



Neil D. Schuster
President and CEO

George Valverde, Chair of the Board
Director, California Department of Motor Vehicles

November 21, 2008

Mr. James Landon
935 Pennsylvania Avenue, NW
Washington, DC 20535

Re: DOJ Docket No. FBI 117; AG Order No. 3000-2008; RIN 1110-AA-30, National Motor Vehicle Title Information System

Dear Mr. Landon:

The American Association of Motor Vehicle Administrators (AAMVA) is grateful for the opportunity to provide comments in response to the Department of Justice (DOJ) September 22, 2008, Notice of Proposed Rulemaking implementing the National Motor Vehicle Title Information System (NMVTIS). These comments relate to the association's role as the operator of the system on behalf of the Department of Justice, a service AAMVA has provided since 1998. AAMVA has also submitted separate comments as the representative of motor vehicle administrators in states and territories responsible for the successful implementation of NMVTIS.

AAMVA is a tax-exempt, not-for-profit 501(c)3 organization representing motor vehicle administration, law enforcement and highway safety agencies in the states, provinces and territories of the United States and Canada. The association advocates on behalf of our jurisdiction members on road safety, security, and driver's license and identity management issues. AAMVA develops best practices and model programs to assist motor vehicle and law enforcement agencies in providing a safe and secure road environment.

Driver and vehicle services are at the core of motor vehicle agency operations. To promote vehicle safety, AAMVA advocates uniform practices in registration and titling, motor carrier programs, safety and emissions inspections, and equipment standard. One of the primary activities our members engage in is titling vehicles, which contributes to the safety mission of AAMVA by:

- Verifying proof of ownership and other identifying information about the vehicle
- Verifying the safe operating condition of vehicles (i.e. brands for salvage, flood or other damage)
- Providing the Vehicle Identification Numbers needed in order to conduct safety recalls.

AAMVA is committed to working with the Department of Justice in support of the full nationwide roll of NMVTIS. We support the tenets of the Anti-Car Theft Act (ACTA), particularly, Title II, which requires the creation of NMVTIS as a tool to combat vehicle and title theft and fraud.

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AAMVA supports the concept of motor vehicle agencies verifying motor vehicle and title information and brands applied to a vehicle, and determining whether a vehicle has been stolen. AAMVA agrees that NMVTIS provides tangible benefits, particularly as additional states join the system toward achieving full nationwide implementation.

Critical Context:

In 1998, AAMVA was considered the natural third party to represent the interest of U.S. states and territories in the system. With that designation, AAMVA and its members designed NMVTIS using \$12 million in federal funding to build the core system, which included the state participation component. The initial focus was placed on building the system to enable states to provide data and use the system as part of their regular vehicle title processing. The federal funds received were used for two main purposes: to build the core technology infrastructure that would support state participation in the system and to provide grant funding to assist states in completing their system development to enable them to participate in the system and comply with ACTA.

Having used federal funds for the purposes outlined above, the burden of the annual operational and maintenance costs of NMVTIS we incurred as system operator have been borne solely by AAMVA and its members. To date, that cost burden totals approximately \$30 million. AAMVA also bears the burden of operating NMVTIS at a loss. In FY 2009, AAMVA projects a NMVTIS loss of \$2.9 million, consisting of operating costs and the costs to support states as they join the system.

AAMVA recognizes that ACTA envisioned that NMVTIS would be self funding and as such should not need to rely on federal funds. However, it is AAMVA's position that NMVTIS represents an unfunded mandate that has serious impacts on states of all sizes. It is AAMVA's position that to achieve full nationwide deployment and long-term success of NMVTIS, federal funding of the remaining development work and support for system operation is needed.

Significant development work is needed to complete NMVTIS. Not all states are fully participating, the prospective purchaser and law enforcement access to the system is not yet implemented, and the requirements for third party reporting by insurance companies, junk yards, and salvage yards is just now being contemplated. Also, a number of states do not participate in NMVTIS. Completing NMVTIS development and including all states in the system will allow NMVTIS to fully realize the level of results identified in the 2001 NMVTIS Cost/Benefit Analysis conducted by for the National Institute of Justice (NIJ).

Without financial assistance, AAMVA faces a critical challenge in our commitment to operate NMVTIS. The AAMVA Board of Directors addressed the sustainability of our role as system operator and at a meeting in August 2008, and concluded that AAMVA will not be able to continue as the system operator if it must subsidize the ongoing development and operational costs of NMVTIS. As a result, AAMVA recently advised DOJ of the Board's intent to reach a decision by August 2009 regarding AAMVA's role as system operator if we cannot determine a clear path to long-term sustainability of NMVTIS. In the interim, we are actively pursuing a variety of options, including fees for consumer access and federal funding, to

achieve sustainability. A copy of our letter to DOJ referencing this discussion is attached. It is within this context that the following comments are submitted:

State Responsibilities

Reporting of owner name:

The proposed rule specifies that states must provide owner name to NMVTIS, a requirement that is consistent with the Anti Car-Theft Act (ACTA). Most states that participate in NMVTIS online currently have the ability to share owner name information as part of the state-to-state inquiry. However, the owner name is treated as optional information by some of these states and as a result is not always exchanged. This information is not stored in NMVTIS, but rather is maintained at the state level as part of the full current record of the vehicle. NMVTIS is designed as a "pointer" system which provides some essential data but points to the source of the information for more detail. Owner name can be accessed by another state or other authorized user via the state to state inquiry.

