



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.



TxDOT Board Meeting

8:00 a.m.

Thursday, October 3, 2019

**AGENDA
BOARD MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
4000 JACKSON AVE., BUILDING 1, LONE STAR ROOM
AUSTIN, TEXAS 78731
THURSDAY, OCTOBER 3, 2019
8:00 A.M.**

THIS MEETING WILL BE VIA VIDEOCONFERENCE

THE PUBLIC PHYSICAL LOCATION WITH PRESIDING OFFICER:

Texas Department of Motor Vehicles
4000 Jackson Ave., Building 1, Lone Star Room
Austin, Texas 78731

All agenda items are subject to possible discussion, questions, consideration, and action by the Board of the Texas Department of Motor Vehicles (Board). Agenda item numbers are assigned for ease of reference only and do not necessarily reflect the order of their consideration by the Board. Presentations may be made by the identified staff or Board member or other staff as needed. The Board reserves the right to discuss any items in executive session where authorized by the Open Meetings Act.

PAGE

1. Roll Call and Establishment of Quorum

2. Pledges of Allegiance - U.S. and Texas

3. Chair's Reports - Chairman Treviño

- A. Appointment of a Member to Act in the Absence of the Chair and the Vice Chair under Transportation Code, §1001.023(b)(9)

6 B. [Proposed 2020 Board Meeting Schedule](#)

4. Executive Director's Reports - Whitney Brewster

- A. [TxDMV Organizational Assessment Project Update](#)

7
12 B. [Awards, Recognition of Years of Service, and Announcements](#)

- Introduction of Chief of Information Security, [Angel Cruz](#)

CONTESTED CASE

- 14 **5. Rehearing: Denial of Renewal Application, Revocation of General Distinguishing Number (GDN), Revocation of Salvage Licenses, and Appeal to SOAH under Occupations Code, §§53.021-53.023 and 2301.251(a), Transportation Code, §503.038(a)(7); and 43 Texas Administrative Code §215.88(i), (j), and §221.112. MVD Docket Nos. 17-0178350 (GDN Case), 17-0178352 (Salvage Case), and 19-0000505 (Salvage Case), SOAH Docket Nos. 608-18-2228.ENF and 608-18-2229.ENF; [Texas Department of Motor Vehicles, Enforcement Division v. Discount Auto Brokers, LLC](#) - Daniel Avitia and Heather Pierce**

PAGE COMMITTEE ITEM

- 88 6. **Advisory Committee Appointments** - Whitney Brewster

RULE - ADOPTION

7. **Chapter 217, Vehicle Titles and Registration** - Jeremiah Kuntz
New, §217.75

(Relating to SB 604, providing Registration and Title System and fraud training and updating statutory citations)

(Proposal Published August 23, 2019 - 44 Tex. Reg. 4465)

RULES - PROPOSAL

- 91 8. **Chapter 217, Vehicle Titles and Registration** - Jeremiah Kuntz and Tim Menke
New, §§217.76-217.78

(Relating to suspension or denial of access to the Registration and Title System)

- 102 9. **New, Chapter 223, Compliance and Investigations Division** - Tim Menke
(Relating to county tax assessor-collector reporting of suspected fraud, waste, or abuse and implementation of Sunset Advisory Commission's Recommendation 2.2)

BRIEFINGS AND ACTION ITEMS

- 112 10. **Specialty Plate Design** - Jeremiah Kuntz
Baylor University, Redesign proposed by My Plates under
Transportation Code, §504.851

11. Finance and Audit

- 114 A. **Delegation of Authority to the Executive Director for the Execution of the
Specialty License Plate Marketing Contract** - Jeremiah Kuntz
- 115 B. **Delegation of Authority to the Executive Director for the Execution of the
Dallas/Carrollton Regional Service Center Commercial
Property Lease Renewal** - Linda M. Flores
- 123 C. **FY 2019 Fourth Quarter Financial Report** - Linda M. Flores and
Sergio Rey (BRIEFING ONLY)
- 144 D. **Procurement and Contract Management Audit Update** - Linda M. Flores
(BRIEFING ONLY)
- 152 E. **Internal Audit Charter** - Sandra Menjivar-Suddeath
- 168 F. **Internal Audit Division Status Report** - Sandra Menjivar-Suddeath
(BRIEFINGS ONLY)
- FY 2019 Quality Assurance and Improvement Program Report
- FY 2019 Annual Audit Report

EXECUTIVE SESSION

12. The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551:

- **Section 551.071** - Consultation with and advice from legal counsel regarding:
 - pending or contemplated litigation, or a settlement offer;
 - a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Government Code, Chapter 551; or
 - any item on this agenda.
- **Section 551.074** - Personnel matters.
 - Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.
 - Executive Director compensation, in accordance with Article VII, General Appropriations Act, HB 1, 86th Legislature, Regular Session, 2019
- **Section 551.076** - Deliberation Regarding Security Devices or Security Audits; Closed Meeting.
 - the deployment, or specific occasions for implementation, of security personnel or devices; or
 - a security audit.
- **Section 551.089** - Deliberation Regarding Security Devices or Security Audits; Closed Meeting.
 - security assessments or deployments relating to information resources technology;
 - network security information as described by Section 2059.055(b); or
 - the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

13. Action Item from Executive Session

Executive Director Compensation

14. Public Comment

15. Adjournment

The Board will allow an open comment period to receive public comment on any agenda item or other matter that is under the jurisdiction of the Board. No action will be taken on matters that are not part of the agenda for the meeting. For subjects that are not otherwise part of the agenda for the meeting, Board members may respond in accordance with Government Code, Section 551.042 and consider the feasibility of placing the matter on the agenda for a future meeting. In accordance with 43 Texas Administrative Code §206.22, any person wishing to address the Board must complete a speaker's form at the registration table prior to the agenda item being taken up by the Board. Public comment will only be accepted in person. Each speaker will be limited to three minutes and time allotted to one speaker may not be reassigned to another speaker.

Agenda items may be presented by the named presenters or other TxDMV staff.

Pursuant to Sections 30.06 and 30.07, Penal Code (trespass by license holder with a concealed or openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun or a handgun that is carried openly.

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact Carrie Fortner by telephone at (512) 465-3044.

I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

CERTIFYING OFFICIAL: Tracey Beaver, General Counsel, (512) 465-5665.

**2020 Board Meeting Hold Dates are highlighted yellow**

Hold dates for full Board Meetings are first Thursdays of February, April, June, August, October and December; but at the call of the Chairman.

Call to Order is typically is 8:00 a.m., unless otherwise updated. Availability and quorum will be confirmed with all Board Members. See legend below.

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Board Meeting Date: 10/3/2019
BRIEFING

To: Texas Department of Motor Vehicles Board
From: Whitney Brewster, Executive Director
Agenda Item: 4.A
Subject: TxDMV Organizational Assessment Project (TOAP) Update

BRIEFING ONLY

The TxDMV Organizational Assessment Project (TOAP) is a staff-driven effort to revisit the Legislature's vision for TxDMV and ensure we have a strong foundation upon which to grow and mature. TOAP utilized six workgroups – Communications, Legal, Organizational Preparation, Process and Technology – to accomplish its objectives.

PURPOSE AND EXECUTIVE SUMMARY

Since December 2018, the TOAP workgroups have accomplished a great deal. Most workgroups have either completed their deliverables or transitioned them to operations and discontinued meeting. Two workgroups will continue meeting.

FINANCIAL IMPACT

No financial impact.

BACKGROUND AND DISCUSSION

Communications Workgroup

Deliverables	Completion Date
Develop a Communications Request Process for Requesting GSC Services	10/31/19
Develop a Style Guide for TxDMV Written Communications	10/04/19
Develop Standard Templates for Communication (Memos, Fax Coversheets, Business Cards, etc)	10/04/19
Develop Governance of Internet/Intranet SOP	09/24/19

Develop Rules of the Road to Set the Expectations for Staff Interactions	09/19/19
Rename Reggie (TxDMV's Current Mascot) Contest	10/04/19
Plan TxDMV's 10-Year Anniversary Celebration	11/15/19

* This workgroup will continue through October to finalize remaining deliverables and oversee the Rename Reggie contest and 10-Year Anniversary planning.

Legal Workgroup

Deliverables	Completion Date
Review of TxDMV Policies	08/30/19
Review Fraud Policies to include: <ul style="list-style-type: none"> • Implementation of Red Flag Policy for Counties • Implementation of Fraud Data Dashboard • Implementation of Hamari (Software Tool) • Implementation of Power BI Mapping (Software Tool) for Fraud Vulnerability Detection • Mandatory Fraud Training for all TxDMV Employees Processing Registration/Title Transactions • County Fraud Reports Project Planning and Approval • Review TxDMV Fraud Policies for Updating 	<ul style="list-style-type: none"> • 12/28/18 • 12/31/18 • 12/31/18 • 03/01/19 • 08/31/19 • 03/26/19 • 07/11/19
Review and Define the Rule Making Process	06/28/19
Review and Implement AAMVA Guidelines for Fraud	12/31/18

*This workgroup has completed all deliverables and is no longer meeting.

Finance and Administrative Services Workgroup

Deliverables	Completion Date
Develop an Assessment Report for Short-Term and Long-Term Strategy for HQ	04/15/19
Evaluate Regional Service Centers for Updates and Renovations	04/18/19
Develop a Facilities Report	10/04/19
Complete Budget Structure Evaluation and Recommendations	08/30/19
Develop Key Performance Indicators (KPI) for Support Functions	10/31/19

* This workgroup is no longer meeting, however the KPIs are being tracked to completion.

Organizational Preparation Workgroup

Deliverables	Completion Date
Complete Organizational Structure Inefficiencies Survey	03/31/20
Develop Organizational Structure Recommendation	03/31/20
Develop Organizational Change Management Definition and Recommendation	10/31/19
Develop Organizational Culture Strategy	10/04/19
Transition TxDMV to an Electronic Performance Management Process in CAPPS	10/15/19

Develop Career Path Policy and Procedures	12/31/19
Develop an Annual Classification Review Plan	08/12/19
Develop a Mentorship Program	03/31/20
Develop and Implement a New Supervisory and Leadership Academy	08/12/19

* This workgroup will continue meeting to work on the remaining deliverables.

Process Workgroup

Deliverables	Completion Date
Develop Process Mapping Project Idea Form and Statement of Work	09/30/19
Evaluate Stakeholder Relationships	09/04/19
Review and Update Governance of Major Initiatives Process	10/15/19
Review and Update Governance of Capital Dollars Process	10/15/19
Develop Delegation of Authority Recommendations	10/31/19
Evaluate CAPPS Modules Usage	05/09/19

* This workgroup is no longer meeting, however the Chair and project manager are tracking remaining deliverables to completion.

Technology Workgroup

Deliverables	Completion Date
Reassess IT Organization Post-Reorg to include: <ul style="list-style-type: none"> Creation of Command and Control Team Transition Communications to Government and Strategic Communications 	<ul style="list-style-type: none"> 08/31/19 09/30/19 08/30/19

<ul style="list-style-type: none"> IT Services Division RACI Alignment Service Desk After-Hours Support (Interim Solution) 	<ul style="list-style-type: none"> 08/30/19
Assess Application Performance	08/30/19
Improve Visibility into Cybersecurity Risks – Procure Skybox Appliance	08/30/19
Evaluation of IT Governance Processes to include: <ul style="list-style-type: none"> Data Data Classification Software Development Life Cycle 	<ul style="list-style-type: none"> 08/30/19 08/30/19 08/30/19
Evaluate IT Portfolio Governance	08/30/19
Identify IT Services for Service Level Agreements	08/30/19
Review Standards and Currency of Software/Hardware	08/30/19
Catalog Shadow IT (Applications and Infrastructure that are Managed and Used by Those Outside IT)	08/30/19
Submit Project Idea Forms to Move the Complaint Management System (CMS) into eLICENSING and re-platform MCCS in eLINC	08/30/19

*This workgroup is no longer meeting. Remaining deliverables have been transitioned to operations.

Board Meeting Date: 10/3/2019

BRIEFING

To: Texas Department of Motor Vehicles Board
From: Whitney Brewster, Executive Director
Agenda Item: 4.B
Subject: Executive Director's Report – Recognition of Years of Service

RECOMMENDATION

Board Chair and members offer congratulations to employees receiving recognition for an award, reaching a state service milestone, or retirement.

PURPOSE AND EXECUTIVE SUMMARY

The Executive Director announces the name of individuals who retired from the agency and recognizes employees who have reached a state service milestone of 20 years and every five-year increment thereafter. Recognition at the October 3, 2019, Board Meeting for retirements and state service awards include:

- Scott Doyle in Information Technology Services Division reached 20 years of state service.
- Tiffanay Waller in Finance & Administrative Services Division reached 20 years of state service.
- Stephanie Rogers in Enforcement Division reached 20 years of state service.
- Yolanda Brijalba in Vehicle Titles & Registration Division reached 25 years of state service.
- Donny Ruemke in Finance & Administrative Services Division reached 25 years of state service.
- Earl Pearson in Enforcement Division reached 40 years of state service.

And, the following individuals recently retired from the agency:

- Gary Gradel – Vehicle Titles & Registration Division Information Technology Services Division
- Cecilia Chen – Vehicle Titles & Registration Division Enforcement Division
- Linda Page – Consumer Relations Division
- Pat Barnes – Human Resources Division
- Alice Carmona – Office of Administrative Hearings
- Conrad Munoz – Information Technology Services Division

FINANCIAL IMPACT

No financial impact.

BACKGROUND AND DISCUSSION

No additional background and discussion.

Angel Cruz, Chief of Information Security

Angel Cruz joined TxDMV as Chief of Information Security on September 16. He brings significant security governance, information risk and service management expertise from 20+ years in senior roles with DXC Corporation, Hewlett Packard Enterprise, Golfsmith International, Texas DIR as State of Texas CISO, Texas Guaranteed Student Loan, CenturyTel, Freescale Semiconductor, The University of Texas at Austin and University of Texas – Pan American.



Originally from Brooklyn New York, Angel served in the US Navy where he retired as a Senior Chief Data Systems Technician and has lived in the Austin area for over 17 years.

Angel and his wife Marybell enjoy quality time with their 3 grown children (no grand-kids yet), play golf whenever they have a chance, love visiting their friends and family and really look forward to a trip to Europe in the near future.



