states, junk yards, salvage yards, and insurance carriers under the Anti-Car Theft Act to help ensure its effectiveness. Finally, this rule provides a means by which user fees will be imposed to fund NMVTIS, consistent with the requirements of the Anti-Car Theft Act and its requirement that NMVTIS be self sustaining and "not dependent on Federal funds."

1. State Responsibilities

The effectiveness of NMVTIS increases as more states fully participate. NMVTIS will only be as good as the quality and quantity of information it contains. Consequently, all non-participating states are strongly urged to comply with their obligations under the Anti-Car Theft Act and to begin title verifications and reporting title information to NMVTIS as soon as possible. While the immediate requirement of this rule is to, at a minimum, have all states make verifications on incoming, out-of-state titles and provide regular (at least daily) data updates to NMVTIS, the ultimate goal is for all states to participate in the system via an integrated, online method that provides real-time data updates, making inquiries into NMVTIS prior to issuing new titles on vehicles coming from out-of-state, and sharing other information and data electronically, via NMVTIS. All states must be fully participating as required by the Act and this rule by January 1, 2010. However, for purposes of continuity and to ensure that there is no degradation of services currently provided by NMVTIS, the final rule requires all states to maintain at least the level of participation (data provision, title verifications, remitting fees) that they had established as of January 1, 2009 for the remainder of that year and until the full compliance date for all states arrives on January 1, 2010.

In accordance with 49 U.S.C. 30502, NMVTIS must provide a means of determining whether a title is valid, where the automobile previously was titled, the automobile's reported mileage, if the automobile is titled as a junk or salvage automobile in another state, and whether the automobile has been reported as a junk or salvage automobile under 49 U.S.C. 30504. Each state is required to make its titling information available to NMVTIS. 49 U.S.C. 30503(a). Each state also is required "to establish a practice of performing an 'instant' title verification check before issuing a certificate of title." 49 U.S.C. 30503(b). This rule clarifies the procedures for verifying title information and the information

states must report to NMVTIS pursuant to the Anti-Car Theft Act, and the procedures and practices that states must follow to provide this needed information. Pursuant to 49 U.S.C. 30503(a), states are required to perform an "instant" title verification check before issuing a certificate of title to an individual or entity bringing a vehicle into the state. Because several states are "central issue" states where titles are produced at a central location after an application for title has been made, "instant" is considered to mean at any point before a permanent title is issued. The primary purpose of the verification is to determine the validity and status of a document purporting to be a certification of title, to determine whether the automobile has been a junk or salvage vehicle or has been reported as such, to compare and verify the odometer information presented with that reported in the system, and to determine the validity of other information presented (*e.g.*, lien-holder status, etc.). While the laws and regulations of the receiving state will prevail in determining the status of the vehicle (*e.g.*, branding, title type, or status), the information in NMVTIS should be used by the state to identify inconsistencies, errors, or other issues, and to follow state procedures and policies for their resolution. Because NMVTIS can prevent many types of fraud in addition to simple brand washing, states are encouraged to use NMVTIS for verifications on all transactions whenever possible. This verification includes in-state title transactions, dealer reassignments, lender and dealer verifications, updates, corrections, and other types of title transactions. This business process is made possible through the integrated, online method of state participation and is strongly encouraged by law enforcement, consumer protection groups, and private sector entities.

States are also required under 49 U.S.C. 30503(a) to make selected titling information they maintain available for use in NMVTIS. Specifically, states are required to report: (1) An automobile's VIN; (2) any description of the automobile included on the certificate of title, including all brand information; (3) the name of the individual or entity to whom the title certificate was issued; and (4) information from junk or salvage yard operators or insurance carriers regarding their acquisition of junk automobiles or salvage automobiles, if this information is being collected by the state. The Anti-Car Theft Act also requires that the operator of NMVTIS make available the odometer mileage that is disclosed pursuant to 49 U.S.C. 32705 on the date the certificate of title was issued and any later mileage information, if in the state's title record for that vehicle. Accordingly, the rule requires states to provide such mileage information to NMVTIS. States shall provide new title information and any updated title information to NMVTIS at least once every 24 hours.

In addition, with the approval of DOJ, the operator, and the state, the rule will allow the state to provide any other information that is included on a certificate of title or that is maintained by the state in relation to the certificate of title.

The Anti-Car Theft Act specifically covers "automobiles" as defined in 49 U.S.C. 32901(a). That definition, which is part of the fuel economy laws, was most recently amended by the Energy Independence and Security Act of 2007, Public Law No. 110–140, and generally covers four-wheel vehicles that are rated at less than 10,000 pounds gross vehicle weight, but excludes vehicles that operate on rails, certain vehicles manufactured in different stages by two or more manufacturers, and certain work trucks. Participating states, however, have been providing information to NMVTIS on other types of motor vehicles [3] possessing VINs, such as motorcycles and various work trucks. Information on these other types of motor vehicles is very useful to the users of NMVTIS, and law enforcement organizations including DOJ have strongly encouraged states to continue to provide information on such vehicles in order to reduce the theft of such vehicles. Therefore, while states only are required to report on automobiles, they are strongly encouraged to continue reporting to NMVTIS information on all motor vehicles possessing VINs in their state titling systems.

2. Insurance Carriers

The Anti-Car Theft Act authorized the Attorney General to issue regulations establishing procedures by which insurance companies must report monthly to NMVTIS on the junk and salvage automobiles they obtain. 49 U.S.C. 30504(c). Accordingly, this rule clarifies the reporting requirements imposed on insurance carriers regarding junk and salvage automobiles. The Anti-Car Theft Act defines a salvage automobile to mean "an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage." 49 U.S.C. 30501(7). For purposes of clarification, the Department of Justice has determined that this definition includes all automobiles found to be a total loss under the laws of the applicable state, or designated as a total loss by the insurance carrier under the terms of its policies, regardless of whether an insurance carrier retitles the vehicle into its name or allows the owner to retain the vehicle.