From the operator's perspective, adding owner name as an item that is stored within the NMVTIS Central Files and is always shared would require a significant change to the system file structure and corresponding on-line transactions. This would take time to complete and would require a further investment of funds.

Recommendation – AAMVA recommends that owner name should not be stored within NMVTIS. Instead, owner name should be shared as part of an inquiry to the state that holds the current record. Should storage of owner name be required, AAMVA recommends the necessary federal funds be made available to the operator in order to accommodate this requirement.

Responsibility of the Operator

User Fees for Non-Participating States:

In the commentary of the proposed rules, DOJ indicates their intent to "allow or to strongly encourage" the NMVTIS system operator to charge users fee to all states, including those states that are not participating in NMVTIS. AAMVA understands that DOJ's interpretation of the Anti-Car Theft Act (ACTA) is that all states are required to participate and that participation is defined as supporting the system through payment of user fees, even if the state does not derive any direct value from the system.

The AAMVA Board of Directors determined that it is difficult to make a defensible case to any state that they are required to pay fees to support the system even though they will not receive any benefit until they use the system. As a result, AAMVA's practice is that states begin to pay user fees when they begin to provide data **and** use the system to verify title information. AAMVA is hopeful that the implementation of

a standalone web-based inquiry will create the opportunity for more states to participate in the system. When states provide data and make inquiries against the system, AAMVA considers them participants and therefore subject to paying state user fees, increasing the revenues to the system.

Given the current budget situation in most states, AAMVA will be hard pressed, even with the Department's strong encouragement, to charge states for a system that is not yet providing value to them. It will be extremely challenging for our members to make the case to their state legislators that they pay fees for a federal system that is not providing an immediate and direct value while they are simultaneously reducing or eliminating other critical state services to the public.

Recommendation – AAMVA proposes that no changes be made in how state participation fees are applied. AAMVA would continue to apply the current principle for the collection of state, only charging user fees when a state is providing data and making inquiries into the system.

User Fee Structure:

The Department has asked for comments on the fee structure to be used in calculating state fees. AAMVA's current fee structure, as adopted by the AAMVA Board of Directors, is a ten-tier system based on the total vehicle population in each state as a way to categorize and group like states. When creating the fee structure, the Board determined a reasonable flat annual fee for each tier, with the lowest tier set at \$15,000 per year and the highest tier set at \$135,000. At one point AAMVA did consider a per-vehicle fee structure, but determined that such a structure would create an even more significant discrepancy between smaller and larger states.

Another option considered was a per-transaction fee. This was not selected because it would be difficult to determine which transaction applies to which fee. This is true because the design of NMVTIS involves a variety of transactions beyond the inquiry transaction. For example, in order to maintain data integrity, a fully online state must initiate a transaction to update NMVTIS once the vehicle is re-titled in their state. The concern is that charging states a transaction fee may limit use of the system, particularly with a standalone inquiry mode. When state budgets are strained in a given year, reducing the number of NMVTIS inquiries could be seen as a way to cut costs.

This issue is further complicated by the current budget climate in most states. Any change to the fee structure or the current annual fee at this time may serve as a further deterrent to state participation.

Recommendation – AAMVA recommends that the current tiered and flat annual fee levels remain unchanged. AAMVA also recommends that the rules be amended to allow changes to the fee structure to be determined through mutual agreement between the DOJ and the operator if, in the future, the DOJ and the operator determine that a change in fees or the structure is needed.

Development of third party reporting mechanism:

AAMVA recognizes that as the operator it would need to establish a mechanism to support reporting by junk and salvage yards and insurance carriers. We are extremely concerned about how this reporting mechanism would be funded, particularly if the deadline to establish this reporting is March 31, 2009. AAMVA is not in a financial position to fund the reporting by junk and salvage yards and insurance carriers without an identified and certain revenue stream, whether from those users or from DOJ, to fully cover the costs to establish and maintain this reporting requirement in the long run. Preliminary cost estimates for the development of this mechanism and the updating of the NMVTIS application so that the data can be incorporated and shared is in the range of \$1 - \$1.5 million. The additional ongoing costs to support the new development would be in the range of \$250,000 and \$400,000. It is the operator's position that the third party reporting mechanism should be fully funded by the federal government.

Recommendation – AAMVA recommends that federal funding must be made available to the operator in order to ensure the timely implementation and operation of the third party reporting mechanism required by this rule.

Administrative Requirement:

Although the proposed rule does not stipulate it, AAMVA is concerned that there is no specific requirement for the operator to track and monitor which entities have reported and when they last reported. AAMVA believes that this should be required to achieve an effective reporting mechanism.