To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Motor Vehicle Division Director
Agenda Item: 5
Subject: Rehearing: Denial of Renewal Application, Revocation of General Distinguishing Number (GDN), Revocation of Salvage Licenses, and Appeal to SOAH under Occupations Code, §§53.021-53.023 and 2301.251(a), Transportation Code, §503.038(a)(7); and 43 Texas Administrative Code §215.88(i), (j), and §221.112. MVD Docket Nos. 17-0178350 (GDN Case), 17-0178352 (Salvage Case), and 19-0000505 (Salvage Case), SOAH Docket Nos. 608-18-2228.ENF and 608-18-2229.ENF; *Texas Department of Motor Vehicles, Enforcement Division v. Discount Auto Brokers, LLC*

RECOMMENDATION

Staff recommends the Board affirm the Final Order.

PURPOSE AND EXECUTIVE SUMMARY

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision (PFD) for consideration by the Board. The Board entered a Final Order denying Respondent's renewal application, revoking Respondent's GDN, and revoking Respondent's Salvage licenses at its June 6, 2019, meeting. The Respondent filed a Motion for Rehearing which the board granted. The contested case is now back before the Board for reconsideration.

FINANCIAL IMPACT

None.

BACKGROUND AND DISCUSSION

The following documents are attached to this Executive Summary for consideration by the Board:

1. Executive Summary - June 6, 2019
2. Second Amended Notice of Department Decision, 17-0178350 (GDN license) October 22, 2018 and Second Amended Notice of Department Decision, 17-0178352.ENF (salvage licenses) October 22, 2018;
3. Proposal for Decision, December 13, 2018;
4. Petitioner's Exhibit E-9 – Court Documents including Plea of Guilty and Sentencing;
5. Final Order of the Board (June 24, 2019);
6. Respondent's Motion for Rehearing; and
7. Order Granting Motion for Rehearing.

DATE: June 6, 2019

Action Requested: APPROVAL OF DRAFT FINAL ORDER

To: Texas Department of Motor Vehicles Board (Board)
From: Daniel Avitia, Director, Motor Vehicle Division (MVD)
Agenda Item: #5
Subject: Denial of Renewal Application, Revocation of General Distinguishing Number, Revocation of Salvage Licenses, and Appeal to SOAH under Occupations Code, §§ 53.021, 53.022, 53.023, and 2301.251; Transportation Code, § 503.038; and 43 Texas Administrative Code § 215.88 and § 221.112. MVD Docket Nos. 17-0178350 (GDN Case), 17-0178352 (Salvage Case), and 19-0000505 (Salvage Case), SOAH Docket Nos. 608-18-2228.ENF and 608-18-2229.ENF; *Texas Department of Motor Vehicles, Enforcement Division v. Discount Auto Brokers, LLC* - Daniel Avitia and Heather Pierce

RECOMMENDATION

Staff recommends that the Board:

- adopt the Administrative Law Judge's (ALJ) Findings of Fact (FOF) 1 – 28 and Conclusions of Law (COL) 1 – 7 and 9 – 11;
- deny renewal and revoke Respondent's GDN and salvage licenses; and
- delete the ALJ's COLs 8 and 13 and amend COL 12 as the ALJ did not properly apply or interpret applicable law, and the recommended sanction is inconsistent with prior Board decisions and is too lenient to be effective.

The result of this recommendation is to change the ALJ's fitness determination and recommended sanction.

PURPOSE AND EXECUTIVE SUMMARY

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision (PFD) for consideration by the Board, and the Board may now consider and approve a Final Order.

FINANCIAL IMPACT

None

BACKGROUND AND DISCUSSION

The Respondent, Discount Auto Brokers, LLC, has been licensed as a salvage dealer since 2011 and a GDN dealer since 2008 and is 100% owned by Mr. Seyed Tabatabaei. Mr. Tabatabaei applied to renew two salvage licenses on May 10, 2017, and to renew a GDN license on June 1, 2017.

Mr. Tabatabaei disclosed his criminal history in the renewal applications. On November 15, 2016, Mr. Tabatabaei pleaded guilty to the felony of Tampering with Government Records confessing that he "unlawfully, intentionally, and knowingly"¹ allowed false information to be entered into the Texas Information Management System (TIMS), the system used by state vehicle inspectors to document motor vehicle emission and safety inspections. Mr. Tabatabaei was then sentenced to deferred adjudication and placed on community supervision (probation) through a plea agreement.

In accordance with TEX. OCC. CODE § 53.021(d)(1)(B)(i), the department may consider Mr. Tabatabaei's deferred adjudication a conviction for purposes of reviewing his criminal history.

¹ Petitioner's Exhibit E-9

The Licensing Committee denied the renewal of Respondent's licenses after reviewing the circumstances including the mitigating facts and information provided by Mr. Tabatabaei. Key factors for considering the applicant as unfit and denying licensure included the following:

1. Mr. Tabatabaei was warned about unlawful inspections in 2015 when two of his employees were arrested at work for conducting false emission tests using a "clean scanning" method. Clean scanning is a method in which one vehicle's emission test results are fraudulently substituted for another vehicle's test results. Police investigators found 38% of all inspections conducted at the Discount Brokers LLC business location were fraudulent in the 3-month period ending December 30, 2014.
2. Despite the warning to Mr. Tabatabaei, he not only allowed the unlawful activity to continue but to increase in frequency; police investigators found 281 fraudulent inspections for the 6-month period October 20, 2015 to April 20, 2016, representing 59% of all inspections performed. In this second investigation Mr. Tabatabaei allowed an employee to use his personal vehicle inspector license to perform fraudulent inspections.
3. The criminal activity was recent and conducted at Mr. Tabatabaei's licensed business; continued licensure would provide him with the opportunity to repeat the conduct.

Mr. Tabatabaei was sent the initial Notice of Department Decision (NODD) for both salvage and GDN cases on November 27, 2017. The Enforcement Division referred the contested cases matter to SOAH on February 9, 2018, and the hearing on the merits was held on November 13, 2018.

The Proposal for Decision was issued on December 13, 2018. The ALJ agreed that the agency may consider Mr. Tabatabaei as being convicted of a crime, and that the crime directly relates to duties and responsibilities of a licensed used and salvage dealer. Mr. Tabatabaei confessed and pleaded guilty to unlawfully and intentionally allowing false data to be entered into the motor vehicle emission and safety inspection system. The ALJ concluded that some sanction was appropriate given the seriousness of the crime, and recommended Respondent's licenses be renewed and suspended for two years. Finally, the ALJ recommended that any instances of misconduct during the two-year probated suspension should lead to the summary revocation of all of Discount Auto Brokers, LLC's licenses.

The TEX. GOV'T CODE § 2001.058(e) provides that a state agency may change an ALJ's Finding of Fact or a Conclusion of Law if the ALJ did not properly apply or interpret applicable law.

The Board, not the ALJ, is the decision maker concerning sanctions in a contested case. *Texas State Bd. of Dental Exam'rs. v. Brown*, 281 S.W.3d 692 (Tex. App.— Corpus Christi 2009). While TEX. OCC. CODE § 2301.651 grants the Board the authority to suspend licenses and place licensees on probation, the Board has not chosen to do so, and the proposed sanction is deemed to be too lenient to be effective.

Staff recommends Respondent be deemed unfit for licensure and that Respondent's license renewal applications be denied and existing licenses GDN No. P105161 and Salvage Dealer License Nos. 101247404 and 101547404 be revoked.

Mr. Tabatabaei received notice of the Board consideration date on May 16, 2019, by email, mail, and certified mail.

The following documents are attached to this Executive Summary for consideration by the Board:

1. Second Amended Notice of Department Decision, 17-0178350 (GDN license) October 22, 2018 and Second Amended Notice of Department Decision, 17-0178352.ENF (salvage licenses) October 22, 2018;
2. Proposal for Decision, December 13, 2018;
3. Petitioner's Exhibit E-9 – Court Documents including Plea of Guilty and Sentencing;
4. Draft of the Final Order for Board Consideration.



October 22, 2018

Rivas Goldstein, LLP for DISCOUNT AUTO BROKERS, LLC
Attention: Ethan Lau
7035 Bee Cave Road, Suite 200
Austin, Texas 78746

SENT VIA FAX, EMAIL, and CMRRR 7003 2260 0005 2741 4991

Dear Mr. Lau:

Enclosed is a copy of a Second Amended Notice of Department Decision (2nd NODD) for the GDN and a Second Amended Notice of Department Decision (2nd NODD) for the salvage license/endorsements that was sent to you - please note that we have sent you the NODDs for both cases (GDN and Salvage Licenses/Endorsements) and that they are attached to this document. Please note that all filings are filed in SOAH Docket No. 608-18-2228.ENF.

Also enclosed is a Notice of Hearing filed by the Enforcement Division that sets the hearing for a two day hearing in this case for Tuesday and Wednesday, November 13 – 14, 2018 at 9:00 a.m. in the State Office of Administrative Hearings (SOAH) located on the fourth floor of the W.P. Clements Building, 300 West 15th Street, Austin, TX 78701.

Pursuant to 43 Tex. Admin. Code § 215.308, within 20 days after service of the notice of hearing and Notice of Department Decision, or within 10 days after service of any amended notice of hearing and Notice of Department Decision, you may file a reply that specifically admits, denies or otherwise explains your position on each of the allegations.

Any reply or other pleadings should be sent to the SOAH at the following address: P.O. Box 13025 Austin, TX 78711-3025. The SOAH telephone number is (512) 475-4993 and the fax number is (512) 322-2061. You must also send a copy of any pleading or reply you or your attorney file in the case to the undersigned at the following address: Enforcement Division, Texas Department of Motor Vehicles, 4000 Jackson Street, Austin, Texas 78731. All communication should reference the SOAH Docket Number above.

Please note that the factual allegations listed in the NODDs and Notice of Hearing can be deemed admitted, and the relief sought in the Notice of Hearing and NODDs might be granted by default against the defaulting party that fails to appear at the hearing.

Please also note that if you have not filed a reply to the NODDs as discussed above and do appear at the hearing, the Enforcement Division Staff may request a continuance of the case and ask that the case be set to be heard on a future date

You can contact me at: 512-465-4163 or via email: Heather.Pierce@txdmv.gov if you have any questions.
Sincerely,


Heather Pierce

Attorney, Enforcement Division

CC: State Office of Administrative Hearings P.O. Box 13025 Austin, Texas 78711-3025
VIA E-File

MOTOR VEHICLE DIVISION
TEXAS DEPARTMENT OF MOTOR VEHICLES

IN THE MATTER OF THE LICENSE(S) OF DISCOUNT AUTO BROKERS, LLC	MVD DOCKET NO. 17-0178350 SOAH DOCKET No. 608-18-2228.ENF
IN THE MATTER OF THE LICENSE(S) OF DISCOUNT AUTO BROKERS, LLC	MVD DOCKET NO. 17-0178352.ENF SOAH DOCKET NO. 608-18-2228.ENF

NOTICE OF HEARING

This Notice of Hearing, together with a Second Amended Notice of Department Decision for the GDN License and the Second Amended Notice of Department Decision for the Salvage License/Endorsements, attached hereto and incorporated herein, is issued in accordance with Tex. Gov't Code §§ 2001.052 et seq, 1 Tex. Admin. Code §§ 155.1 et seq, and Tex. Occ. Code § 2301.705 by the Enforcement Division, Texas Department of Motor Vehicles (hereinafter "The Department"). The Enforcement Division (hereinafter "Petitioner") alleges that Discount Auto Brokers, LLC, (hereinafter "Respondent"), has engaged in conduct that constitutes grounds for sanctions under the Texas Occupations Code, Texas Transportation Code or implementing regulations as alleged in the Second Amended Notice of Department Decision for both cases.

Under the authority of Tex. Occ. Code §§ 2301.151 through 2301.153, this matter has been docketed and set for a two day hearing at the offices of the State Office of Administrative Hearings, on Tuesday and Wednesday, November 13 -14th, 2018 at 9:00 a.m. each day at the W. P. Clements Building, 300 W. 15th Street, Fourth Floor, Austin, TX 78701.

Pursuant to Tex. Gov't Code § 2001.057(c), the hearing may be continued on subsequent working days or at such times announced by the Administrative Law Judge until the hearing is concluded. At the hearing, the Administrative Law Judge will afford Respondent the opportunity to respond to the allegations and present evidence on each issue involved in the case.

The Administrative Law Judge will determine whether Respondent has engaged in conduct that constitutes grounds for sanctions under the statutes and implementing rules set forth in the Second Amended Notice of Department Decision for the GDN License and the Second Amended Notice of Department Decision for the Salvage License/Endorsements, and will make a recommendation as to whether sanctions and penalties should be imposed against the Respondent.

For allegations where the prescribed conduct is subject to Chapter 2301 of the Texas Occupations Code and the rules adopted under that statute, the Department is authorized, in accordance with Tex. Occ. Code §§ 2301.651 and 2301.802, to deny an application for a license; revoke, cancel, probate, or suspend a license; reprimand a license holder; or seek injunctive relief. Moreover, Tex. Occ. Code § 2301.801 authorizes the imposition of a civil penalty not to exceed \$10,000.00 per violation per day.

For allegations where the prescribed conduct is subject to Chapter 503 of the Texas Transportation Code or the rules adopted under that statute, the Department is authorized, in

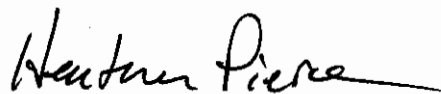
accordance with Tex. Transp. Code §§ 503.038 and 503.093(a)(2) and 43 Tex. Admin. Code § 215.141(a), to deny an application for license; revoke, cancel or suspend a license; or seek injunctive relief. Moreover, Tex. Transp. Code § 503.095 authorizes the imposition of a civil penalty not to exceed \$1,000.00 per violation per day.

The factual allegations listed in this Second Amended Notice of Department Decision for the GDN License and the Second Amended Notice of Department Decision for the Salvage License/Endorsements and Notice of Hearing could be deemed admitted, and the relief sought in the Notice of Hearing and First Amended Notice of Department Decision might be granted by default against the defaulting party that fails to appear at hearing.

Please also note that if you have not filed a reply to the Second Amended Notice of Department Decision for the GDN License and the Second Amended Notice of Department Decision for the Salvage License/Endorsements as discussed above and do appear at the hearing, the Enforcement Division Staff may request a continuance of the case and ask that the case be set to be heard on a future date. Advise the undersigned at least five (5) days before the scheduled hearing date if you or your attorney plan to attend the scheduled hearing.

Date: October 22, 2018

Sincerely,



Heather Pierce,
Attorney Enforcement Division

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2018, a true and correct copy of the foregoing Notice of Hearing with attached Second Amended Notice of Department Decision for the GDN License and the Second Amended Notice of Department Decision for the Salvage License/Endorsements for SOAH Docket No.608-18-2228.ENF was sent to Respondent.

It was sent via Fax, Email, and CMRRR 7003 2260 0005 2741 4991.