As a practical matter, the determination that an automobile is a total loss (*i.e.*, that the automobile has been "totaled") is the logical event that shall trigger reporting to NMVTIS by an insurance carrier. Insurance carriers are required under this rule to provide NMVTIS with: (1) The VIN of such automobiles; (2) the date on which the automobile was obtained or designated as a junk or salvage automobile; (3) the name of the individual or entity from whom the automobile was obtained (owner name or lien-holder name) and who possessed the automobile when it was designated a junk or salvage automobile; and (4) the name of the owner of the automobile at the time of the filing of the report with NMVTIS (either the insurance company or the owner, if owner-retained). DOJ strongly encourages insurers to include the primary reason for the insurance carrier's designation of salvage or total loss in this reporting as well. In accordance with 49 U.S.C. 30504(b), the report must provide such information on "all automobiles of the current model year or any of the 4 prior model years that the carrier, during the prior month, has obtained possession of and has decided are junk automobiles or salvage automobiles."

In addition, although not specifically required by the Anti-Car Theft Act or this rule, this rule will permit insurance carriers to provide the NMVTIS operator with information on other motor vehicles, including older model automobiles, and other information relevant to a motor vehicle's title, including the disposition of such automobiles, and the name of the individual or entity that takes possession of the vehicle. The reporting of this information by insurance carriers will help reduce instances in which thieves use the VINs of junk or salvage motor vehicles on stolen motor vehicles and will assist in preventing and

[3] Pursuant to 49 U.S.C. 30102(a)(6), a "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

eliminating fraud. Accordingly, the Department of Justice strongly encourages insurance carriers to report such additional information to the operator.

3. Junk and Salvage Yards and Auto Recyclers

Under this rule, junk yards and salvage yards are required to provide NMVTIS with the VIN, the date the automobile was obtained, the name of the individual or entity from whom the automobile was obtained, and a statement of whether the automobile was crushed or disposed of, for sale or other purposes. Such entities must also report whether the vehicle is intended for export out of the United States, which will assist law enforcement in investigations related to the export and cloning of exported vehicles. The reporting of this information will be limited to junk yards and salvage yards located within the United States. Pursuant to the Anti-Car Theft Act, junk and salvage yards are defined as individuals or entities engaged in the business of acquiring or owning junk or salvage automobiles for resale in their entirety or as spare parts or for rebuilding, restoration, or crushing. *See* 49 U.S.C. 30501(5), (8). "Rebuilding, restoration, and crushing" is reflective of the varied nature of entities that meet this definition. Included in this definition are scrap-vehicle shredders and scrap-metal processors, as well as "pull- or pick-apart yards," salvage pools, salvage auctions, and other types of auctions, businesses, and individuals that handle salvage vehicles (including vehicles declared a "total loss"). A salvage pool is an entity that acquires junk and salvage automobiles from a variety of parties and consolidates them for resale at a common point of sale. The pooling of junk and salvage automobiles attracts a large number of buyers. It is the belief of the Department of Justice and the state and local law enforcement community that a significant number of these buyers purchase junk and salvage automobiles at salvage pools in order to acquire VINs or titles that can be used on stolen motor vehicles or to create cloned motor vehicles for other illicit purposes.

Such entities must report all salvage or junk vehicles they obtain, including vehicles from or on behalf of insurance carriers, that can reasonably be assumed to be total-loss vehicles. Such entities are not required to report any vehicle that is determined not to meet the definition of salvage or junk after a good-faith physical and value appraisal conducted by qualified appraisal personnel entirely independent of any other persons or entities. Second, DOJ has added a clarification that individuals and entities of this type that handle fewer than five vehicles per year that are determined to be salvage or total loss are not required to report under the salvage yard requirements, consistent with requirements for automobile dealers, *see* 49 U.S.C. 32702(2).

Pursuant to 49 U.S.C. 30504(a)(2), junk yards and salvage yards will not be required to submit reports to NMVTIS if they already report the required information to the state in which they are located and that state makes available to the operator the information required by this rule of junk and salvage entities. Because some junk or salvage yards may hold vehicles for several months or years before a final disposition (*e.g.*, crushed, sold, rebuilt, etc.) is known, some junk and salvage yards may need to provide a supplemental or additional report at the time of disposition or within 30 days of the date of disposition. Nothing in this rule shall preclude a junk or salvage yard from reporting the disposition of a vehicle at the time of first reporting, if such a disposition is known with certainty. Junk and salvage yards are responsible for ensuring the accuracy and completeness of their reporting and for providing corrected information to the system should the disposition be changed from what was initially reported.

4. Lenders and Automobile Dealers

The Anti-Car Theft Act requires that the operator make NMVTIS information available to prospective purchasers, including auction companies and entities engaged in the business of purchasing new or used automobiles. The Department believes that the scope of prospective purchasers also includes lenders who are financing the purchase of automobiles and automobile dealers. Lenders and dealers are integral components of the automobile purchasing and titling process who also can be the victims of fraud. This rule allows the operator to permit public and private entities involved in the purchasing and titling of automobiles to access NMVTIS if such access will assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles and parts into interstate commerce and to prevent fraud. For purposes of clarification, this rule permits commercial consumers to access and verify NMVTIS information at the time of purchases, as well as at any time during the ownership of or involvement with such vehicles (*i.e.*, lender verifications). States are strongly encouraged to work with lenders and others in using NMVTIS as an electronic means of performing title transactions and verifications. Conducting such efforts in an electronic fashion will eliminate a major source of fraud—paper-based title exchanges, updates, lien releases, etc.

5. Responsibilities of the Operator of NMVTIS

In accordance with 49 U.S.C. 30502, NMVTIS must provide a means of determining whether a title is valid, where the automobile is currently titled, the automobile's reported mileage, if the automobile is titled as a junk or salvage automobile in another state, and whether the automobile has been reported as a junk or salvage automobile under 49 U.S.C. 30504. Further, the operator of NMVTIS must make relevant information available to states, law enforcement officials, prospective and current purchasers (individual and commercial), and prospective and current insurers. This rule clarifies that the operator of NMVTIS will be responsible for collecting the required information and providing the necessary access to all permitted users.

The Department will instruct the operator that if it is not receiving reporting entity data directly, then it must identify at least three third-party organizations willing to receive reports from reporting entities (junk, salvage, insurance) and to share such data with NMVTIS. The operator also will take steps to ensure data quality to the extent possible and take steps as described in this rule to correct reported data, if not reported by a state, which has the authority to make changes via updates.

The operator will be using the National Information Exchange Model or any successor information-sharing model for all new information exchanges established, and DOJ may require the operator to use Web services for all new connections to NMVTIS.