Recommendation – AAMVA recommends that the rules clearly stipulate that the operator must have the ability to track the status of entities that are reporting into the system, including, name, reporting history and date of last report.

NMVTIS Sustainability

As the operator, the main challenge to AAMVA for system operation and effective implementation of the rule is long-term financial viability. AAMVA has served as the operator of NMVTIS for the past 10 years because we strongly believe that NMVTIS is a key tool to reducing vehicle theft and fraud. Our members have supported the system, providing \$30 million of association funds to develop and operate NMVTIS.

Current revenues derived from state fees are insufficient to cover the cost of the existing system. In fiscal year 2009, AAMVA will operate NMVTIS at a net loss of about \$2.9 million, an operating loss that we are increasingly unable to assume. Adding the additional development and ongoing costs contemplated by the proposed rule without any certainty of revenues will place a further financial burden on AAMVA as the system operator.

One of the main reasons NMVTIS has not achieved nationwide rollout is the cost states must incur to participate. Many states are unable to assume these costs absent sufficient federal funding assistance. We

understand that ACTA intended for the system to be self funding. NMVTIS is a federal system that has value for a variety of stakeholders and for society as a whole. Beneficiaries include law enforcement, consumers and insurance carriers. We continue to have grave concerns that AAMVA, as the system operator, and the states are currently expected to bear the entire cost burden of developing and operating NMVTIS. NMVTIS is an unfunded mandate and neither AAMVA nor the states are in a position to support its implementation and operation without further federal funding assistance.

Conclusion

The Association encourages DOJ to identify effective solutions to meet the challenges described above before implementation of a final rule. Doing so will allow AAMVA to effectively expand NMVTIS to a nationwide system and to operate NMVTIS in a self-sufficient manner.

Thank you again for the opportunity to provide comments on this important proposal.

Sincerely,



Neil D. Schuster
President & CEO

Attachment: AAMVA letter to DOJ

American Association of Motor Vehicle Administrators



Nell D. Schuster
President and CEO

George Valverde, Chair of the Board
Director, California Department of Motor Vehicles

November 3, 2008

James Burch, Deputy Director
United States Department of Justice
Bureau of Justice Assistance
810 7th Street, N.W.
Washington, D.C. 20531

Re: AAMVA Board of Director's Direction Regarding NMVTIS

Dear Mr. Burch:

I am writing to advise you of the direction the AAMVA Board of Directors recently approved for the Association in relation to our role as NMVTIS system operator. Although the Board had a brief opportunity to discuss this with you informally, I wanted to provide you with formal notification and a complete explanation of the Board's decision.

As you know, we have invested considerable resources over the years – more than \$30 million – to promote and operate NMVTIS, and we currently operate the program at a loss of about \$3 million a year. Unfortunately, the Association does not have the resources to continue to subsidize the program in the long run. At the August 2008 AAMVA Board of Directors meeting in Orlando, Florida, the Board directed staff to explore strategies and scenarios to put NMVTIS on a measurable path toward operational and financial success. As you are aware, some of the solutions we are pursuing over the next few months to achieve success include: implementing NMVTIS consumer access, developing and launching a web-based stand-alone query for states and exploring private sector partnerships.

At the same time, just as we have in the last 10 years, AAMVA pledges to continue supporting state development and implementation efforts by aggressively exploring opportunities for our members to meet the requirements of the Anti Car Theft Act in the most efficient ways possible. However, the Board also made it clear that if by August 2009 at the latest, we are not able to show a clear path to toward operational and financial success for NMVTIS, AAMVA would be required to relinquish its role as the system operator.

The Board will weigh the financial impact of continuing to operate NMVTIS, the revenue potential from consumer access and possible private sector partnerships, and the impacts on our members.

An International Safety Association of Motor Vehicle and Law Enforcement Administrators

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James Burch, Deputy Director
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We have a clear timeline of activities and key milestones that will enable us to provide the Board with the information needed to assist it in evaluating AAMVA's ability to continue to serve as the operator of NMVTIS. We will, of course, keep you updated on our progress as we work through this effort.

Rest assured that AAMVA remains committed to NMVTIS. Our serving in the role as system operator for the past 10 years is a testament to our commitment to making this system successful. Over the coming months we are determined to make all possible efforts to establish a path forward that would make NMVTIS financially sustainable, and it is the Board's intent to ensure that any decisions do not affect a state's NMVTIS implementation plans. Should the AAMVA Board decide to begin the process to step out of the role as NMVTIS system operator, we expect that AAMVA would engage in an efficient migration out of our role as operator. Part of the migration would include transitioning participating states to a new operator.

With 13 states participating and 18 states paying fees, the current economic model does not allow us to operate without significant annual subsidies to the program. Unfortunately, AAMVA is not in a position to continue to subsidize the program and, in fact, AAMVA may not be able to fund substantial NMVTIS operating losses after the current fiscal year. As always, we appreciate your efforts and we look forward to working with you in the months ahead to solutions that will allow NMVTIS to be successful.

Sincerely,



Neil D. Schuster
President & CEO

NDS/wnd

Copy to:
AAMVA Board of Directors