Heather Pierce,
Attorney Enforcement Division



October 22, 2018

Rivas Goldstein, LLP for DISCOUNT AUTO BROKERS, LLC
7035 Bee Cave Road, Suite 200
Austin, Texas 78746
VIA FAX, EMAIL, and CMRRR 7003 2260 0005 2741 4991

Dear Mr. Lau:

I am faxing, emailing, and mailing you the Second Amended Notice of Department Decision (NODD). Please note I made an amendment for both cases: GDN case and Salvage cases. This document will also be submitted to SOAH via upload today.

In accordance with the notice provisions of Texas Administrative Procedure Act (TEX. GOV'T CODE §§ 2001.001 et seq.) and 43 TEX. ADMIN. CODE § 215.500, enclosed is a Notice of Department Decision ("Decision") prepared by the Texas Department of Motor Vehicles ("Department"), Enforcement Division alleging that you, as a licensee of the Department, have violated the cited provisions of law in the manner described in the Decision. The allegation(s) are a result of a Department initiated investigation or outside complaint made against you and a Department investigation of that complaint.

You have already submitted a Request for an Administrative Hearing and this hearing is set for trial at the State Office of Administrative Hearings (SOAH) you are entitled to and will receive a Notice of Hearing. The hearing in this matter is conducted under the rules of the Department and SOAH.

Please note: the Second Amended Notice of Department Decision for the Salvage (NODD) is to add the other license to the hearing at SOAH: so this NODD adds 101247404 to the hearing. Since the NODD was amended for the Salvage license and the language was slightly changed in the Salvage NODD the GDN NODD was also updated to reflect that change.

The trial at SOAH is scheduled for: November 13 – 14, 2018 at 9:00 a.m.

Sincerely,

Heather Pierce,
Attorney, Enforcement Division
(512) 465-4163

CC: SOAH via upload

**MOTOR VEHICLE DIVISION
TEXAS DEPARTMENT OF MOTOR VEHICLES**

**IN THE MATTER OF THE LICENSE(S) OF
DISCOUNT AUTO BROKERS, LLC**

MVD CASE NO. 17-0178352.ENF

SECOND AMENDED NOTICE OF DEPARTMENT DECISION

The Texas Department of Motor Vehicles, (hereinafter “Department” or “Petitioner”), is the state agency with authority to administer and enforce Texas Occupations Code §§ 2302.0015, 2302.051, 2302.052, 2302.102, 2302.103, 2302.106, 2302.108, and 2302.354 and Texas Transportation Code §§ 501.097, 501.099, and 501.108, 501.110. An investigation of your business was conducted by the Department. As a result of that investigation, the Department determined that you, DISCOUNT AUTO BROKERS, LLC, (hereinafter “Respondent”), the holder of a license issued by the Department, has in the manner described below violated certain provisions of the Texas Transportation Code, Chapter 501 and/or the Texas Occupations Code Chapter 2302 and 43 Texas Administrative Code Chapter 221. The Department alleges that Respondent i.e. Applicant committed the following violations:

1. Respondent was issued salvage dealer license numbers: 101547404 and 101247404.
2. About May of 2017, Respondent (Seyed Tabatabaei) submitted two applications to renew both salvage dealer license/endorsements. However, the applications were denied and Respondent appealed to the State Office of Administrative Hearings. The reasoning for denial was based on Respondent’s criminal history. Specifically:
3. Respondent has the following criminal history: on or about November 15, 2016, Respondent pled guilty in the 337th District Court Harris County (Court) to the state jail felony of tampering - governmental record and the Court entered an Order of Deferred Adjudication placing Respondent on Community Supervision.
4. TEX. OCC. CODE §53.021(d) provides that a licensing authority may consider a person to have been convicted of a criminal offense if the person receives an Order of Deferred Adjudication for the criminal offense and the person has not completed the supervision under the order. At the time of the licensure denial, Respondent had not yet completed the supervision under the Order. Specifically, Respondent submitted an application to renew the licenses around May of 2017 and Respondent’s Deferred Adjudication was terminated on or about February 15, 2018. Per TEX. OCC. CODE § 53.021, even if Respondent completed the period of deferred adjudication the licensing authority may consider the person convicted if the period of supervision was less than five years before the date the person applied.
5. TEX. OCC. CODE §§ 53.022; 53.023; and 53.025 requires a licensing authority to review factors in determining whether a conviction relates to an occupation and other factors. The department reviewed these factors and the mitigating information provided

- by Respondent on more than one occasion and based on their review Licensure made a determination to deny both of Respondent's renewal applications.
6. The Order of Deferred Adjudication for the criminal offense in this case is a conviction and the criminal offense is an offense that directly relates to the duties and responsibilities of the licensed occupation per TEX. OCC. CODE §§ 53.021; 53.022; 53.025. As such the salvage dealer licenses/endorsements for Respondent are subject to revocation and the applications to renew the license are subject to denial per § 53.021 and TEX. ADMIN. CODE §§ 221.112; 221.112(17).

The Department is authorized to deny an application for a license, revoke or suspend a license, under TEX. OCC. CODE § 2302.108, and 43 TEX. ADMIN. CODE § 217.81. Further, TEX. OCC. CODE § 2302.354 allows for an administrative penalty of up to \$1,000 for each act in violation of Chapter 2302 of the Texas Occupations Code or a rule or order adopted under this chapter and for each day of a continuing violation.

Based on the aforementioned investigation and allegations, the Department recommends that Salvage Dealer License Numbers: 101547404 and 101247404 be revoked and the application to renew the license be denied.

Petitioner prays that it be found that Respondent has violated the statutes and implementing rules alleged above; and, that, as appropriate, Respondent's application for a license be denied and that Respondent's license be revoked; and that the conduct alleged above be ceased and not resumed.

If you have any questions regarding this Decision, please contact me at (512) 465-4163.

DATE OF DECISION: October 22, 2018

Respectfully Submitted,



Heather Pierce

Attorney – Enforcement Division
Bar Card 24067969
4000 Jackson Avenue
Austin, Texas 78731
(512) 465-4163
(512) 465-5650 Fax

**MOTOR VEHICLE DIVISION
TEXAS DEPARTMENT OF MOTOR VEHICLES**

**IN THE MATTER OF THE LICENSE(S) OF
DISCOUNT AUTO BROKERS, LLC**

MVD Case NO. 17-0178350.ENF.ENF

SECOND AMENDED NOTICE OF DEPARTMENT DECISION

The Texas Department of Motor Vehicles, (hereinafter, "Department" or "Petitioner"), is the state agency with authority to administer and enforce Texas Occupations Code Chapter 2301; Texas Transportation Code Chapters 501, 502 and 503; and 43 Texas Administrative Code Chapter 215. An investigation of your business was conducted by the Department. As a result of that investigation, the Department determined that you, DISCOUNT AUTO BROKERS, LLC, (hereinafter "Respondent"), the holder of a license issued by the Department, violated certain provisions of Texas Occupations Code Chapter 2301; and/or Texas Transportation Code Chapters 501, 502 and 503 and/or 43 Texas Administrative Code Chapter 215. The Department alleges that Respondent committed the following violations:

1. On or about July 30, 2008, Respondent was originally issued a General Distinguishing Number (License No. P105161).
2. On or about June 1, 2017, Respondent (Seyed Tabatabaei) submitted an application to renew the General Distinguishing Number.
3. Respondent has the following criminal history: on or about November 15, 2016, Respondent pled guilty in the 337th District Court Harris County (Court) to the state jail felony of tampering - governmental record and the Court entered an Order of Deferred Adjudication placing Respondent on Community Supervision.
4. TEX. OCC. CODE §53.021(d) provides that a licensing authority may consider a person to have been convicted of a criminal offense if the person receives an Order of Deferred Adjudication for the criminal offense and the person has not completed the supervision under the order. At the time of the licensure denial, Respondent had not yet completed the supervision under the Order.
Specifically, Respondent submitted an application to renew the license on June 1, 2017 and Respondent's Deferred Adjudication was terminated on or about February 15, 2018. Per TEX. OCC. CODE § 53.021, even if Respondent completed the period of deferred adjudication the licensing authority may consider the person convicted if the period of supervision was less than five years before the date the person applied.
5. TEX. OCC. CODE §§ 53.022; 53.023; and 53.025 require a licensing authority to review factors in determining whether a conviction relates to an occupation and other factors. The department reviewed these factors and the mitigating information provided by Respondent on more than one occasion and based on their review Licensure made a determination to deny Respondent's renewal application.
6. The Order of Deferred Adjudication for the criminal offense in this case is a conviction and the criminal offense is an offense that directly relates to the duties and responsibilities of the licensed occupation per §§ 53.021; 53.022; 53.025. As such, the

General Distinguishing Number for Respondent is subject to revocation and /or the application to renew the license is subject to denial per TEX. OCC. CODE § 53.021 and TEX. ADMIN. CODE §§ 215.88(j)(13).

The Department is authorized to deny an application for a license, revoke or suspend a license, under Texas Occupations Code § 2301.651; Texas Transportation Code § 503.038; and 43 Texas Administrative Code § 215.141(a). Further, Texas Transportation Code § 503.095 allows for a civil penalty of up to \$1,000.00 for each violation of, or per day for a continuing violation, of Chapter 503, or a rule or order adopted under the chapter. Texas Occupations Code § 2301.801 allows for a civil penalty of up to \$10,000.00 for each violation of, or per day for a continuing violation, of Chapter 2301, or a rule or order adopted under the chapter.

Based on the aforementioned investigation and allegations, the Department recommends that Dealer General Distinguishing Number License No. P105161 be revoked and/or the application to renew the license be denied.

If a timely written hearing request is received and no settlement is reached, an administrative

Petitioner prays that it be found that Respondent has violated the statutes and implementing rules alleged above; and, that, as appropriate, Respondent's application for a license be denied and that Respondent's license be revoked; and that the conduct alleged above be ceased and not resumed.

If you have any questions regarding this Decision, please contact me at (512) 465-4163.

DATE OF DECISION: October 22, 2018

Respectfully Submitted,


Heather Pierce

Attorney – Enforcement Division
Bar Card 24067969
4000 Jackson Avenue
Austin, Texas 78731
(512) 465-4163
(512) 465-5650 Fax

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

December 13, 2018

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731

VIA INTERAGENCY MAIL

RE: **Docket Nos. 608-18-2228.ENF & 608-18-2229.ENF; MVD Docket Nos. 17-0178350.ENF & 17-0178352.ENF / *The Texas Department of Motor Vehicles, Enforcement Division v. Discount Auto Brokers, LLC.***

Dear Mr. Avitia:

Please find enclosed a Proposal for Decision in these consolidated cases. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Casey A. Bell", written over a horizontal line.

Casey A. Bell
Administrative Law Judge

CAB/lac
Enclosure

cc: John J. Rivas, Rivas Goldstein, LLP, 7035 Bee Cave Rd., Ste. 200, Austin, TX 78746 - **VIA REGULAR MAIL**
Heather Pierce, Staff Attorney, Enforcement Division, Texas Department of Motor Vehicles, Motor Vehicle Division, 400 Jackson Ave., Austin, TX 78731 - **VIA INTERAGENCY MAIL**
Melinda Moreno, Docket Clerk, Texas Department of Motor Vehicle, 4000 Jackson Avenue, Austin, Texas 78731 - **VIA INTERAGENCY MAIL**

**SOAH DOCKET NOS. 608-18-2228.ENF & 608-18-2229.ENF
MVD NOS. 17-0178350.ENF & 17-0178352.ENF**

TEXAS DEPARTMENT OF MOTOR	§	BEFORE THE STATE OFFICE
VEHICLES,	§	
Petitioner	§	
	§	
v.	§	OF
	§	
DISCOUNT AUTO BROKERS, LLC,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Motor Vehicles Enforcement Division (Department) seeks to deny the applications filed by Discount Auto Brokers, LLC (Respondent) to renew its General Distinguishing Number (GDN) and salvage vehicle dealer licenses and/or revoke those licenses based on the criminal history of its owner, Seyed Tabatabaei. After reviewing the evidence and the applicable law, the Administrative Law Judge (ALJ) concludes the Department should grant Respondent's applications, suspend the licenses, and probate the suspensions for two years.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Neither party disputed notice or jurisdiction. Those matters are discussed in the Findings of Fact and Conclusions of Law without further discussion here. On November 13, 2018, ALJ Casey A. Bell convened the hearing on the merits at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Heather Pierce represented Staff. Respondent appeared through Mr. Tabatabaei and was represented by attorney Ethan Lau. The hearing concluded that day, and the record closed on December 3, 2018, when the transcript of the hearing was filed with SOAH.

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PROPOSAL FOR DECISION

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II. APPLICABLE LAW

A person may not engage in business as a motor vehicle dealer by regularly and actively buying, selling, or exchanging vehicles at an established and permanent location without a GDN issued by the Department.¹ Likewise, a person may not act as a salvage vehicle dealer without a salvage vehicle dealer license issued by the Department.² The Department issues salvage vehicle dealer licenses with one or more endorsements based on the type of activities in which the dealer will engage.³

The Department is authorized to disqualify a person from receiving a license, suspend or revoke a license, place on probation a person whose license is suspended, or reprimand a license holder if the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.⁴ A “person” includes “a person holding 50% or more ownership interest in a business entity licensed by the [D]epartment.”⁵ If the Department probates a license suspension, it may require the license holder to report regularly to the Department on matters that are the basis of the probation or limit the license holder’s activities.⁶

Pursuant to Texas Occupations Code (Code) § 53.025, the Department adopted a rule identifying which criminal convictions directly relate to the duties and responsibilities of occupations licensed by the Department and which may indicate a lack of fitness for licensure.⁷ The rule identifies crimes under Texas Penal Code chapter 37, which include tampering with a governmental record, as directly relating to the duties and responsibilities of occupations licensed by the Department.⁸ Whether the crime of tampering with a governmental record

¹ Tex. Transp. Code §§ 503.001(4), .021; Tex. Occ. Code §§ 2301.022(17), .251(a), .255(a).

² Tex. Occ. Code (Code) § 2302.101(1).

³ Code § 2302.103; 43 Tex. Admin. Code § 221.11.

⁴ Code §§ 53.021(a)(1), 2301.651(1), (5); 43 Tex. Admin. Code § 215.88(b)(1)-(2), (i)(1).

⁵ 43 Tex. Admin. Code § 215.88(c)(5).

⁶ Code § 2301.654.

⁷ 43 Tex. Admin. Code § 215.88(j).

⁸ 43 Tex. Admin. Code § 215.88(j)(19); Tex. Penal Code § 37.10.