Services to State Motor Vehicle Title Administrations

The operator will:

- Make available to state motor vehicle title administrations at least two methods of interacting with NMVTIS. States will have the option of participating via "stand alone" access, which is a basic Internet site that allows a state to enter a VIN and receive the results of the search. States currently have the option of fully integrating the NMVTIS search function into their title-information systems. This method of access allows state systems to perform the search seamlessly and without specific effort of the titling staff. This method allows updates made after the

title transaction to be shared with the prior state of title and allows real-time updates to NMVTIS as well. The operator also will make available a modified stand-alone access process (that allows for batch inquiries) to central-issue states to support their efficient title administration needs.

- Share with states any and all information in NMVTIS, including any intended export criteria, junk and salvage history, and any other information obtained by the operator (*e.g.*, title history information from other North American title administrations, etc.).
- Provide the states with the greatest amount of flexibility in such things as data standards, mapping, and connection methodology.

Services to Law Enforcement

In particular, the operator of NMVTIS will be responsible for ensuring that state and local law enforcement agencies have access to all title information in or available through NMVTIS, including personal information collected by NMVTIS for law enforcement purposes. A thief can take a stolen, cloned vehicle to a non-participating state and get a valid title by presenting the clone and matching fraudulent ownership documentation to the new state. Thieves often switch the VIN plate (and sometime other VIN stickers) of a stolen motor vehicle with one from a junked car in order to get a valid title for the stolen car. These activities were possible because the states had no instantly updated, reliable way of validating the information on the ownership documentation prior to issuing the new title. Investigations have shown that sophisticated criminal organizations typically employ fraud schemes involving multiple state-title processes and either target non-participating states as the new title-issuing agent or use fraudulent or counterfeit title documents from a non-participating state in order to effect brand washing or cloning. Exported vehicles also have become a key source for cloning activities. NMVTIS will provide law enforcement agencies with access to make inquiries to further their investigations of motor vehicle theft and fraud—including fraud committed against consumers, businesses, and states. This access will allow law enforcement agencies to better identify stolen motor vehicles, enhance their ability to identify vehicle theft rings, identify cases of public corruption, and identify other criminal enterprises involving vehicles. NMVTIS will reduce the ability of organized criminal organizations to obtain fraudulent vehicle registrations by linking state and local authorities with real-time verification of information. This system also will provide an additional tool to identify and investigate international organized criminal and terrorist activity. NMVTIS will assist investigations of vehicles involved in violent crimes, smuggling (narcotics, weapons, undocumented aliens, and currency), and fraud. In addition to providing access to NMVTIS based on a VIN inquiry, the operator also will allow law enforcement agencies to make inquiries based on other search criteria in the system, including the organizations reporting data to the system, individuals owning, supplying, purchasing, or receiving such vehicles (if available), and export criteria.

Services in Support of Consumer Access

The operator of NMVTIS is responsible for ensuring that a means exists for allowing insurers and purchasers to access information, including information regarding brands, junk and salvage history, and odometer readings. Such access shall be provided to individual consumers in a single-VIN search arrangement and to commercial consumers in a single-, multiple-, or batch-VIN search arrangement. As noted above, motor vehicles that incur significant damage are considered "junk" or "salvage." Fraud occurs when junk or salvage motor vehicles are presented for sale to purchasers without disclosure of their real condition or history. Not only are unsuspecting purchasers paying more than the motor vehicle is worth, but they do not know if the damaged vehicles have been adequately repaired and are safe to drive. For example, during Hurricane Katrina, thousands of motor vehicles were completely flooded, and many remained under water for weeks before flood waters subsided. Many of these flooded motor vehicles were taken to other states where they were cleaned and sold as purportedly undamaged used cars, despite the damage caused by the flood, which jeopardizes the motor vehicles' electrical and safety systems. In several reported cases, consumers purchased vehicles that had previously been involved in a collision, and airbags were not reinstalled. These consumers were later killed in a collision where the airbags could not deploy because they were no longer present. This fraud has serious consequences, not only for commerce and law enforcement, but also for highway and citizen safety.

The cost for Web-based prospective-purchaser inquiries for individuals shall be nominal and take into consideration the potential that consumers may lack credit cards or Internet access. Consumer-access fees charged by the operator may be in addition to fees that may be charged by other public or private entities participating in providing the service. While this rule does not establish minimum or maximum fees for such consumer access in order to allow it to remain "market-driven" and flexible, the Department requires that all consumer-access fees and methods be approved by the Department prior to enactment.

The Department anticipates that the operator will implement a Web-based method of permitting prospective purchasers to access NMVTIS information as required by the Act. Consumer access shall be available to individual and commercial consumers who are considering purchasing a vehicle or who have recently purchased a vehicle. Consumers accessing NMVTIS shall receive an indication of and link to the current state of title, the brand history (name of brand/brand category), the most recent odometer information in the system, and any reports on the subject vehicle from junk or salvage yards.

Privacy and Security Protections for NMVTIS

The operator may not release any personal information to individual prospective purchasers. The operator also will develop a privacy policy that will address the release of this information as well. The operator also will ensure that NMVTIS and associated access services (*i.e.*, secure networks used to facilitate access to personal information included in NMVTIS) meet or exceed technology industry security standards, most notably any relevant Global Justice Information Sharing Initiative standards and recommendations.

Accountability and Transparency

The operator shall publish an annual report describing the performance of the system during the preceding year and shall include a detailed report of NMVTIS expenses and all revenues received as a result of NMVTIS operation. Additionally, the operator (if not the Department of Justice) shall be required to procure an independent financial audit of NMVTIS expenses and revenues during the preceding year. Both the annual performance and budget report and the independent audit report shall be publicly available via *www.NMVTIS.gov*.

Although DOJ has primary enforcement responsibility for the provisions of this rule, the operator

shall conduct regular reviews of reporting compliance by all reporters to assess the extent to which reporting entities are reporting appropriately, documentation is in place, and other requirements of reporting are being met. The operator shall provide the results of such information to DOJ. The operator shall also maintain a publicly available, regularly updated listing of all entities reporting to NMVTIS. Such listing shall include the name of the reporting entity, city/state, contact information, and last-data-reported date.

