

## **“Safe Harbor” Provisions for NMVTIS Reporting Entities**

### **September 2017**

Junk and salvage yards must report automobiles to the National Motor Vehicle Title Information System (NMVTIS) as required by 49 U.S.C. § 30504. Under that statute, *all* “junk automobiles” and “salvage automobiles” within the meaning of 49 U.S.C. § 30501 *must* be reported, and (conversely) *no* automobile may be reported to NMVTIS *unless* it is a “junk automobile” or a “salvage automobile” within that meaning. Violations of the statute (including both “under-” and “over-” reporting) are subject to penalties as prescribed in 49 U.S.C. § 30505. The following “safe harbors” may aid in the required reporting.

### **Safe Harbors Regarding Vehicle Condition Determinations**

1. **Safe Harbor Regarding Legal Operability:** Any automobile that runs under its own power in a manner consistent with driving and could operate legally on the public streets, roads, or highways, need not be reported to NMVTIS. An automobile is presumed to operate legally if it is determined that it operates and could pass the safety inspection required for it to be driven on the public streets, roads, or highways of the domicile state of the junk or salvage yard. “Safety inspection” means any official inspection for compliance with safety standards required by state law in the domicile state of the junk or salvage yard. A record of the determination (and of the information supporting it) must be preserved by the junk or salvage yard, and made available to the United States upon request, for not less than 3 years.
2. **Safe Harbor Regarding Cause of Damage:** Unless an automobile is actually known (or could have been known, after an inspection of the automobile’s title and a reasonable mechanical and visual inspection of the automobile itself), to have been involved in a collision, fire, flood, accident, trespass, or other similar event, it need not be reported to NMVTIS. A “mechanical inspection” requires a determination that the automobile is capable of starting, being put into gear, and moving under its own power in a manner consistent with ordinary driving. A signed statement explaining such actual knowledge, or (alternatively) a record of the determination (and of the information supporting it), must be preserved by the junk or salvage yard, and made available to the United States upon request, for not less than 3 years.
3. **Safe Harbor Regarding “Total Loss Automobile”:** A junk or salvage yard will not be subject to penalties for reporting to NMVTIS any automobile that it receives that (a) *already* has been declared a “total loss automobile” by that automobile’s insurer; or (b) is otherwise determined to be a “total loss automobile” subsequent to its receipt by the junk or salvage yard. A record of the declaration must be preserved by the junk or salvage yard, and made available to the United States upon request, for not less than 3 years.
4. **Safe Harbor Regarding Automobiles with Junk- or Salvage-branded Titles:** A junk or salvage yard will not be subject to penalties for reporting to NMVTIS any automobile that already has a junk- or salvage-branded title before its arrival at the yard. A record of the title must be preserved by the junk or salvage yard, and made available to the United States upon request, for not less than 3 years.

- 5. Safe Harbor Regarding Determination of Requirement to Have Junk- or Salvage-branded Titles:** A junk or salvage yard will not be subject to penalties for reporting to NMVTIS any automobile that has been determined (after a reasonable mechanical and visual inspection) to be required by applicable state law to be sold on a junk- or salvage-branded title. “Applicable state law” is the law of the domicile state of the junk or salvage yard. A record of the determination (and of the underlying inspection) must be preserved, and made available to the United States upon request, for not less than 3 years.

### **Safe Harbors Regarding Bailments and Indirect Reporting**

- 6. Safe Harbor Regarding Insurance Carrier Bailment to a Junk or Salvage Yard:** The report required under 49 U.S.C. § 30504(a) relates only to automobiles “obtained” by a junk or salvage yard. If an automobile is bailed to a junk or salvage yard by an insurance carrier, the automobile will *not* be considered to have been “obtained” by the yard until the earlier of — (a) the date the yard has legal authority to sell or dispose of the automobile or any of its parts; or (b) the date legal title to the automobile passes to the yard. Information sufficient to support the existence of the foregoing circumstances must be preserved, and made available to the United States upon request, for not less than 3 years. (An automobile is “bailed” when it is physically transferred from one party (e.g., an insurance carrier) to another party (e.g., a salvage yard) for purposes of temporary custody upon which the parties have agreed. BJA anticipates that this Safe Harbor will apply primarily in cases involving junk or salvage auctions.)
- 7. Safe Harbor Regarding Reports Filed by Agents of Insurance Carriers:** The report required under Section 30504(b) relates to automobiles that an insurance carrier “has obtained possession of and has decided are junk automobiles or salvage automobiles.” An insurance carrier may make this report directly or through a designated agent (which may be a junk or salvage yard). (Whether the required report is made directly by the insurance carrier or by the insurance carrier’s designated agent, it remains the report and responsibility of the insurance carrier.) An insurance carrier or its designated agent will not be subject to penalties if, within 30 days of obtaining possession of an automobile, it or the designated agent (a) decides that the automobile is a junk or salvage automobile; and (b) reports that automobile to NMVTIS.

### **Safe Harbors Regarding Value Determinations**

- 8. Safe Harbor Regarding Fair Salvage Value Determination:** The fair salvage value of an automobile may be established by — (a) determining the fair market value of the automobile immediately prior to the collision, fire, flood, accident, trespass, or other similar event; and (b) subtracting therefrom the estimated cost to repair the automobile so as to return it to its fair market value immediately prior to the damaging event. A record of the determination (and any underlying information used to make the determination) must be preserved, and made available to the United States upon request, for not less than 3 years.
- 9. Safe Harbor Regarding Fair Market Value Determination:** The fair market value of an automobile may be established using industry standard valuation guides (such as the Kelly Blue Book and the NADA Used Car Guide). A record of the determination (and

of the underlying information from the guide used) must be preserved, and made available to the United States upon request, for not less than 3 years.

10. **Safe Harbor Regarding Cost of Repair for Legal Operability:** A junk or salvage yard will not be subject to penalties for reporting to NMVTIS any automobile whose fair market value immediately prior to the collision, fire, flood, accident, trespass, or other similar event has been determined to be less than or equal to the estimated total cost of repairing the automobile for legal operation. A record of the determination (and any underlying information used to make the determination) must be preserved, and made available to the United States upon request, for not less than 3 years.
  
11. **Safe Harbor Regarding Repair Labor Estimate:** The cost of labor (which is an element of the total cost of repairing a damaged automobile for legal operation) may be estimated by using the most recent hourly mean wage provided by the U.S. Bureau of Labor Statistics, Occupational Employment and Wages (49-3023 — Automotive Service Technicians and Mechanics) that is applicable to the location of the junk or salvage yard. A record of the estimate (and the underlying information from the U.S. Bureau of Labor Statistics) must be preserved, and made available to the United States upon request, for not less than 3 years.