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PROPOSAL FOR DECISION

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directly relates to the duties and responsibilities of a licensed salvage vehicle dealer requires the Department to consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.⁹

The Department may not consider a person to have been convicted of an offense if:

- (1) the person entered a plea of guilty or nolo contendere;
- (2) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and
- (3) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.¹⁰

However, the Department may consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed and the person was discharged if (a) the person completed the period of supervision less than five years before the date the person applied for the license, and (b) after considering the factors set forth in Code §§ 53.022 and 53.023, the Department determines that the person may pose a continued threat to public safety or employment of the person in the licensed profession would create a situation in which the person has an opportunity to repeat the conduct.¹¹

⁹ Code § 53.022.

¹⁰ Code § 53.021(c).

¹¹ Code § 53.021(d)(1)(B)(i).

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PROPOSAL FOR DECISION

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In deciding whether to deny an application or revoke a license because of a conviction, the Department must determine whether that person is nonetheless fit to perform the duties and discharge the responsibilities of the licensed profession. In determining a person's fitness for licensure, the Department will consider: (1) the requirements of Code chapter 53; (2) the provisions of Code § 2301.651; (3) any specific statutory licensing requirements; (4) mitigating factors; and (5) other evidence of a person's fitness as allowed by law, including the standards identified in the Department's rule on fitness.¹²

The Department is required to consider the following factors set forth in Code § 53.023:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) other evidence of the person's fitness, including letters of recommendation from:
 - (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and
 - (C) any other person in contact with the convicted person.¹³

An applicant or licensee has the responsibility, to the extent possible, to obtain and provide to the Department the recommendations of the prosecution, law enforcement, and

¹² 43 Tex. Admin. Code § 215.89(a)(1)-(5).

¹³ Code § 53.023(a).

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PROPOSAL FOR DECISION

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correctional authorities discussed above.¹⁴ Additionally, an applicant or licensee must furnish proof in the form required by the Department that he has:

- (1) maintained a record of steady employment;
- (2) supported his dependents;
- (3) maintained a record of good conduct; and
- (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.¹⁵

III. DISCUSSION

A. Background Facts

On or about July 30, 2008, the Department issued GDN License No. P105161 to Respondent. On or about August 15, 2011, the Department issued Salvage Vehicle License No. 101547404 to Respondent. Respondent's salvage vehicle license has a used automobile dealer endorsement and a salvage vehicle broker endorsement.¹⁶ In May and June of 2017, Respondent applied to the Department to renew these licenses.¹⁷ Respondent operates a used car dealership and a vehicle inspection station at its place of business in Houston, Texas.

On November 15, 2016, in the 337th Judicial District Court of Harris County, Texas, Mr. Tabatabaei pleaded guilty to the state jail felony of tampering with a governmental record.¹⁸ The court deferred adjudication of Mr. Tabatabaei's guilt and placed him on community supervision for two years.¹⁹ On February 15, 2018, the court found that Mr. Tabatabaei's and

¹⁴ Code § 53.023(b).

¹⁵ Code § 53.023(c).

¹⁶ Staff Ex. 1.

¹⁷ Staff Exs. 3-4.

¹⁸ Staff Ex. 9 at 64-67.

¹⁹ Staff Ex. 12.

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society's best interests would be served by early termination of his supervision period and entered an order discharging Mr. Tabatabaei.²⁰

B. Evidence Regarding The Crime

Staff presented evidence regarding the facts and circumstances that resulted in Mr. Tabatabaei's arrest for tampering with a governmental record. An incident report from the Harris County Constable Precinct 4 indicates that from April 20 to April 25, 2016, Investigator Edward Martinez and members of the Harris County Emissions Task Force Unit (Task Force) conducted covert surveillance operations at Respondent's place of business.²¹ In the report, Officer Martinez stated that his search of the Texas Information Management System (TIMS) revealed that Respondent conducted 281 unlawful inspections from October 20, 2015, to April 20, 2016.²² According to Officer Martinez, during the surveillance of Respondent's place of business, he observed an unknown female performing emissions inspections using another inspector's identification with Mr. Tabatabaei's knowledge and consent. In searching the TIMS, Officer Martinez determined that Respondent's employees were using a Dodge Ram or a Toyota 4Runner to obtain false emission test results for other vehicles. Officer Martinez referred to this technique for conducting false emission tests as "clean scanning."²³

Officer Martinez's report specifically connects Mr. Tabatabaei to unlawful inspections of two vehicles, both conducted on April 25, 2016. He stated in the report that on that day he observed Mr. Tabatabaei in close proximity to the inspection bay and the unknown female as she performed emissions tests on the vehicles using clean scanning. Officer Martinez stated that Mr. Tabatabaei approached the female as she entered data into the emissions analyzer and gave her instructions and directions. The TIMS reflected that the emissions tests were performed using Mr. Tabatabaei's vehicle inspector license. According to Officer Martinez, neither Mr. Tabatabaei nor the unknown female performed the mandated safety inspections on the two

²⁰ Staff Ex. 13.

²¹ Staff Ex. 14 at 90.

²² TIMS is a computer system used to record the results of vehicle emission inspections.

²³ Staff Ex. 14 at 90-91.

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PROPOSAL FOR DECISION

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vehicles. Officer Martinez alleged that Mr. Tabatabaei “knowingly participated and allowed [the unknown female] to use his name and secret PIN number to make false entries into a governmental record” by entering test results for the two vehicles when he actually used a Dodge Ram or Toyota 4Runner to complete the inspections, and by recording that the required safety inspections were performed.²⁴

According to Officer Martinez’s report, he had made a previous arrest in 2015 at Respondent’s place of business for unlawful inspections, and he had warned Mr. Tabatabaei about the situation at that time. Mr. Tabatabaei testified that two of his employees were arrested in 2015 for conducting illegal inspections, but that he did not know about that illegal activity until they were arrested because he was only in the office a few times a week during that time because of a back injury. Mr. Tabatabaei stated that Officer Martinez never issued a warning to him, and that he fired those employees immediately.

Mr. Tabatabaei admitted that he had allowed Johanna Barrios, the unknown female referred to in Officer Martinez’s report, to use his inspector’s license to perform inspections at Respondent’s location. He testified that he hired Ms. Barrios in late October 2015, and that she was in the process of obtaining her own license for vehicle inspections. Mr. Tabatabaei stated that shortly after she was hired, Ms. Barrios repeatedly requested that he allow her to use his inspector’s license. She claimed that it would help her learn and obtain her own license more quickly. According to Mr. Tabatabaei, he was very busy with other aspects of the business and his life at that time, so he allowed Ms. Barrios to use his license, a decision he now regrets. He testified that he was given very short notice by Respondent’s landlord in March 2016 that the business would have to move, which resulted in court actions that, along with his new marriage and the impending tax deadline, took up much of his time.

Mr. Tabatabaei denied any knowledge that Ms. Barrios was conducting illegal inspections using his license. He also denied that he gave any instructions or directions to Ms. Barrios regarding the inspections she conducted that were referenced in Officer Martinez’s

²⁴ Staff Ex. 14 at 94-95.

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report. In the surveillance video taken by the Task Force on April 25, 2016, which appears to have been taken from a location several hundred feet away from Respondent's place of business, there is no audio recording of any conversations between Mr. Tabatabaei and Ms. Barrios. The video shows Mr. Tabatabaei and Ms. Barrios present at Respondent's location at the time of the clean scanning inspections. It is unclear from the video if they interacted with each other during that time, and Mr. Tabatabaei testified that he was busy with other matters and was not involved in Ms. Barrios's inspection activity.²⁵ Mr. Tabatabaei stated that when the constables showed up in May 2016 to arrest him, Ms. Barrios disappeared.

C. Evidence Regarding Fitness for Licensure

Mr. Tabatabaei has no criminal record other than his November 2016 guilty plea for tampering with a governmental record. His plea pertained to the charges that he knowingly made false records in TIMS pertaining to emissions inspections performed by Ms. Barrios on April 25, 2016.²⁶ At that time, Mr. Tabatabaei was 39 years old. He testified that he has operated Respondent's business since Respondent obtained its GDN in 2008, and has continued to operate the business since his guilty plea. His tax records support this testimony.²⁷ Mr. Tabatabaei offered certifications from various vehicle dealer associations that Respondent belongs to, as well as 2017 Gold Star Certificate awarded to Respondent by the Better Business Bureau.²⁸ According to Mr. Tabatabaei, Respondent currently has four employees.

According to Mr. Tabatabaei, he pleaded guilty and accepted deferred adjudication because he wanted to take responsibility for his mistake in allowing illegal inspections to occur at Respondent's place of business. According to Mr. Tabatabaei, he paid all of his fines and court costs and performed 120 hours of community service. He stated that since his arrest, he has worked harder to provide for his family. Mr. Tabatabaei recently married, and at the time of the hearing, his wife was eight months pregnant with their first child. He submitted proof that he

²⁵ Portions of the video were shown during the hearing, but the video was not admitted as evidence.

²⁶ Staff Ex. 9 at 61-63.

²⁷ Staff Ex. 15 at 112-17; Staff Ex. 16 at 147.

²⁸ Resp. Ex. 3-5.

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has paid taxes on his and his wife's behalf, that he is covering her pregnancy expenses, and that she is covered by his health insurance policy.²⁹ Mr. Tabatabaei also testified that he supports his elderly parents.

Mr. Tabatabaei also offered as evidence a letter from his probation officer stating that Mr. Tabatabaei complies with the terms of his probation and was not deemed a threat to society. The letter indicates that Mr. Tabatabaei's probation ended early because he had a positive attitude. According to the probation officer, Mr. Tabatabaei is a model citizen living a legitimate lifestyle and would not become involved in further criminal activity.³⁰ Mr. Tabatabaei provided receipts showing fees, court costs, and restitution he paid to his probation officer pursuant to the conditions of his community supervision.³¹

Mr. Tabatabaei expressed remorse for allowing Ms. Barrios to use his inspector's license to perform inspections, and he accepted responsibility for his conduct. He understands that he made a serious mistake in trusting Ms. Barrios, and he has learned to pay more attention to running his business and be less trusting of people as a result. Mr. Tabatabaei fired the employees who were working for Respondent at the time of his arrest, and he took more care in the interviews to fill those positions in an attempt to hire new employees that were more trustworthy. He also installed a surveillance system with 24 cameras at Respondent's place of business. Mr. Tabatabaei stated that he has instructed his employees that any illegal inspections or other wrongdoing would result in consequences. He testified that he discovered earlier this year that an employee had conducted an illegal inspection, and that he immediately fired the employee and reported the incident to the Texas Department of Public Safety.

Antonia Knight, the Licensing Manager for the Department's Motor Vehicle Division, testified regarding the decision by the Department's Enforcement Committee to deny Respondent's applications and revoke its licenses. She testified that the committee made the decision after consideration of Mr. Tabatabaei's crime and the information that he provided for

²⁹ Staff Ex. 15 at 123-29.

³⁰ Resp. Ex. 2.

³¹ Staff Ex. 12 at 81-82; Staff Ex. 15 at 130-38.

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their review. Ms. Knight testified that the committee considered the offense to be very serious. The committee found it significant that the offense occurred very recently and that the Task Force found that similar conduct had occurred over an extended period of time at the licensed location. Ms. Knight stated that Respondent's explanation of how the offense occurred was very different than the Task Force report. She noted that the committee assumed Mr. Tabatabaei had paid all outstanding fees, court costs, and restitution given that his community supervision terminated early. They also found the positive reference from his probation officer to be a significant mitigating factor. However, Ms. Knight noted that other than the brief note from the probation officer, Mr. Tabatabaei offered no other evidence of his rehabilitation. She admitted that Mr. Tabatabaei's evidence showed that he had maintained steady employment and a record of good conduct, supported his dependents, and had no other criminal activity in his past.

D. ALJ's Analysis and Recommendation

It is undisputed that Mr. Tabatabaei pleaded guilty to a crime that the Department has found to relate directly to the duties and responsibilities of a GDN license holder. Further, the Department found, and the ALJ agrees upon an analysis of the factors set forth in Code § 53.022, that the crime also directly relates to the salvage vehicle dealer occupation. Tampering with a governmental record in the context of vehicle inspections is very serious and can result in unsafe vehicles traveling on Texas roadways. The Department requires licenses to engage in used car and salvage vehicle dealing at least partially for the purpose of preventing such a scenario. Licenses to deal used and salvage vehicles, with all the attendant paperwork and filing of records with the Department and other agencies, certainly provide an opportunity to engage in tampering with governmental records. Someone who tampers with governmental records, absent extenuating circumstances, would not normally have the fitness or capacity required to perform the duties or discharge the responsibilities of a used or salvage vehicle dealer. Further, because Mr. Tabatabaei completed his community supervision less than five years before he applied to renew Respondent's licenses, and because his employment as a used and salvage vehicle would create a situation in which he could engage in tampering with governmental records, the Department may consider him to have been convicted of the crime.

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However, to determine whether the Department should deny Respondent's applications and revoke its licenses based on Mr. Tabatabaei's conviction, it must consider the Code § 53.023 factors. In that regard, Mr. Tabatabaei has no other criminal history besides the conviction at issue. He was 39 years old at the time of the offense, so it was not an act of youthful indiscretion. The offense occurred approximately two and a half years ago, and Mr. Tabatabaei has worked steadily and conducted himself appropriately since that time. As for his rehabilitation, the evidence is scant, although he expressed remorse and accepted responsibility for his mistake in allowing Ms. Barrios to use his vehicle inspector license. Mr. Tabatabaei only presented one letter of recommendation, albeit from his probation officer, to support his fitness for licensure. The evidence is clear, and Staff did not dispute, that Mr. Tabatabaei has supported his dependents, maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution.³²

Importantly, Staff did not prove that Mr. Tabatabaei knew or even should have known that Ms. Barrios was using his inspector license to conduct illegal emissions inspections by clean scanning. Officer Martinez's conclusion regarding the level of Mr. Tabatabaei's involvement in Ms. Barrios's illegal activity is speculative. There was no evidence presented to support the assertions in Officer Martinez's report that Ms. Barrios performed illegal inspections under Mr. Tabatabaei's instruction and direction. Mr. Tabatabaei admitted that he allowed Ms. Barrios to use his vehicle inspector license to perform inspections and enter information regarding those inspections into the TIMS. However, he testified that he did not know until he was arrested that Ms. Barrios had used his license to enter false information regarding those inspections into the TIMS. The ALJ finds this testimony credible.

The most troublesome aspect of Mr. Tabatabaei's offense is that it occurred in the course and scope of Respondent's business. Allowing an unlicensed person to conduct state inspections on Respondent's behalf using his license created the possibility that unsafe vehicles would pass inspection and find their way onto Texas roadways. Mr. Tabatabaei was careless and used poor

³² In the memorandum prepared by the Department's Enforcement Committee and included in Staff's evidence, the committee concluded that Mr. Tabatabaei did not prove that he had completed payment of court costs, supervision fees, and restitution. However, Ms. Knight testified that she assumed that Mr. Tabatabaei had completed such payment based on the court's order terminating his supervision.