6. User Fees

Pursuant to 49 U.S.C. 30502(c), NMVTIS is to be "paid for by user fees and should be self-sufficient and not be dependent on amounts from the United States Government. The amount of fees the operator collects and keeps * * * subject to annual appropriations laws, excluding fees the operator collects and pays to an entity providing information to the operator, may be not more than the costs of operating the System." Rather than charge states user fees based on the number of transactions they place with NMVTIS, AAMVA (the operator of NMVTIS) currently employs a ten-tiered fee structure. The fee a particular state is charged depends on the tier in which that state is placed based on the number of currently titled motor vehicles in that state. As a result of the great disparity between the states in their total number of titled motor vehicles, the per-vehicle fee currently charged by the operator of NMVTIS ranges from less than 1 cent per vehicle in the states with the most titled motor vehicles to nearly 7 cents per vehicle in the state with the lowest number of titled motor vehicles. This fee structure was developed by AAMVA and approved by its Board of Directors, comprising state motor vehicle administrators. As noted above, AAMVA is a nonprofit, tax-exempt, educational association representing U.S. and Canadian officials who are responsible for the administration and enforcement of motor vehicle laws.

This rule requires the operator (if not the Department of Justice) to continue to charge user fees to all states based on the total number of motor vehicles titled in the state and to continue the tiered structure. Such a pro rata fee structure simplifies billing for both the states and the operator of NMVTIS. In addition, a state would not be subject to a significant change in user fees if it moves from one tier to another. Last, a pro rata fee structure eliminates any disincentive for states to make title verifications and encourages all states to participate in order to receive the benefits of the system they are funding.

In addition, the Department of Justice requires that the operator charge user fees to all states, even if a state is not a current participant in NMVTIS. In accordance with 49 U.S.C. 30503(a) and (b), each state is required to participate in the system, which includes making titling information available to NMVTIS, conducting title-verification checks before issuing a title, and paying any user fees. Because all states are required to participate in NMVTIS, this rule requires that the operator charge user fees to all states, regardless of their current level of participation. Further, this rule requires that the operator notify states at least one year in advance of user fees and invoice every state at least once per year. This schedule shall remain in place until modified by agreement with DOJ.

Under this rule, and consistent with the Anti-Car Theft Act, users, such as purchasers, insurers, consumers, and other non-governmental entities, may be charged a fee for inquiries they make to NMVTIS. Because of the varying levels of participation by the states, the Department has decided to eliminate the proposed provision prohibiting the operator from charging transaction fees for consumer transactions performed by fully participating states. However, the Department retains the authority to allow the operator to discount such fees for fully participating states. The operator shall not charge any user fees or transaction fees for inquiries made by law enforcement agencies. The operator shall ensure that all third-party providers of NMVTIS information are eligible for the same prices and discounts, based on the product implemented or provided (*e.g.*, single VIN lookup, batch lookup, etc.). The operator shall require that all providers and methods of consumer access include a visible notice and disclaimer, or a link to such a notice or disclaimer, that provides consumers with accurate information on what NMVTIS includes and any limitations in the database. The names of all noncompliant states shall be disclosed to each consumer for purposes of awareness. Providers and methods of consumer access also will include a link to operator-provided information that explains to consumers how NMVTIS works, such as how different reporting streams may explain variances or seemingly conflicting information. Those providers and methods of consumer access also will provide a link to a state's brand definitions if those brands are displayed and the information is available.

The expenses to be recouped by the operator of NMVTIS through its fees will consist of labor costs, data center operations costs, the cost of providing access to authorized users, annual functional-enhancement costs (including labor and hardware), the cost of technical upgrades, costs to comply with the provisions of this rule, and other costs as approved by the Department of Justice in advance of the expense. The operator is authorized to develop a system-enhancement reserve that does not exceed 50% of the annual cost of operating the system for use in ensuring that critical upgrades can be implemented on an emergency basis as necessary. AAMVA currently estimates that the annual cost of operating NMVTIS is approximately $5,650,000. According to DOT's 2005 Highway Statistics, 241,193,974 vehicles were titled in the United States in 2005. Therefore, the cost to fund NMVTIS will average less than 3 cents per motor vehicle title, although states in different tiers may pay slightly different rates. The operator of NMVTIS will inform the states of the applicable fees either through publication in the **Federal Register** or by direct notice or invoicing to the states.

The operator will be required to recalculate its fees on at least a biennial (every two years) basis at least one year in advance of their effective date. Any fees charged to the states would be offset by transaction fees received by the operator. In addition, the total fees charged to the states would be reduced by future funds awarded by the U.S. Government to the operator to assist in implementing the system. Any fees imposed by the operator in connection to NMVTIS must be approved by the Department of Justice.

Notwithstanding individual and batch lookups or inquiries, the operator shall not, under any circumstances, sell a state's entire data set in bulk or sell the entire NMVTIS data set in bulk.

Since Fiscal Year 1997, the Department of Justice, through BJA, has provided over $15 million to AAMVA for NMVTIS implementation. In Fiscal Years 2007–2009, BJA invited states to apply for direct funding from DOJ to support initial NMVTIS implementation. In fiscal years 2007 and 2008, less than six states applied for funds each year. BJA awarded funds to five states in fiscal year 2007 and one state in 2008 to support system implementation. BJA also invited AAMVA, the system operator, to apply for direct funding from BJA in fiscal years 2007 and 2008, to supplement state participation fees received by AAMVA, as authorized under the Anti-

Car Theft Act, and encouraged states to apply through its other funding programs to enhance NMVTIS participation. As a result of these solicitations, funding was awarded to AAMVA to assist with NMVTIS implementation in fiscal years 2007 and 2008. As noted above, funds awarded to the operator of NMVTIS will reduce the amount of user fees that must be imposed to implement NMVTIS once all states are participating.

7. Governance

The Department of Justice may establish a NMVTIS Advisory Board to provide input and recommendations from stakeholders on NMVTIS operations and administration. If created, the Advisory Board's costs would be supported by the operator after approval of the Department of Justice.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Although the reporting requirements imposed by the Anti-Car Theft Act will apply to all small insurance companies and small junk and salvage yard operators that handle junk or salvage automobiles, the Department believes that the incremental cost for these entities to collect VINs and the other required information will be minimal and that the rule will not have a significant economic impact on them. Many insurance companies and junk and salvage yards already capture VINs as a means of positively identifying automobiles and tracking inventory. The additional cost to insurance companies, junk yard operators, and salvage yard operators to report the collected information electronically to NMVTIS is not expected to exceed 1 cent per motor vehicle for most entities after the first year. In the first year only, start-up investments increase this per-vehicle cost to approximately 4 cents per vehicle. For the estimated small number of non-automated reporting entities, a manual reporting process may be required, in which case the additional cost is estimated at 96 cents per vehicle annually. In the first year only, the cost for these entities is estimated at $1.86 per vehicle due to initial investment or start-up needs. Indeed, these costs may be significantly lower or possibly even eliminated altogether if insurance, salvage, and junk data is provided through a third party that may already have access to the data and may be in a position to establish a data-sharing arrangement with NMVTIS in order to reduce the reporting burden on these entities.

Moreover, insurance companies will not be required to provide data on automobiles older than the four previous model years. In addition, junk and salvage yards will not be required to report if they already report the required information to the state and the state makes that information available to the operator. The Department has attempted to minimize the impact of the rule on small businesses by allowing them to use third parties to report the statutorily required information to NMVTIS. In addition, the monthly reporting requirements of this rule only apply to automobiles obtained by the business within the prior month or in cases where an update or correction to previously reported data is needed.

Paperwork Reduction Act

This information collection has been submitted to the Office of Management and Budget (OMB) for review in accordance with the procedures of the Paperwork Reduction Act of 1995, Public Law No. 104–13, 109 Stat. 163. If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in a major increase in costs or prices or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, this rule has been reviewed by the Office of Management and Budget.

Regulatory Impact Assessment

In 1999, the GAO conducted a review of NMVTIS. The GAO report found that a life-cycle cost and benefits analysis should be performed to determine if further federal funding of NMVTIS was warranted. Accordingly, at the request of the Department of Justice, the Logistics Management Institute conducted such an analysis. The 2001 LMI report found that NMVTIS would achieve significant net benefits if it is fully implemented in all 50 states and the District of Columbia. In addition, the 2006 IJIS Institute report found that: "the NMVTIS program provides an invaluable benefit to state vehicle administrators and the public community as a whole. Advantages of the program include improving the state titling process, as well as providing key information to consumers and law enforcement agencies." Based on these reviews of NMVTIS and the Department's experience with automobile theft and fraud, the Department believes that the full implementation of NMVTIS should reduce the market for stolen motor vehicles, enhance public safety, and reduce fraud. This rule will serve to enhance the efficacy of NMVTIS by implementing the statutory reporting requirements imposed on junk and salvage yards and insurance carriers and clarifying the obligations of the states and the operator of NMVTIS.

The operator of the NMVTIS is entitled to receive revenues from user fees to support the system. Currently, these fees generate approximately $1.5 million annually. AAMVA, however, estimates the annual operating cost of the system to be approximately $5,650,000—depending on necessary system upgrades that may be required and user volume. Therefore, the current AAMVA fee structure under-funds NMVTIS by $4,150,000 according to its estimates. According to the Department of Transportation's 2005 Highway Statistics, 241,193,974 vehicles were titled in the United States in 2005. Therefore, the total cost to the operator to fund NMVTIS ranges from 1 cent to

2.3 cents per motor vehicle title titled in the U.S.

Consequently, the average fees charged to the states by the operator under this proposed rule should be less than 3 cents per vehicle. In most cases, states that choose to integrate the NMVTIS processes of data provision and inquiry into their titling process generally incur one-time upgrade costs to establish these connections. In nearly every case, once a connection to the system is established, data transmission for uploads and inquiries is automated and occurs without recurring costs. With these one-time costs and state fees considered, the costs to states are estimated at 6 cents per vehicle. This scenario includes making the data available to NMVTIS via real-time updates and making inquiries into the system prior to issuing new titles. While the frequency of reporting does not impact costs under this scenario, states can lower their upgrade costs by choosing to integrate the NMVTIS reporting and inquiry requirements into their business rules but not into their electronic titling processes. In these cases, states would see lower costs by establishing a regular reporting/data upload process but not re-engineering their own title-information systems for real-time updates. Under this scenario, instead of a state's title-information system automatically making the NMVTIS inquiry, the title clerk would switch to an internet-enabled PC to perform a web search of NMVTIS via a secure virtual private network (VPN). In addition, the cost is minimized because a state is only required to check out-of-state titles. Moreover, because this type of search is internet-based versus state-title-information system-based, no changes to the state's title-information system is required and therefore there is no cost for this aspect of compliance. For the reporting aspect however (*i.e.*, programming an automated batch upload process via file transfer protocol (FTP)), it is anticipated that states would incur reporting costs of less than 1 cent per vehicle. Assuming the reporting costs for states are 0.005 cents per vehicle and that 241,193,974 vehicles are titled in the United States, the Department estimates that the reporting costs for states is approximately $1,205,970.

The incremental cost to insurance companies and junk- and salvage-yard operators that handle junk or salvage automobiles also is expected to be low. Many insurance companies and junk and salvage yards already capture VINs as a means of positively identifying automobiles and tracking inventory. Additionally, for both the insurance sector and the junk/salvage industry, many companies are already reporting much of the required data to independent third parties who have indicated a willingness to pass this data on to DOJ for NMVTIS use.

According to the NICB, it is estimated that there are approximately 321 insurance groups representing approximately 3,000 insurers that report an estimated 2.4 million salvage and total-loss records annually (based on the most recent three-year average). Furthermore, based on 2007 insurance data, over 60% of these motor vehicles will originate from the ten largest insurance groups. These 3,000 insurers would then be responsible for reporting this total-loss information to NMVTIS if not already reported to a third party that agrees to provide the data to NMVTIS. In those cases where the data is already reported to a state or to a cooperating third party, there is no additional cost to insurance carriers. In cases where this data is not currently reported to a cooperating third party, the carrier would be required to report the data to NMVTIS. With the assumption that the data is already collected in an exportable format, and assuming that NMVTIS would establish a reporting mechanism involving a simple FTP-based solution, the cost to insurance carriers is similar to the state reporting costs of less than 1 cent per vehicle. The FBI previously has estimated that approximately 10.5 million junk and salvage vehicles are handled each year. Assuming that it costs insurance carriers approximately 0.005 cents per vehicle to report and that the insurance carriers are required to report on all 10.5 million junk and salvage vehicles, then the reporting costs to insurance carriers will be approximately $52,500 annually.