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judgment and decision-making by permitting Ms. Barrios to conduct vehicle inspections under his license. This is especially so given the prior arrest of one of Respondent's ex-employees the previous year for conducting illegal inspections at Respondent's place of business. Although Staff presented no evidence that Mr. Tabatabaei knew that his employees performed illegal inspections, they occurred at Respondent's place of business so he bears some responsibility. However, there is insufficient evidence in the record to show that Mr. Tabatabaei intended to deceive or defraud anyone, or to breach anyone's trust, by his actions in allowing Ms. Barrios to use his license to perform inspections. The record indicates that Respondent runs a respectable business and has generally stayed free of any legal problems except for employees having performed illegal vehicle inspections.

The ALJ finds that Mr. Tabatabaei has learned a lesson from the events involving Ms. Barrios and is now more careful in hiring and monitoring Respondent's employees, and that it is highly unlikely that he will engage again in similar conduct. The ALJ also finds that Mr. Tabatabaei is fit to perform the duties and discharge the obligations of a used and salvage vehicle dealer. However, some sanction against Respondent is warranted under the circumstances. The illegal inspections performed by Ms. Barrios using Mr. Tabatabaei's license occurred at Respondent's place of business when Mr. Tabatabaei was present and resulted in financial gain to Respondent. Further, there had been illegal inspections performed by other employees at Respondent's place of business within the previous year which resulted in those employees' arrest. Given these facts, the ALJ concludes that the Department should grant Respondent's applications and renew its GDN and salvage licenses, suspend those licenses for a period of two years, and probate such suspension to allow the Department to maintain oversight over Respondent's activities to ensure it maintains proper standards of operation as a used and salvage vehicle dealer. Any instances of misconduct by Mr. Tabatabaei during the suspension period should lead to summary revocation of Respondent's licenses. The ALJ makes the following Findings of Fact and Conclusions of Law in support of this recommendation.

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IV. FINDINGS OF FACT

1. On or about July 30, 2008, the Texas Department of Motor Vehicles (Department) issued General Distinguishing Number (GDN) License No. P105161 to Discount Auto Brokers, LLC (Respondent).
2. On or about August 15, 2011, the Department issued Salvage Vehicle License No. 101547404 to Respondent with two endorsements, one for buying and selling salvaged vehicles and one for brokering sales between salvage vehicle dealers.
3. Mr. Tabatabaei also holds a vehicle inspector license issued by the Texas Department of Public Safety (DPS).
4. Respondent operates a used car dealership and a vehicle inspection station at its place of business in Houston, Texas.
5. Seyed Tabatabaei is Respondent's owner.
6. On November 15, 2016, in the 337th Judicial District Court of Harris County, Texas, Mr. Tabatabaei pleaded guilty to the state jail felony of tampering with a governmental record. The court deferred adjudication of Mr. Tabatabaei's guilt and placed him on community supervision for two years.
7. On February 15, 2018, the court found that Mr. Tabatabaei's and society's best interests would be served by early termination of his supervision period and entered an order discharging Mr. Tabatabaei.
8. A search of the Texas Information Management System (TIMS), a computer system used to record the results of vehicle emission testing, by Edward Martinez, an investigator for the Harris County Constable Precinct 4, revealed that 281 unlawful inspections were conducted at Respondent's place of business from October 20, 2015, to April 20, 2016.
9. On April 25, 2016, Respondent's employee Johanna Barrios performed two illegal vehicle inspections at Respondent's place of business. Ms. Barrios did not have a vehicle inspector license and used Mr. Tabatabaei's vehicle inspector license to perform the inspections.
10. Mr. Tabatabaei knowingly allowed Ms. Barrios to use his vehicle inspector license to perform vehicle inspections at Respondent's place of business.
11. The Harris County Constable had also arrested two of Respondent's employees in February 2015 for performing illegal vehicle inspections.

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12. Mr. Tabatabaei has no criminal record other than his guilty plea for tampering with a government record pertaining to information input into TIMS by Ms. Barrios using his vehicle inspector license for emissions inspections she performed on April 25, 2016.
13. Mr. Tabatabaei was 39 years old on April 25, 2016.
14. Mr. Tabatabaei has operated Respondent's business since he obtained his GDN in 2008, and has continued to operate the business since his guilty plea.
15. Respondent belongs to several vehicle dealer associations and was awarded a 2017 Gold Star Certificate by the Better Business Bureau.
16. Mr. Tabatabaei took responsibility for and regrets his mistake in allowing Ms. Barrios to use his vehicle inspector license and for the illegal inspections to occur at Respondent's place of business, and he has learned to be more careful and not trust people so easily.
17. Mr. Tabatabaei installed a surveillance system with 24 cameras at Respondent's place of business. Using this system, he discovered an employee performing an illegal inspection early in 2018, and he fired the employee and promptly reported the incident to the Texas Department of Public Safety.
18. Mr. Tabatabaei paid all of his fines and court costs and performed 120 hours of community service.
19. Mr. Tabatabaei's probation officer wrote a letter of recommendation stating that Mr. Tabatabaei complied with the terms of his probation and was not deemed a threat to society. The letter indicates that Mr. Tabatabaei has a positive attitude and is a model citizen living a legitimate lifestyle and would not become involved in further criminal activity.
20. Mr. Tabatabaei supports his wife, who at the time of the hearing was eight months pregnant with their first child, and his elderly parents.
21. Mr. Tabatabaei was careless and used poor judgment and decision-making by permitting Ms. Barrios to conduct vehicle inspections under his license.
22. Mr. Tabatabaei bears some responsibility for illegal inspections that occurred at Respondent's place of business.
23. Mr. Tabatabaei has learned from his mistakes, is now more careful in hiring and monitoring Respondent's employees, and is unlikely to make similar errors in the future.
24. In May and June of 2017, Respondent applied to the Department to renew its GDN and Salvage Vehicle licenses.

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25. On June 22, 2017, the staff (Staff) of the Department sent a letter to Mr. Tabatabaei informing him that his criminal record supported denial of his renewal applications and inviting him to submit information for the Department's consideration in deciding whether to renew the licenses.
26. On November 27, 2017, Respondent requested a hearing on the Department's decision to deny the renewal applications and revoke Respondent's licenses.
27. On October 22, 2018, Staff issued a Notice of Hearing and Second Amended Notices of Department Decision (NODDs) on both the GDN and salvage licenses to Respondent. The Notice of Hearing and NODDs stated the date, time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain, statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
28. On November 13, 2018, Administrative Law Judge (ALJ) Casey A. Bell convened the hearing on the merits at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Heather Pierce represented Staff, and attorney Ethan Lau represented Respondent. The hearing adjourned the same day, and the record closed on December 3, 2018, when the court reporter delivered the transcript of the hearing to ALJ Bell.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over used and salvage motor vehicle dealers pursuant to Texas Occupations Code chapters 2301 and 2302 and Texas Transportation Code chapter 503.
2. SOAH has jurisdiction over all matters related to conducting a contested case in this matter, including the preparation of a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, pursuant to Texas Government Code chapter 2003.
3. Respondent received proper and timely notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.
4. A person may not legally engage in business or act as dealer without a GDN issued by the Department. Tex. Occ. Code (Code) §§ 2301.002(17), .251(a), .255(a); Tex. Transp. Code §§ 503.001(4), .021.
5. A person cannot act as a salvage vehicle dealer without a salvage vehicle dealer license issued by the Department. Code § 2302.101(1).
6. The Department is authorized to disqualify a person from receiving a license, suspend or revoke a license, place on probation a person whose license is suspended, or reprimand a

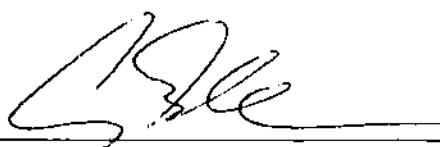
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- license holder if the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Code §§ 53.021(a)(1), 2301.651(1), (5); 43 Tex. Admin. Code § 215.88(b)(1)-(2), (i)(1).
7. A "person" includes someone holding 50% or more ownership interest in a business entity licensed by the Department. 43 Tex. Admin. Code § 215.88(c)(5).
 8. If the Department probates a license suspension, it may require the license holder to report regularly to the Department on matters that are the basis of the probation or limit the license holder's activities. Code § 2301.654.
 9. The Department may consider Mr. Tabatabaei to have been convicted of tampering with a government record because he completed community supervision less than five years before Respondent filed its renewal applications and because he could repeat the conduct as a licensed used and salvage vehicle dealer. Code § 53.021(c), (d)(1)(B)(i).
 10. Tampering with a government record is an offense that directly relates to the duties and responsibilities of a licensed used and salvage vehicle dealer. 43 Tex. Admin. Code § 215.88(j)(19); Tex. Penal Code 37.10
 11. In determining whether that person is fit for licensure despite a disqualifying criminal conviction, the Department will consider: (1) the requirements of Code chapter 53; (2) the provisions of Code § 2301.651; (3) any specific statutory licensing requirements; (4) mitigating factors; and (5) other evidence of a person's fitness as allowed by law, including the standards identified in the Department's rule on fitness. Code §§ 53.022-.023; 43 Tex. Admin. Code § 215.89(a)(1)-(5);.
 12. Mr. Tabatabaei is fit to perform the duties and discharge the responsibilities of a used and salvage vehicle dealer, but some sanction is warranted given that his crime occurred at Respondent's place of business.
 13. The Department should renew Respondent's licenses, suspend them for two years, and probate the suspensions so long as Mr. Tabatabaei and Respondent do not engage in any misconduct during the suspensions.

SIGNED December 13, 2018.



CASEY A. BELL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

ADMITTED 8X1

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43

P.12

THE STATE OF TEXAS

02851031

Syed Tabatabaei
TABATABAEI M. SEYED
15000 PARK ROW #527
HOUSTON, TX 77084

SPN:
DOB: AM 11/13/1976
DATE PREPARED: 5/11/2016

D.A. LOG NUMBER: 2258576
CJIS TRACKING NO.: 9171851887-A001
BY: SR DA NO: 002595291
AGENCY: HCCO #4
O/R NO: 1666294
ARREST DATE: 05/11/2016

NCIC CODE: 4802 32

RELATED CASES: SAME DEF-FEL CO-DEF M. UDDIN-2FEL

FELONY CHARGE: TAMPERING GOVERNMENTAL RECORD

CAUSE NO: 1509745
HARRIS COUNTY DISTRICT COURT NO: 337
FIRST SETTING DATE:

BAIL: \$2000
PRIOR CAUSE NO:

WAIVER OF CONSTITUTIONAL RIGHTS, AGREEMENT TO STIPULATE, AND JUDICIAL CONFESSION

Syed Tabatabaei
In open court and prior to entering my plea, I waive the right of trial by jury. I also waive the appearance, confrontation, and cross-examination of witnesses, and my right against self-incrimination. The charges against me allege that in Harris County, Texas, ~~TABATABAEI M. SEYED~~, hereafter styled the Defendant, heretofore on or about **APRIL 25, 2016**, did then and there unlawfully, intentionally and knowingly MAKE, USE, AND PRESENT a governmental record, namely, TEXAS INFORMATION MANAGEMENT SYSTEM, attached hereto as Exhibit A, with knowledge of its falsity.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

of 12

For Official Use Only - Do Not Disseminate to the Public: 72771059 - P.

27 pan)

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

E-9

I understand the above allegations and I confess that they are true and that the acts alleged above were committed on

April 25 2016

In open court I consent to the oral and written stipulation of evidence in this case and to the introduction of affidavits, written statements, of witnesses, and other documentary evidence. I am satisfied that the attorney representing me today in court has properly represented me and I have fully discussed this case with him.

I intend to enter a plea of guilty and the prosecutor will recommend that my punishment should be set at _____

27 DAYS	RWA	ATC	5,000	\$25 US	120 HRS W
	PAET	9,900	Rest	\$25 min	

and I agree to that recommendation. I waive any further time to prepare for trial to which I or my attorney may be entitled. Further, I waive any right of appeal which I may have should the court accept the foregoing plea bargain agreement between myself and the prosecutor.

DEFENDANT

Sworn to and Subscribed before me on

NOV 15 2016
11/15/16

HARRIS COUNTY DEPUTY DISTRICT CLERK

I represent the defendant in this case and I believe that this document was executed by him knowingly and voluntarily and after I fully discussed its consequences with him. I believe that he is competent to stand trial. I agree to the prosecutors recommendation as to punishment. I waive any further time to prepare for trial to which I or the defendant may be entitled.

DEFENDANT'S ATTORNEY (PRINT)

SIGNATURE OF DEFENDANT'S ATTORNEY

I consent and approve the above waiver of trial by jury and stipulation of evidence

ASSISTANT DISTRICT ATTORNEY
OF HARRIS COUNTY, TEXAS

This document was executed by the defendant, his attorney, and the attorney representing the State, and then filed with the papers of the case. The defendant then came before me and I approved the above and the defendant entered a plea of guilty. After I admonished the defendant of the consequences of his plea, I ascertained that he entered it knowingly and voluntarily after discussing the case with his attorney. It appears that the defendant is mentally competent and the plea is free and voluntary. I find that the defendant's attorney is competent and has effectively represented the defendant in this case. I informed the defendant that I would not exceed the agreed recommendation as to punishment.

JUDGE PRESIDING

PLEA OF GUILTY

State Jail Felony, After Sept. 1, 1997- Rev 1-1-2013

WRITTEN PLEA ADMONISHMENTS
337TH DISTRICT COURT
HARRIS COUNTY, TEXAS

Cause Number: 1509745
Offense: Tamper

DEFENDANT: Seyed Tabatabaei Sayed

Pursuant to Article 26.13 of the Code of Criminal Procedure, the Court admonishes you the Defendant in writing as follows. Place your initials by each item only, if you fully understand it.