Similarly, junk and salvage yard operators that already are reporting to cooperating third parties would not be required to report separately. Thus, NMVTIS would impose no additional burden. For those entities not voluntarily reporting to a cooperating third party, a separate reporting mechanism would be established. Depending on the type of mechanism established (*e.g.*, FTP-based solution, form-fax solution, etc.), the costs will vary. It is assumed that all junk and salvage yard operators already collect much of the information required under the rule, and therefore, it is only the transmission of this data to NMVTIS that will result in costs. The table below summarizes these cost estimates.

Yard size	Reporting method	Initial investment costs	Annual ongoing labor costs	Annual vehicle volume *	Total annual average labor costs per vehicle (cents)	Total first year costs (includes initial investment costs and annual labor costs)
Small (non-automated)	Fax	$90	12 hours per year/ $96.00.	1–200	96	$1.86.
Small (automated)	FTP	0	24 minutes per year/ $3.12.	1–200	3	3 cents.
Medium	FTP	0	24 minutes per year/ $3.12.	201–500	<1	<1 cent.
Large	FTP	250	24 minutes per year/ $3.12.	501–7,800	<1	6 cents.

(* Note: Per-vehicle costs based on an average annual vehicle volumes.)

While it is difficult to estimate how many junk and salvage yards are not automated, the National Salvage Vehicle Reporting Program and other industry representatives estimate that nearly all have some form of data collection even if they do not have automation in place. The National Salvage Vehicle Reporting Program has discussed with many of the inventory-management vendors the assistance that can be made available to establish reliable reporting protocols through its voluntary and independent efforts within the industry. If such assistance is available from these vendors, nearly all junk and salvage yards will have some form of automation and be capable of exporting

and sending monthly reports electronically.

In cases in which small junk and salvage yards have no form of automation or computerized files, the Department assumes that a fax or other data-transmittal process would be needed. This paper-based process would likely incur additional labor costs that would bring the estimated per-vehicle costs for this small number of businesses to approximately 0.96 cents per vehicle (annual labor costs). However, according to industry representatives, the number of junk and salvage yards of this size is relatively small (estimated at 20% of licensed junk and salvage yards) and the number of businesses without any automation is even lower (expected to be less than 1,700 licensed businesses in the U.S.). These businesses would not incur these costs if already reporting this data to a state or another cooperating third party.

Assuming that small junk and salvage yards handle approximately 170,000 vehicles annually (at $0.96 per vehicle annual labor costs) and that the remaining junk and salvage yards handle 10,330,000 vehicles annually (at an average labor cost of 1 cent per vehicle), then the Department estimates that their annual reporting costs will be approximately $266,500.

The Department anticipates that the cost for web-based prospective-purchaser inquiries will be nominal. Similarly, the cost to law enforcement to access NMVTIS also is expected to be minimal because law enforcement will not be charged any direct transaction costs. Law enforcement will access NMVTIS through their existing infrastructure. The only cost will be to the operator of the system based on the number of inquiries received from law enforcement. The expected cost to the operator is less than 12 cents per inquiry.

The Department of Justice also considered possible alternatives to those proposed in the rule. Indeed, pursuant to 49 U.S.C. 30504(c), the Attorney General was required to establish ''procedures and practices to facilitate reporting in the least burdensome and costly fashion'' on insurance carriers and junk and salvage yards. Because of the statutory requirements imposed by the Anti-Car Theft Act, however, the Department of Justice did not have many options regarding the information that must be provided and the scope of the entities that must report the required information. In particular, the information required to be reported by the proposed rule is mandated by the Anti-Car Theft Act. The Department also considered various alternatives for funding NMVTIS, such as a tiered-based fee structure and a transaction-based fee structure. Based on the comments to the proposed rule, the Department believes that a tiered fee structure based on the total number of motor vehicles titled in a state is preferable to these alternatives because it complies with the Anti-Car Theft Act and minimizes any burden imposed on reporting entities.

With regard to all sector reporting requirements, in most cases reducing the reporting timelines from monthly to semi-annually or less will not significantly reduce costs due to the benefits of automated processes. Additionally, the costs that this reduced reporting would incur by enabling theft and fraud to continue far outweighs the benefits. Consumers, states, law enforcement, and others need to know as soon as possible when a vehicle is reported as totaled or salvage to prevent the vehicle from being turned over to another state or consumer with a clean title. Moreover, a monthly reporting cycle is expressly required by statute.

Executive Order 13132

In accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement. The rule does not impose substantial direct compliance costs on state and local governments and does not preempt state law. In formulating this rule, the Department has worked closely with AAMVA regarding the implementation of NMVTIS.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

List of Subjects

28 CFR Part 25

Crime, Law enforcement, Motor vehicles safety, Motor vehicles, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510 and, for the reasons set forth in the preamble, part 25 of chapter I of title 28 of the Code of Regulations is amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

■ 1. The Authority citation for part 25 is revised to read as follows:

Authority: Public Law 103–159, 107 Stat. 1536, 49 U.S.C. 30501–30505; Public Law 101–410, 104 Stat. 890, as amended by Public Law 104–134, 110 Stat. 1321.

■ 2. Add a new subpart B to read as follows:

Subpart B—National Motor Vehicle Title Information System (NMVTIS)

Sec.

25.51 Purpose and authority.
25.52 Definitions.
25.53 Responsibilities of the operator of NMVTIS.
25.54 Responsibilities of the States.
25.55 Responsibilities of insurance carriers.
25.56 Responsibilities of junk yards and salvage yards and auto recyclers.
25.57 Erroneous junk or salvage reporting.

Subpart B—National Motor Vehicle Title Information System (NMVTIS)

§ 25.51 Purpose and authority.

The purpose of this subpart is to establish policies and procedures implementing the National Motor Vehicle Title Information System (NMVTIS) in accordance with title 49 U.S.C. 30502. The purpose of NMVTIS is to assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles into interstate commerce, protect states and individual and commercial consumers from fraud, reduce the use of stolen vehicles for illicit purposes including fundraising for criminal enterprises, and provide consumer protection from unsafe vehicles.

§ 25.52 Definitions.

For purposes of this subpart B:

Acquiring means owning, possessing, handling, directing, or controlling.

Automobile has the same meaning given that term in 49 U.S.C. 32901(a).

Certificate of title means a document issued by a state showing ownership of an automobile.

Insurance carrier means an individual or entity engaged in the business of underwriting automobile insurance.

Junk automobile means an automobile that—

(1) Is incapable of operating on public streets, roads, and highways; and

(2) Has no value except as a source of parts or scrap.