COURT'S ADMONISHMENTS TO DEFENDANT

You are charged with the offense shown above, and you are subject to the following range of punishment:

9. X **STATE JAIL FELONY:** a term of confinement in a State Jail for not less than 180 days or more than 2 years, and in addition, a fine not to exceed \$10,000.00 may be assessed. Upon conviction for a State Jail Felony offense, the period of confinement may be suspended and you may be placed under supervision of the Court for a period of not less than 2 years or more than five years;

STATE JAIL FELONY WITH TWO STATE JAIL FELONY CONVICTIONS: if a state jail felony punishable under Section 12.35 (a) of the Texas Penal Code is enhanced with two final state jail felony convictions, a term of not more than 10 years or less than 2 years confinement in the Texas Department of Criminal Justice, and in addition, a fine not to exceed \$10,000.00 may be assessed;

STATE JAIL FELONY WITH TWO FELONY CONVICTIONS: if a state jail felony punishable under Section 12.35 (a) of the Texas Penal Code is enhanced with two previous final felony convictions, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction becoming final, a term of not more than 20 years or less than 2 years in the Institutional Division of the Texas Department of Criminal Justice and in addition, a fine not to exceed \$10,000.00 may be assessed;

A STATE JAIL FELONY AND SENTENCED UNDER 12.44 (A): a term of confinement in the county jail not to exceed one year which is a felony conviction;

CLASS A MISDEMEANOR: a term of confinement in the county jail not to exceed one year and/or a fine not to exceed \$4,000.00;

CLASS B MISDEMEANOR: a term of confinement in the county jail not to exceed 180 days and/or a fine not to exceed \$2,000.00;

OTHER:

3 PLEA BARGAINS: if no plea bargain exists, the recommendation of the prosecuting attorney is not binding on the Court. If a plea bargain does exist, the Court will inform you whether it will follow the agreement in open court and before any finding on your plea. Should the Court reject the agreement, you will be entitled to withdraw your plea.

4 NO RIGHT TO APPEAL: if the punishment assessed does not exceed the agreement between you and the prosecutor, the Court will not give you permission to appeal any matter in the case except for matters raised by written motions filed and ruled upon prior to entering your plea.

5 CITIZENSHIP: if you are not a United States Citizen, a plea of guilty or nolo contendere may result in your deportation, exclusion from admission to the United States or denial of naturalization under federal law.

6 DEFERRED ADJUDICATION: If the court places you on deferred adjudication, you may raise issues such as sufficiency of the evidence in the original plea proceeding before an appellate court within 30 days (within 90 days if you file a timely motion for new trial). If you are on deferred adjudication and violate a condition of your probation, you may be arrested and detained. The Court will then conduct a hearing to determine whether you have violated a condition of your probation and whether to adjudicate your guilt on the original charge. You may not appeal that determination. The Court may then assess your punishment within the full range of punishment for this offense. After the court adjudicates your guilt, all proceedings, including the assessment of punishment and your right to appeal, if any, will continue as if adjudication of guilt had not been deferred on the original charge..

7 DOMESTIC VIOLENCE: If you are convicted of an offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

DEFENDANTS WAIVERS AND STATEMENTS

1 I read and write the English Language.
(or)

These papers were explained to me in my preferred language
of _____ by an interpreter, namely

2 I am a citizen of the United States.

3 WAIVER OF COURT REPORTER: I have consulted with my attorney, whose name is signed below regarding my right to have all court proceedings recorded by an official court reporter. My attorney has advised me of the consequences of not having said proceedings recorded. I understand that it is my burden to show on any appeal or post conviction writ of habeas corpus that my plea of guilty or no contest was not voluntarily or knowingly given and/or that the Judge did not properly advise me of the effect of a plea of guilty or no contest. Understanding all of the above consequences, I wish to waive my right to have a court reporter make a record of the court proceedings in my case.

WAIVER OF PRE-SENTENCE REPORT: I have consulted with my attorney, regarding the application of Article 42.12, Sec. 9(a), Code of Criminal Procedure to my case which provides that prior to imposition of sentence by the judge, the judge shall direct a supervision officer to report to the judge in writing on the circumstances of the offense with which I am charged, including my criminal history, if any, and my social history. I understand that the judge is not required to order such a report if the only available punishment is imprisonment or if a plea bargain exists where the punishment is imprisonment, unless I request that such a report be made. I do knowingly and voluntarily waive my right to the preparation of a report by the supervision officer and expressly request that such a report not be prepared, except as may be otherwise required by law.

WAIVER OF PRESERVATION OF EVIDENCE: I have consulted with my attorney regarding requirements under TEX. CODE CRIM PROC., ART. 38.39 [2001] that any evidence in possession of the attorney representing the state or a clerk or any other officer which is known to contain biological material, which if subjected to scientific testing would more likely than not establish the identity of the person committing the offense for which I am presently charged in the above captioned and numbered cause or which would exclude a person from a group of persons who could have committed the offense for which I am presently charged in the above captioned and numbered cause, shall be preserved. I further have been advised that such evidence may not be destroyed by the attorney representing the state or a clerk or any other officer possessing said evidence if either my attorney, the above named court, or I object within ninety-one (91) days after having received notice of the planned destruction of that evidence. Further, having been advised by my attorney of my rights, and fully understanding those rights to: 1) the preservation of the above described evidence, 2) notice of any planned destruction of the above described evidence, and 3) an objection to any destruction of the above described evidence, I knowingly and voluntarily waive these rights and do not object to the destruction of that evidence at such time as either the attorney for the state or a clerk or any officer currently in possession of that evidence shall deem proper. I also represent to the judge of the above named court that this Waiver of the Presentation of Evidence is not the result of a part of any plea bargain agreement with the attorney representing the state.

Joined by my counsel, I state that I understand the foregoing admonishments and I am aware of the consequences of my plea. I am mentally competent to stand trial and my plea is freely and voluntarily made. I waive and give up any time provided to me by law to prepare for trial. I am satisfied with the representation provided by my counsel and I received effective and competent representation. Under Article 1.14 Code of Criminal Procedure I give up all rights given to me by law, whether of form, substance or procedure. Joined by my counsel, I waive and give up my right to a jury in this case and my right to require the appearance, confrontation and cross examination of the witnesses. I consent to oral and written stipulations of evidence in this case. I waive and give up my right of confidentiality to the pre-sentence report if one is filed in this case and agree that the report may be publicly filed.

Under oath I swear that the foregoing and all the testimony I give in this case is true.

FILED
Chris Daniel
District Clerk
NOV 15 2016
Harris County, Texas

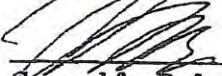
Sworn and subscribed before me this the _____ day of _____

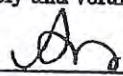
Defendant

NOV 15 2016

Deputy District Clerk

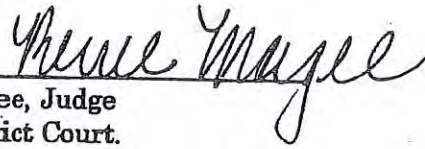
I join in and approve the waivers and stipulations made by the defendant. It is my opinion that the defendant is mentally competent to stand trial, that all of the defendant's statements were freely and voluntarily made, and that the defendant's plea was freely and voluntarily entered.


Counsel for Defendant


Assistant District Attorney

Date: NOV 15 2016
11-15-16

Approved:


Renee Magee, Judge
337th District Court.

FILED
Chris Daniel
District Clerk
NOV 15 2016
Time: _____
Harris County, Texas
Deputy
3y _____

STATE OF TEXAS

02851031

Syed
 TABATABAEI M. SEYED
 15000 PARK ROW #527
 HOUSTON, TX 77084

SPN:
 DOB: AM 11/13/1976
 DATE PREPARED: 5/11/2016

D.A. LOG NUMBER: 2258576
 CJIS TRACKING NO.: 9171851887-A001
 BY: SR DA NO: 002595291
 AGENCY: HCCO #4
 O/R NO: 1666294
 ARREST DATE: 05/11/2016

NCIC CODE: 4802 32

RELATED CASES: SAME DEF-FEL CO-DEF M. UDDIN-2FEL

FELONY CHARGE: TAMPERING GOVERNMENTAL RECORD

CAUSE NO: 1509745
 HARRIS COUNTY DISTRICT COURT NO: 337
 FIRST SETTING DATE:

BAIL: \$2000
 PRIOR CAUSE NO:

ACKNOWLEDGMENT OF COMPLIANCE WITH
 TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 39.14 (a)

Comes now the defendant and hereby withdraws any requests made in the above numbered cause for further discovery pursuant to Texas Code of Criminal Procedure Article 39.14 (a). My attorney has fully and completely explained to me my right to request discovery under Texas Code of Criminal Procedure Article 39.14 (a) and I understand that right. I am satisfied with the State's compliance and I affirmatively and voluntarily declare that I have no additional requests for discovery of items pursuant to Texas Code of Criminal Procedure Article 39.14 (a).

Defendant:

Sworn to and Subscribed before me on

11.15.16

HARRIS COUNTY DEPUTY DISTRICT CLERK

I represent the defendant in this case, and I believe that this document was executed by him freely, knowingly, and voluntarily. My client and I have fully discussed his right to discovery under Texas Code of Criminal Procedure Article 39.14 (a), and I believe that he understands this right and the consequences of executing this document. It is my opinion that he is competent to make this acknowledgment, and along with him and at his instruction I also withdraw any pending or additional discovery requests made pursuant to Texas Code of Criminal Procedure Article 39.14(a).

Defense Attorney (print)

Signature of Defense Attorney

This document was executed by the defendant, his attorney, and then filed with the papers of the case. The defendant came before me and I approved the above acknowledgment along with the defendant's plea of guilty or no contest. It appears that the defendant is mentally competent to withdraw any request he may have made for further discovery pursuant to Texas Code of Criminal Procedure Article 39.14 (a), and is doing so freely and voluntarily. I find that the defendant's attorney adequately informed him of his right to discovery under Texas Code of Criminal Procedure Article 39.14 (a) and the effects of this acknowledgment.

NOTHING HEREIN SHALL ABRIDGE THE STATE'S ONGOING DUTY TO DISCLOSE TO THE DEFENDANT ANY EXCULPATORY, IMPEACHMENT OR MITIGATING INFORMATION IN THE POSSESSION, CUSTODY OR CONTROL OF THE STATE THAT TENDS TO NEGATE THE GUILT OF THE DEFENDANT OR WOULD TEND TO REDUCE THE PUNISHMENT FOR THE OFFENSE CHARGED.

The Court hereby **ORDERS** the District Clerk of Harris County, Texas to file this document in the Court's record in this cause.

JUDGE PRESIDING

THE STATE OF TEXAS

02851031

D.A. LOG NUMBER: 2258576

CJIS TRACKING NO.: 9171851887-A001

Syed
 TABATABAEI M. SEYED
 15000 PARK ROW #527
 HOUSTON, TX 77084

SPN:
 DOB: AM 11/13/1976
 DATE PREPARED: 5/11/2016

BY: SR DA NO: 002595291
 AGENCY: HCCO #4
 O/R NO: 1666294
 ARREST DATE: 05/11/2016

NCIC CODE: 4802 32

RELATED CASES: SAME DEF-FEL CO-DEF M. UDDIN-2FEL

FELONY CHARGE: TAMPERING GOVERNMENTAL RECORD

CAUSE NO: 1509745
 HARRIS COUNTY DISTRICT COURT NO: 337
 FIRST SETTING DATE:

BAIL: \$2000
 PRIOR CAUSE NO:

TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 39.14
JOINT LIST OF REQUESTED AND RELEASED DISCOVERY

COMES NOW, the State of Texas by and through the undersigned assistant district attorney and the undersigned attorney for the above named defendant and would jointly show the Court the following:

Pursuant to Texas Code of Criminal Procedure Article 39.14(j) this document and the attached pages encompass the discoverable documents and evidence requested by the defendant and released by the State. Additionally, the below signed Assistant District Attorney declares that he/she permitted inspection of the entire Harris County District Attorney's Office file for this cause with the exception of items privileged by law or designated as work product of the District Attorney or her investigators. The signatures included on this document represent a declaration of release and receipt on the dates and in the forms therein related. The parties also incorporate by reference all notices on file in the Clerk's Record under this cause number provided in compliance with the requirements of the Texas Code of Criminal Procedure and the Texas Penal Code. Based on the signatures provided in this document and the documents incorporated by reference, the below signed Assistant District Attorney and defense counsel do hereby acknowledge that all the designated items thereby referenced were released pursuant to Texas Code of Criminal Procedure Article 39.14, and that the State has produced all the discoverable items requested by the defense as of the entry of the plea or commencement of trial. This document and the attached log are the acknowledgment required by article 39.14(j), and act as a written record of the documents, items, and information requested by and provided to the defendant in relation to this cause number, as is hereby witnessed to by our signatures as counsel for the parties.

ASSISTANT DISTRICT ATTORNEY
 HARRIS COUNTY, TEXAS

DEFENSE ATTORNEY

Syed
 signature

Syed
 printed name

24044244 bar number

DEFENSE ATTORNEY

Larry G. Langer
 signature

Larry G. Langer
 printed name

12541200 bar number

LIST OF RELEASED DISCOVERY ORDER

On this date the Harris County District Attorney and the attorney for the Defendant in the above Cause presented to the Court this Texas Code of Criminal Procedure Article 39.14 Joint List of Requested and Released Discovery. The Court hereby ORDERS the District Clerk of Harris County, Texas, to file the entirety of this Joint List of Requested and Released Discovery totaling 3 pages in the Court's record in this Cause.

Signed this 11-15-16 day of NOV, 2016

Heule Mayel
 JUDGE PRESIDING

JOINT LIST OF REQUESTED AND RELEASED DISCOVERY (Cont'd)

The defendant requests **NO ITEMS OR REPORTS** beyond its inspection of the contents of the Harris County District Attorney's Office file which excludes review of items privileged by law or designated as work product:

Signature Defense Counsel _____ Print name _____

OFFENSE REPORT(s)

The Defendant hereby requests that the State produce and permit the inspection (I), the electronic duplication (E), copying (C), and/or photographing of the following offense reports (describe with specificity):

Agency _____ OR No.: 1666294 Release Dt: 6/14/2016 Form:(C,E,I,P): E

Agency _____ OR No.: _____ Release Dt: _____ Form:(C,E,I,P): _____

Agency _____ OR No.: _____ Release Dt: _____ Form:(C,E,I,P): _____
(Add additional pages when requesting more than three offense reports)

ADDITIONAL ITEMS REQUESTED:

The Defendant hereby requests that the State produce, permit inspection (I), the electronic duplication (E), provide copies of (C), and/or allow photographing (P) of the following designated **ITEM(s)** that constitute or contain evidence material to any matter involved in this action that are in the possession, custody, or control of the State or any person under contract with the State (describe with specificity):

1. Surveillance Video (9 DVD's) Release Dt: 8-30-16 Form:(C,E,I,P): PH

2. Printouts (10-30-15-04-20-16) Release Dt: 8-30-16 Form:(C,E,I,P): PH

3. _____ Release Dt: _____ Form:(C,E,I,P): _____

4. _____ Release Dt: _____ Form:(C,E,I,P): _____

(Add additional pages when requesting more than four items)

Respectfully requested,

[Signature] (defense counsel)

Printed name Larry G. Longer

State Bar of Texas No.: 12541200

Email address lglonger@subell.net

Date of Request: 6/14/2016

The below signatures of the State and defendant hereby acknowledge the disclosure and receipt of all reports, documents, and items listed herein and provided to the defendant pursuant to Article 39.14 of the Texas Code of Criminal Procedure.

Signature: [Signature]

Name (legibly): Jiang
Assistant District Attorney

[Signature]
Defense Attorney

STATE OF TEXAS

v. Seyid
Tabatabaie ~~Seyid~~
 Defendant

§
§
§
§
§IN THE 337 DISTRICT COURT

OF HARRIS COUNTY, TEXAS

ADVICE OF DEFENDANT'S RIGHT TO APPEAL

The Court, pursuant to Tex. R. App. P. 25.2, advises the Defendant as follows:

1. Texas law gives a defendant convicted of a crime the right to appeal his conviction.
2. If you pleaded guilty or no contest and accepted the punishment recommended by the prosecutor, however, you cannot appeal your conviction unless the Court gives you permission. If you waived or gave up your right to appeal, you cannot appeal your conviction.
3. If you did not plead guilty, you may have the right to appeal. If you want to appeal, you must give notice of appeal in writing to this Court's clerk within 30 days.
4. If an attorney represents you in the court of appeals, your attorney must mail a copy of the court of appeals' judgment and opinion to your last known address. You must tell your attorney in writing of any change in your address.
5. If you are not satisfied with your appeal's result, you can ask the Court of Criminal Appeals to review your case by filing a petition for discretionary review in the Court of Criminal Appeals within 30 days of the issuance of the opinion by the court of appeals. If you fail to inform your attorney of any change in your address, you may lose the opportunity to seek discretionary review.

The Defendant declares the following to the Court (choose one):

1. ☒ I read and write English. I have read and I understand this document. S. X (Defendant initial here if true); or
2. ☐ I speak English. _____ (name reader) read this document to me. I understand its contents. _____ (Defendant initial here if true); or
3. ☐ I do not speak English. _____ (name translator) translated this document for me. I understand its contents. _____ (Defendant initial here if true).

[Signature]
 Defendant's signature

Sworn to and subscribed before me on

NOV 15 2016

11:15/16

Harris County Deputy District Clerk

FILED
 Chris Daniel
 District Clerk
 NOV 15 2016

Time:

Harris County, Texas
 Deputy

[Signature]
 PRESIDING JUDGE
 District Court
 Harris County, Texas

Revised 5/2/12

CLERK

Cause No. 1509775

THE STATE OF TEXAS

IN THE 377 DISTRICT COURTv. Syed
Tabatabaie Defendant

COUNTY CRIMINAL COURT AT LAW NO. _____

HARRIS COUNTY, TEXAS

TRIAL COURT'S CERTIFICATION OF DEFENDANT'S RIGHT OF APPEAL*

I, judge of the trial court, certify this criminal case:

- ☐ is not a plea-bargain case, and the defendant has the right of appeal. [or]
- ☐ is a plea-bargain case, but matters were raised by written motion filed and ruled on before trial, and not withdrawn or waived, and the defendant has the right of appeal. [or]
- ☐ is a plea-bargain case, but the trial court has given permission to appeal, and the defendant has the right of appeal. [or]
- ☒ is a plea-bargain case, and the defendant has NO right of appeal. [or]
- ☐ the defendant has waived the right of appeal.

Judge

Thane Magee

Date Signed

NOV 15 2016 11:15/1612
Page 72771059
Public Use Only - Do Not Disseminate to the Public
For Official Use Only - Do Not Disseminate to the Public

I have received a copy of this certification. I have also been informed of my rights concerning any appeal of this criminal case, including any right to file a *pro se* petition for discretionary review pursuant to Rule 68 of the Texas Rules of Appellate Procedure. I have been admonished that my attorney must mail a copy of the court of appeals's judgment and opinion to my last known address and that I have only 30 days in which to file a *pro se* petition for discretionary review in the Court of Criminal Appeals. TEX. R. APP. P. 68.2 I acknowledge that, if I wish to appeal this case and if I am entitled to do so, it is my duty to inform my appellate attorney, by written communication, of any change in the address at which I am currently living or any change in my current prison unit. I understand that, because of appellate deadlines, if I fail to timely inform my appellate attorney of any change in my address, I may lose the opportunity to file a *pro se* petition for discretionary review.

Defendant

[Signature]

Defendant's Counsel

[Signature]
Larry G. Long

Mailing Address:

Telephone number:

Fax number (if any):

FILED
Chris Daniels
District Clerk
NOV 15 2016
Harris County, Texas
Deputy

000 put from 933
332 362 4449
281 912 6029

State Bar of Texas ID number:

Mailing Address:

Telephone number:

Fax number (if any):

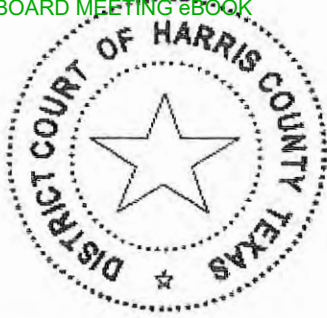
125412005005 W. 34th Street, #206A713-623-0499713-622-3772

"A defendant in a criminal case has the right of appeal under these rules. The trial court shall enter a certification of the defendant's right to appeal in every case in which it enters a judgment of guilt or other appealable order. In a plea bargain case—that is, a case in which a defendant's plea was guilty or *nolo contendere* and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant - a defendant may appeal only: (A) those matters that were raised by a written motion filed and ruled on before trial, or (B) after getting the trial court's permission to appeal." TEXAS RULES OF APPELLATE PROCEDURE

25.2(a)(2).

CLERK

9/1/2011



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this March 2, 2018

Certified Document Number: 72771059 Total Pages: 12

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

**MOTOR VEHICLE DIVISION
TEXAS DEPARTMENT OF MOTOR VEHICLES**

**IN THE MATTER OF DISCOUNT
AUTO BROKERS, LLC**

§ MVD DOCKET NO. 17-0178350.ENF
§ MVD DOCKET NO. 17-0178352.ENF
§ MVD DOCKET NO. 19-0000505.ENF

SOAH DOCKET NO. 608-18-2228.ENF
SOAH DOCKET NO. 608-18-2229.ENF

FINAL ORDER

The referenced contested case matter is before the Board of the Texas Department of Motor Vehicles (Board) in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH) and involves the General Distinguishing Number (GDN) license P105161 and Salvage Dealer licenses 101547404 and 101247404, for Discount Auto Brokers, LLC (Respondent).

In accordance with TEXAS GOV'T CODE § 2001.058(e)(1), the specific reasons and legal basis for the Board's changes and omissions to the Administrative Law Judge's (ALJ) Conclusions of Law are as follows:

The Board deletes Conclusion of Law 8 and 13.

The ALJ misapplied the law and did not properly apply prior administrative decisions. The Board, not the ALJ, is the decision maker concerning sanctions in a contested case. *Texas State Bd. of Dental Exam'rs v. Brown*, 281 S.W.3d 692 (Tex. App.—Corpus Christi 2009). When the Board finds an applicant or license holder to be unfit to perform the duties and discharge the responsibilities of a license holder, the Board may deny the applicant's application or the license holder's application for renewal and revoke the license under TEX. OCC. CODE §§ 53.021, 2301.651, and 43 TEX. ADMIN. CODE § 215.88.

The Board amends Conclusion of Law 12 to read:

Mr. Tabatabaei is unfit to perform the duties and discharge the responsibilities of a used and salvage vehicle dealer, and a sanction is warranted given that his crime occurred at Respondent's place of business.

The ALJ misapplied the law and did not properly apply prior administrative decisions. The Board, not the ALJ, is the decision maker concerning sanctions in a contested case. *Texas State Bd. of Dental Exam'rs v. Brown*, 281 S.W.3d 692 (Tex. App.—Corpus Christi 2009). The ALJ recommended the department renew Respondent's licenses, suspend them for two years, and probate the suspension so long as Mr. Tabatabaei and Respondent do not engage in any

misconduct during the suspensions. In Conclusion of Law 10, the ALJ found that conviction for tampering with a governmental record, (TEX. PENAL CODE § 37.10, *Perjury and Other Falsification*), at Respondent's place of business directly relates to the duties and responsibilities of the licensed occupation. In Finding of Fact 8, the ALJ found that over 281 unlawful emission inspections were conducted from the Respondent's place of business from October 20, 2015 to April 20, 2016. The false information from those unlawful inspections was recorded into the Texas Information Management System using Respondent owner's license number and Respondent employee's license numbers.

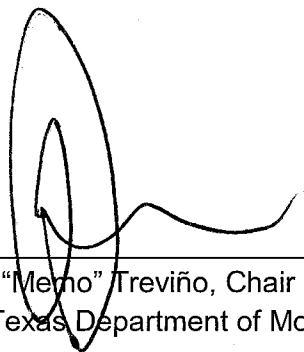
The continued employment of the Respondent in the licensed occupation would create a situation in which the Respondent has an opportunity to repeat the prohibited conduct. (TEX. OCC. CODE § 53.021; 43 TEX. ADMIN. CODE § 215.89). The ALJ's recommended sanction in the Proposal for Decision of a probated license is too lenient to be effective. The sanction of denial of Respondent's applications for renewal, and a revocation of Respondent's GDN license is appropriate and consistent with prior Board administrative decisions.

ACCORDINGLY, IT IS ORDERED:

1. Findings of Fact 1 – 28 and Conclusions of Law 1 – 7, and 9 – 11 are adopted as stated in the PFD;
2. Conclusions of Law 8 and 13 are deleted;
3. Conclusion of Law 12 is amended;
4. Respondent's license renewal applications are denied and existing licenses (GDN license P105161 and Salvage Dealer licenses 101247404 and 101547404) are revoked; and
5. All remaining motions, exceptions, or objections, of any party, if any, are hereby denied.

Date: _____

6/24/2019



Guillermo "Memo" Treviño, Chair
Board of Texas Department of Motor Vehicles

Medina, Marie

From: Pierce, Heather
Sent: Monday, July 29, 2019 9:50 AM
To: Medina, Marie
Subject: FW: Motion for Rehearing - Discount Auto Brokers
Attachments: Motion for Rehearing on DMV Matter_071819.pdf

**HEATHER PIERCE || ATTORNEY
ENFORCEMENT DIVISION**

EMAIL: HEATHER.PIERCE@TxDMV.GOV **OFFICE:** 512.465.4163 **FAX:** 512.465.5650



4000 JACKSON AVE || AUSTIN TX 78731 || www.TxDmv.gov



Online license applications, renewals, and amendments are coming to TxDMV salvage dealers, motor vehicle dealers, converters and manufacturers. Visit our licensee page for more information <http://www.txdmv.gov/new-online-system-for-motor-vehicle-licensees/>.

This electronic message transmission and any documents, files, graphics, or previous e-mail messages attached to it may contain information that may be legally confidential and/or privileged. The information is intended solely for the individual(s) or entity(s) named above and access by disclosure, copying, distribution, or other use of the contents of this message is prohibited and may be unlawful. If you have received this transmission in error, please reply immediately to the sender pointing out the error, and delete the message.

From: Sheila Strutz [<mailto:sheila@rivasgoldstein.com>]
Sent: Thursday, July 18, 2019 12:06 PM
To: Pierce, Heather <Heather.Pierce@txdmv.gov>
Cc: ethan@rivasgoldstein.com
Subject: Motion for Rehearing - Discount Auto Brokers

Heather,

Please see the attached. It is also being faxed to you as well.

Sheila Strutz
Paralegal

Rivas Goldstein, LLP
3345 Bee Cave Road, Suite 104
Austin, Texas 78746
Office: [512-481-8000](tel:512-481-8000)
Fax: [512-481-0022](tel:512-481-0022)

Please consider the environment - do you really need to print this email?



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MOTOR VEHICLE DIVISION**TEXAS DEPARTMENT OF MOTOR VEHICLES**

IN THE MATTER OF	§	MVD DOCKET NO. 17-0178350.ENF
DISCOUNT AUTO BROKERS,	§	MVD DOCKET NO. 17-0178352.ENF
LLC	§	MVD DOCKET NO. 19-0000505.ENF

SOAH DOCKET NO. 608-18-2228.ENF**SOAH DOCKET NO. 608-18-2229.ENF****MOTION FOR REHEARING**

COMES NOW Respondent, Discount Auto Brokers, LLC (hereinafter “Respondent”), in the above-styled cause and files this Motion for Rehearing pursuant to Texas Government Code § 2001.146.

I. FACTS

1. On or about July 30, 2008, the Texas Department of Motor Vehicles (hereinafter the “Department”) issued General Distinguishing Number (GDN) License No. P105161 to Respondent. On or about August 15, 2011, the Department issued Salvage Dealer License No. 101547404 to Respondent. Respondent’s Salvage Dealer license has a used automobile dealer endorsement and a salvage vehicle broker endorsement. In the past decade, Respondent has been operating a used car dealership and a vehicle inspection station at its place of business in Houston, Texas. Respondent is owned and operated by its owner, Seyed Tabatabaei (hereinafter “Mr. Tabatabaei”).

2. On or about November 15, 2016, in the 337th District Court, Harris County, Texas, Mr. Tabatabaei pled guilty to Tampering with a Record. Due to various mitigating circumstances and Mr. Tabatabaei’s cooperation with the underlying criminal investigation, the court deferred his adjudication and placed him on community supervision for two (2) years. On February 15, 2018, the court found that Mr. Tabatabaei’s and society’s best interests would be served by early termination of his supervision period and entered an order discharging the community supervision nine (9) months earlier than the original expiration date. Mr. Tabatabaei has also satisfied all other conditions of the deferred adjudication agreement.

3. In May and June of 2017, Respondent applied to the Department to renew its GDN and Salvage Dealer Licenses.

4. On June 22, 2017, the Department sent a letter to Respondent informing it that Mr. Tabatabaei's criminal records supported a denial of Respondent's renewal applications and invited it to submit additional information for the Department's consideration in deciding whether to renew the licenses.

5. On November 27, 2017, Respondent requested an administrative law judge hearing on the Department's decision denying its renewal applications.

6. On November 13, 2018, the Honorable Administrative Law Judge (ALJ) Casey A. Bell convened the hearing on the merits in Austin, Texas. At the hearing, Mr. Tabatabaei admitted that he had allowed his employee, Johanna Barrios (hereinafter "Ms. Barrios"), to use his inspector license to perform inspections at Discount Auto Brokers. Mr. Tabatabaei testified that he hired Ms. Barrios in late October 2015 while she was in the process of obtaining her own vehicle inspection license. Ms. Barrios repeatedly asked Mr. Tabatabaei to allow her to use his inspector's license as a way to help her learn and aid her in obtaining her own license. According to Mr. Tabatabaei, he was inundated with other aspects of his business and personal life at that time. Particularly, he was given a very short eviction notice by his landlord in March of 2016 that resulted in numerous protracted litigations. Moreover, Mr. Tabatabaei was occupied by his new marriage and the impending tax deadlines. As such, in a moment of lapse of judgment, Mr. Tabatabaei reluctantly agreed to allow Ms. Barrios to use his license to perform vehicle inspections, a decision he now regrets.