Junk yard means an individual or entity engaged in the business of acquiring or owning junk automobiles for—

(1) Resale in their entirety or as spare parts; or

(2) Rebuilding, restoration, or crushing.

Motor vehicle has the same meaning given that term in 49 U.S.C. 3102(6).

NMVTIS means the National Motor Vehicle Title Information System.

Operator means the individual or entity authorized or designated as the operator of NMVTIS under 49 U.S.C. 30502(b), or the office designated by the Attorney General, if there is no authorized or designated individual or entity.

Purchaser means the individual or entity buying an automobile or financing the purchase of an automobile. For purposes of this subpart, purchasers include dealers, auction companies or entities engaged in the business of purchasing used automobiles, lenders financing the purchase of new or used automobiles, and automobile dealers.

Salvage automobile means an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage. Salvage automobiles include automobiles determined to be a total loss under the law of the applicable jurisdiction or designated as a total loss by an insurer under the terms of its policies, regardless of whether or not the ownership of the vehicle is transferred to the insurance carrier.

Salvage yard means an individual or entity engaged in the business of acquiring or owning salvage automobiles for—

(1) Resale in their entirety or as spare parts; or

(2) Rebuilding, restoration, or crushing.

Note to definition of "Salvage yard": For purposes of this subpart, vehicle remarketers and vehicle recyclers, including scrap vehicle shredders and scrap metal processors as well as "pull- or pick-apart yards," salvage pools, salvage auctions, and other types of auctions handling salvage or junk vehicles (including vehicles declared a "total loss"), are included in the definition of "junk or salvage yards."

State means a state of the United States or the District of Columbia.

Total loss means that the cost of repairing such vehicles plus projected supplements plus projected diminished resale value plus rental reimbursement expense exceeds the cost of buying the damaged motor vehicle at its pre-accident value, minus the proceeds of selling the damaged motor vehicle for salvage.

VIN means the vehicle identification number;

§ 25.53 Responsibilities of the operator of NMVTIS.

(a) By no later than March 31, 2009, the operator shall make available:

(1) To a participating state on request of that state, information in NMVTIS about any automobile;

(2) To a Government, state, or local law enforcement official on request of that official, information in NMVTIS about a particular automobile, junk yard, or salvage yard;

(3) To a prospective purchaser of an automobile on request of that purchaser, information in NMVTIS about that automobile; and

(4) To a prospective or current insurer of an automobile on request of that insurer, information in NMVTIS about the automobile.

(b) NMVTIS shall permit a user of the system to establish instantly and reliably:

(1) The validity and status of a document purporting to be a certificate of title;

(2) Whether an automobile bearing a known VIN is titled in a particular state;

(3) Whether an automobile known to be titled in a particular state is or has been a junk automobile or a salvage automobile;

(4) For an automobile known to be titled in a particular state, the odometer mileage disclosure required under 49 U.S.C. 32705 for that automobile on the date the certificate of title for that automobile was issued and any later mileage information, if noted by the state; and

(5) Whether an automobile bearing a known VIN has been reported as a junk automobile or a salvage automobile under 49 U.S.C. 30504.

(c) The operator is authorized to seek and accept, with the concurrence of the Department of Justice, additional information from states and public and private entities that is relevant to the titling of automobiles and to assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles and parts into interstate commerce. The operator, however, may not collect any social security account numbers as part of any of the information provided by any state or public or private entity. The operator may not make personally identifying information contained within NMVTIS, such as the name or address of the owner of an automobile, available to an individual prospective purchaser. With the approval of the Department of Justice, the operator may allow public and private entities that provide information to NMVTIS to query the system if such access will assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles and parts into interstate commerce.

(d) The operator shall develop and maintain a privacy policy that addresses the information in the system and how personal information shall be protected. DOJ shall review and approve this privacy policy.

(e) The means by which access is provided by the operator to users of NMVTIS must be approved by the Department of Justice.

(f) The operator shall biennially establish and at least annually collect user fees from the states and users of NMVTIS to pay for its operation, but the operator may not collect fees in excess of the costs of operating the system. The operator is required to recalculate the user fees on a biennial basis. After the operator establishes its initial user fees for the states under this section, subsequent state user fees must be established at least one year in advance of their effective date. Any user fees established by the operator must be established with the approval of the Department of Justice. The operator of NMVTIS will inform the states of the applicable user fees either through publication in the **Federal Register** or by direct notice or invoice to the states.

(1) The expenses to be recouped by the operator of NMVTIS will consist of labor costs, data center operations costs, the cost of providing access to authorized users, annual functional enhancement costs (including labor and hardware), costs necessary for implementing the provisions of this rule, the cost of technical upgrades, and other costs approved in advance by the Department of Justice.

(2) User fees collected from states should be based on the states' pro rata share of the total number of titled motor vehicles based on the Highway Statistics Program of the Federal Highway Administration, U.S. Department of Transportation, except in cases where states did not report to that program, in which case the states shall make available the most recent statistics for motor vehicle title registrations.

(3) All states, regardless of their level of participation, shall be charged user fees by the operator.

(4) No fees shall be charged for inquiries from law enforcement agencies.

(g) The operator will establish procedures and practices to facilitate reporting to NMVTIS in the least burdensome and costly fashion. If the operator is not the Department of Justice, the operator must provide an annual report to the Department of Justice detailing the fees it collected and how it expended such fees and other

funds to operate NMVTIS. This report must also include a status report on the implementation of the system, compliance with reporting and other requirements, and sufficient detail and scope regarding financial information so that reasonable determinations can be made regarding budgeting and performance. The operator shall procure an independent financial audit of NMVTIS revenues and expenses on an annual basis. The Department of Justice will make these reports available for public inspection.

§ 25.54 Responsibilities of the States.

(a) Each state must maintain at least the level of participation in NMVTIS that it had achieved as of January 1, 2009. By no later than January 1, 2010, each state must have completed implementation of all requirements of participation and provide, or cause to be provided by an agent or third party, to the designated operator and in an electronic format acceptable to the operator, at a frequency of once every 24 hours, titling information for all automobiles maintained by the state. The titling information provided to NMVTIS must include the following:

(1) VIN;

(2) Any description of the automobile included on the certificate of title (including any and all brands associated with such vehicle);

(3) The name of the individual or entity to whom the certificate was issued;

(4) Information from junk or salvage yard operators or insurance carriers regarding the acquisition of junk automobiles or salvage automobiles, if this information is being collected by the state; and

(5) For an automobile known to be titled in a particular state, the odometer mileage disclosure required under 49 U.S.C. 32705 for that automobile on the date the certificate of title for that automobile was issued and any later mileage information, if noted by the state.

(b) With the approval of the operator and the state, the titling information provided to NMVTIS may include any other information included on the certificates of title and any other information the state maintains in relation to these titles.

(c) By no later than January 1, 2010, each state shall establish a practice of performing a title verification check through NMVTIS before issuing a certificate of title to an individual or entity claiming to have purchased an automobile from an individual or entity in another state or in cases of title transfers. The check will consist of—

(1) Communicating to the operator the VIN of the automobile for which the certificate of title is sought;

(2) Giving the operator an opportunity to communicate to the participating state the results of a search of the information and using the results to determine the validity and status of a document purporting to be a certification of title, to determine whether the automobile has been a junk or salvage vehicle or has been reported as such, to compare and verify the odometer information presented with that reported in the system, and to determine the validity of other information presented (*e.g.*, lien-holder status, etc.).

(d) By January 1, 2010, those states not currently paying user fees will be responsible for paying user fees as established by the operator to support NMVTIS.

§ 25.55 Responsibilities of insurance carriers.

(a) By no later than March 31, 2009, and on a monthly basis as designated by the operator, any individual or entity acting as an insurance carrier conducting business within the United States shall provide, or cause to be provided on its behalf, to the operator and in a format acceptable to the operator, a report that contains an inventory of all automobiles of the current model year or any of the four prior model years that the carrier, during the past month, has obtained possession of and has decided are junk automobiles or salvage automobiles. An insurance carrier shall report on any automobiles that it has determined to be a total loss under the law of the applicable jurisdiction (*i.e.* , state) or designated as a total loss by the insurance company under the terms of its policies.

(b) The inventory must contain the following information:

(1) The name, address, and contact information for the reporting entity (insurance carrier);

(2) VIN;

(3) The date on which the automobile was obtained or designated as a junk or salvage automobile;

(4) The name of the individual or entity from whom the automobile was obtained and who possessed it when the automobile was designated as a junk or salvage automobile; and

(5) The name of the owner of the automobile at the time of the filing of the report.

(c) Insurance carriers are strongly encouraged to provide the operator with information on other motor vehicles or other information relevant to a motor vehicle's title, including the reason why the insurance carrier obtained possession of the motor vehicle. For example, the insurance carrier may have obtained possession of a motor vehicle because it had been subject to flood, water, collision, or fire damage, or as a result of theft and recovery. The provision of information provided by an insurance carrier under this paragraph must be pursuant to a means approved by the operator.

(d) Insurance carriers whose required data is provided to the operator through an operator-authorized third party in a manner acceptable to the operator are not required to duplicate such reporting. For example, if the operator and a private third-party organization reach agreement on the provision of insurance data already reported by insurance to the third party, insurance companies are not required to subsequently report the information directly into NMVTIS.

§ 25.56 Responsibilities of junk yards and salvage yards and auto recyclers.

(a) By no later than March 31, 2009, and continuing on a monthly basis as designated by the operator, any individual or entity engaged in the business of operating a junk yard or salvage yard within the United States shall provide, or cause to be provided on its behalf, to the operator and in a format acceptable to the operator, an inventory of all junk automobiles or salvage automobiles obtained in whole or in part by that entity in the prior month.

(b) The inventory shall include the following information:

(1) The name, address, and contact information for the reporting entity (junk, salvage yard, recycler);

(2) VIN;

(3) The date the automobile was obtained;

(4) The name of the individual or entity from whom the automobile was obtained;

(5) A statement of whether the automobile was crushed or disposed of, for sale or other purposes, to whom it was provided or transferred, and if the vehicle is intended for export out of the United States.

(c) Junk and salvage yards, however, are not required to report this information if they already report the information to the state and the state makes the information required in this rule available to the operator.

(d) Junk and salvage yards may be required to file an update or supplemental report of final disposition of any automobile where final disposition information was not available at the time of the initial report

filing, or if their actual disposition of the automobile differs from what was initially reported.

(e) Junk and salvage yards are encouraged to provide the operator with similar information on motor vehicles other than automobiles that they obtain that possess VINs.

(f) Junk- and salvage-yard operators whose required data is provided to the operator through an operator-authorized third party (*e.g.*, state or other public or private organization) in a manner acceptable to the operator are not required to duplicate such reporting. In addition, junk and salvage yards are not required to report on an automobile if they are issued a verification under 49 U.S.C. 33110 stating that the automobile or parts from the automobile are not reported as stolen.

(g) Such entities must report all salvage or junk vehicles they obtain, including vehicles from or on behalf of insurance carriers, which can be reasonably assumed are total loss vehicles. Such entities, however, are not required to report any vehicle that is determined not to meet the definition of salvage or junk after a good-faith physical and value appraisal conducted by qualified appraisal personnel, so long as such appraisals are conducted entirely independent of any other interests, persons or entities. Individuals and entities that handle less than five vehicles per year that are determined to be salvage, junk, or total loss are not required to report under the salvage-yard requirements.

(h) Scrap metal processors and shredders that receive automobiles for recycling where the condition of such vehicles generally prevent VINs from being identified are not required to report to the operator if the source of each vehicle has already reported the vehicle to NMVTIS. In cases where a supplier's compliance with NMVTIS cannot be ascertained, however, scrap metal processors and shredders must report these vehicles to the operator based on a visual inspection if possible. If the VIN cannot be determined based on this inspection, scrap metal processors and shredders may rely on primary documentation (*i.e.*, title documents) provided by the vehicle supplier.

§ 25.57 Erroneous junk or salvage reporting.

(a) In cases where a vehicle is erroneously reported to have been salvage or junk and subsequently destroyed (*i.e.*, crushed), owners of the legitimate vehicles are encouraged to seek a vehicle inspection in the current state of title whereby inspection officials can verify via hidden VINs the vehicle's true identity. Owners are encouraged to file such inspection reports with the current state of title and to retain such reports so that the vehicle's true history can be documented.

(b) To avoid the possibility of fraud, the operator may not allow any entity to delete a prior report of junk or salvage status.

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Mark Filip,

Acting Attorney General.

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