7. Importantly, Mr. Tabatabaei unequivocally testified that he had no knowledge that Ms. Barrios was conducting illegal inspections using his license, and at no time, was he involved or participated in said illegal activities. He further testified that he pled guilty and accepted deferred adjudication because he wanted to take responsibility for allowing illegal inspections to occur at his business.

8. Since the conviction, Mr. Tabatabaei has been leading an exemplary life and providing for his family. Respondents also offered as evidence, a letter authored by Mr. Tabatabaei's probation officer stating that he fully complied with the terms of his community supervision and was not deemed a threat to society. *See Exhibit 1.* The letter further indicates that Mr. Tabatabaei is a model citizen living a legitimate lifestyle and would not become involved in further criminal activity. *See id.*

9. On December 13, 2018, ALJ Bell issued a Proposal for Decision (PFD) attached herein as Exhibit 2. In his Statement of Facts, ALJ Casey specifically found that Mr. Tabatabaei “took responsibility for and regrets his mistake in allowing Ms. Barrios to use his vehicle inspector license and for the illegal inspections to occur at Respondent’s place of business, and he has learned to be more careful and not trust people so easily.” Exhibit 2, p. 14.

10. Furthermore, ALJ Bell found that Mr. Tabatabaei has “installed a surveillance system with 24 cameras at Respondent’s place of business. Using this system, he discovered an employee performing an illegal inspection early in 2018, and he fired the employee and promptly reported the incident to the Texas Department of Public Safety.” *Id.*

11. Additionally, in his Conclusions of Law No. 12, ALJ Casey applied the factors listed in Tex. Occ. Code §§53.002-023; 43 Tex. Admin. Code § 215.89(a)(1)-(5), and found that “Mr. Tabatabaei is *fit* to perform the duties and discharge the responsibilities of a used and salvage vehicle dealer, but some sanction is warranted given that his crime occurred at Respondent’s place of business.” *Id.* at p. 16 [emphasis added].

12. ALJ then recommended the Department to “renew Respondent’s licenses, suspend them for two years, and probate the suspensions so long as Mr. Tabatabaei and Respondent do not engage in any misconduct during the suspensions.” *Id.*

13. In direct contradiction of the ALJ’s findings, the Department proposed a Final Order (“Proposed Final Order”) sought to deny Respondent’s renewal applications and revoking its licenses.

14. The Department convened in a June 6, 2019 Board Meeting for a hearing to consider the Proposed Final Order in accordance to Tex. Occ. Code Chapter 2301, Subchapter O and 43 Tex. Admin. Code Chapter 215.

15. Following the Board Meeting, the Department adopted the Proposed Final Order as is and issued its final order (“Final Order”). *See* attached Exhibit 3. In the Final Order, the Department ignores the ALJ’s Findings of Facts and Conclusions of Law and proceeded to revoke Respondents’ GDN and Salvage Dealer licenses. *See id.* Moreover, without stating any specific reason or legal basis, the Department amended the ALJ’s Conclusions of Law 12 to read as “Mr. Tabatabaei is *unfit* to perform the duties and discharge the

responsibilities of a used and salvage vehicle dealer ...” *Id.* at p. 1 [emphasis added].

II. AUTHORITIES AND ARGUMENTS

16. Under Section 2001.058(e) of the Tex. Admin. Pro. Act, “[a] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, *only if* the agency determines: (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under subsection (c), or prior administrative decisions[.]” Furthermore, “the agency shall state in writing the specific reason and legal basis for a change made under this subsection.” *Id.* [emphasis added]; *see also Levy v. Texas State Bd. of Med. Exam’rs*, 966 S.W.2d 813, 815–16 (Tex.App.-Austin 1998, no pet.).

17. Admittedly, “the choice of penalty is vested in the agency, not in the courts.” *Sears v. Tex. State Bd. Of Dental Exam’rs*, 759 S.W. 2d 748, 751 (Tex.App.-Austin 1988, no pet); *Texas State Bd. Of Dental Exam’rs v. Brown*, 281, S.W.3d 692, 697 (Tex.App.-Corpus Christi-Edinburg 2009, no pet). Thus, an agency is “not required to give presumptively binding effect to an ALJ’s recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law.” *Granek v. Tex. State Bd. Of Med. Exam’rs*, 172 S.W. 3d 761, 781 (Tex.App.-Austin 2005, pet. denied). Nonetheless, the agency’s imposition of penalty must not be arbitrary and capricious where which the person’s due process right is denied. *See Lewis v. Metropolitan Saving and Loan Assoc.*, 550 S.W.2d 11 (Tex. 1977); *Tex. Health Facilities Com’n v. Charter Medical-Dallas, Inc.*, 665 S.W.2d 445, 454 (Tex. 1984).

18. In the instant case, ALJ Bell expressly found that “Mr. Tabatabaei is fit to perform the duties and discharge the responsibilities of” the licenses in question. *See* Exhibit 2, p. 14. This Conclusion of Law was made upon ALJ’s consideration of the mitigating factors under Tex. Occ. Code §§53.002-023; 43 Tex. Admin. Code § 215.89(a)(1)-(5). *See id.* In its Final Order, the Department attempted to characterize Respondent’s fitness for licensure as a finding “concerning sanctions in a contested case.” Exhibit 3. While the Department may determine sanctions applicable to a violation, it is presumptively bound by the ALJ’s Conclusions of Law. The Department also fails to provide specific reasons or legal basis to amend the ALJ’s Conclusion of Law No. 12. The Department fails, or even attempted, to demonstrate that ALJ Bell

has somehow misapplied or misinterpreted the Tex. Occ. Code §§53.002-023; 43 Tex. Admin. Code § 215.89(a)(1)-(5) factors, or otherwise acted in violation of any statutes or board rules. There is no evidence that the ALJ's finding of Respondent's fitness to be licensed is in any way erroneous under the prevailing laws. Rather, the Department cited the *Texas Board of Dental Examiner v. Brown* case, which stands for the notion that the Department retains the final say on issues of sanction, but interestingly, reinforces the fact that the Department is bound by the ALJ's Conclusions of Law. *Id.* Also, the Department's narrative simply states its disagreements and distaste of the ALJ's findings but provides no specific basis for the amendment. *Id.* Therefore, the Department's Final Order as adopted falls far short of the requirements under Tex. Admin. Code §2001.58(e).

19. Substantively, in deciding whether to revoke a license due to a conviction, the Department must determine whether that person is nonetheless fit to perform the duties and discharge the responsibilities of the licensed profession. Particularly, the Department is required to consider the factors set forth in Tex. Occ. Code § 53.023 which include: (1) the extent and nature of the person's past criminal activity; (2) the age of the person when the crime was committed; (3) the amount of time that has elapsed since the person's last criminal activity; (4) the conduct and work activity of the person before and after the criminal activity; (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (6) other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person. *See* 43 Tex. Admin. Code § 215.89(a)(1)-(5).

20. In this case, Respondents offered uncontroverted evidence at the ALJ hearing that he has engaged in no criminal activity besides the conviction at issue. Exhibit 2, p. 14. The offense occurred approximately three (3) years ago, and Respondent Tabatabaei has worked steadily and conducted himself appropriately since that time. *Id.* It is likewise undisputed that Mr. Tabatabaei has supported his dependents, maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution. *Id.*

21. Furthermore, as stated above, Mr. Tabatabaei's culpability underlying the criminal conviction was

greatly limited and attenuated. He has taken full responsibility for his mistake and is remorseful of his lapse of judgment. *Id.* Also, Mr. Tabatabaei has taken positive steps to ensure future compliance for his business. *Id.* Specifically, he has installed surveillance cameras at his place of business, provided training to his employees, and has been reporting any irregularities to the Department of Public Safety. *Id.*

22. Importantly, the Department did not prove that Respondent Tabatabaei knew or even should have known that Ms. Barrios was using his inspector license to conduct illegal emission inspections by clean scanning. *Id.* at p. 11. There was no evidence to support the assertions that Ms. Barrios performed illegal inspections under Respondents' direction or acquiescence. *Id.* Likewise, there is insufficient evidence to prove that Mr. Tabatabaei's conviction is sufficiently related to his responsibilities as a motor vehicle inspector since he did not participate in the alleged illegal inspection.

23. The Department erred in ignoring the ALJ's Conclusions of Law without specific reason or legal basis in violation of Tex. Admin. Code § 2001.058(e). While the Department may determine the sanctions upon a finding of violations, it is nonetheless bound by the legal conclusions made by the independent adjudicator. *See generally Tex. State Bd. Of Dental Exam'rs v. Brown*, 281 S.W.3d 692 (Tex.App.-Corpus Christi 2009). The Department acted arbitrarily and capriciously by denying the Respondent's renewal applications and revoking its licenses despite the ALJ's finding of fitness for licensure. As noted above, the Department is not authorized to amend the ALJ's Conclusions of Law in this case, thus the ALJ's finding of fitness for licensure is final and binding on the Department. The Department's insistence in denying the Respondent's renewals and revoking its licenses completely disregard the mandatory factors prescribed under Tex. Occ. Code § 53.023 and 43 Tex. Admin. Code § 215.89(a)(1)-(5). It is unconvincing to argue that the legislature intends for an agency to impose the most extreme sanction without regards to the licensee's fitness to discharge its duties and responsibilities under the licenses. To rule otherwise will render §§ 53.023 and 215.89(a)(1)-(5) completely and utterly superfluous and redundant. *Young v. UPS*, 135 S. Ct. 1338, 1352 (2015) (quoting *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001)) (internal quotation mark omitted); *see also Eskridge*, Cases and Materials on Legislation and Regulation: Statutes and the Creation of Public Policy (5th ed. 2014), at 1197 ("Presumption against redundancy: avoid interpreting a provision

in a way that would render other provisions of the statute superfluous or unnecessary."); Scalia & Garner, Reading Law: The Interpretation of Legal Texts (2012); at 174 ("If possible, every word and every provision is to be given effect (verba cum effectu sunt accipienda). None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").

24. The Department, in its Final Order, fails to state any legitimate reason or legal basis to amend the ALJ's findings. Furthermore, the Department disregards its obligations to consider the mitigating factors under Tex. Occ. Code § 53.023 and 43 Tex. Admin. Code § 215.89(a)(1)-(5). The Department's blatant disregard of statutes and board rules clearly infringes upon the Respondent's due process rights and the Department has, likewise, acted without its statutory authority.

III. PRAYER

25. Based on the foregoing, Respondents respectfully request that the Department grant this Motion for Rehearing and immediately reinstate Respondents' GDN and Salvage Dealer Licenses.

Respectfully Submitted,

RIVAS GOLDSTEIN, LLP

By: /s/ Ethan Yat Fai Lau

Ethan Yat Fai Lau

State Bar No. 24104243

3345 Bee Cave Road, Suite 104

Austin, Texas 78746

Tel: 512.481.8000

Fax: 512.481.0022

CERTIFICATE OF SERVICE

I certify that a true copy of the above *Motion for Rehearing* was forwarded to the following on July 18, 2019.

Via Facsimile: 512.465.5650 & Email: Health.Pierce@txdmv.gov

Heather Pierce

Attorney, Enforcement Division

Texas Department of Motor Vehicles

4000 Jackson Avenue

Austin, Texas 78731

/s/ Ethan Yat Fai Lau

Ethan Yat Fai Lau



49 San Jacinto • Houston, Texas 77002 • (713) 735-3700

, TEXAS
Tel: Fax:

DATE: 03/27/2018
RE: Seyed M. Tabatabaei
CAUSE #: 1509945
SPN: 02851031
COURT: 330
OTHER: _____

Dear DMV

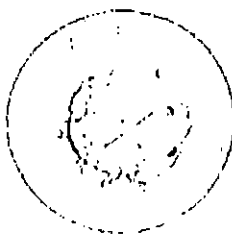
To whom it may concern, during Mr. Tabatabaei time on probation he was in compliance with his terms. He was not deemed a threat to society and he done what was ordered. As a result of his positive attitude and eagerness to complete his Supervision, Mr. Tabatabaei was granted Early Termination 8 months before his expiration date. He appears to be a model citizen and forthcoming about living a legit lifestyle and never again getting into any legal or criminal issues.

Sincerely,

Supervising Officer

713 953 8212

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

December 13, 2018

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731

VIA INTERAGENCY MAIL

RE: Docket Nos. 608-18-2228.ENF & 608-18-2229.ENF; MVD Docket Nos. 17-0178350.ENF & 17-0178352.ENF / *The Texas Department of Motor Vehicles, Enforcement Division v. Discount Auto Brokers, LLC.*

Dear Mr. Avitia:

Please find enclosed a Proposal for Decision in these consolidated cases. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Casey A. Bell
Administrative Law Judge

CAB/lac
Enclosure

cc: John J. Rivas, Rivas Goldstein, LLP, 7035 Bee Cave Rd., Ste. 200, Austin, TX 78746 - **VIA REGULAR MAIL**
Heather Pierce, Staff Attorney, Enforcement Division, Texas Department of Motor Vehicles, Motor Vehicle Division, 400 Jackson Ave., Austin, TX 78731 - **VIA INTERAGENCY MAIL**
Melinda Moreno, Docket Clerk, Texas Department of Motor Vehicle, 4000 Jackson Avenue, Austin, Texas 78731 - **VIA INTERAGENCY MAIL**

**SOAH DOCKET NOS. 608-18-2228.ENF & 608-18-2229.ENF
MVD NOS. 17-0178350.ENF & 17-0178352.ENF**

TEXAS DEPARTMENT OF MOTOR VEHICLES, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
DISCOUNT AUTO BROKERS, LLC, Respondent		

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Motor Vehicles Enforcement Division (Department) seeks to deny the applications filed by Discount Auto Brokers, LLC (Respondent) to renew its General Distinguishing Number (GDN) and salvage vehicle dealer licenses and/or revoke those licenses based on the criminal history of its owner, Seyed Tabatabaei. After reviewing the evidence and the applicable law, the Administrative Law Judge (ALJ) concludes the Department should grant Respondent's applications, suspend the licenses, and probate the suspensions for two years.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Neither party disputed notice or jurisdiction. Those matters are discussed in the Findings of Fact and Conclusions of Law without further discussion here. On November 13, 2018, ALJ Casey A. Bell convened the hearing on the merits at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Heather Pierce represented Staff. Respondent appeared through Mr. Tabatabaei and was represented by attorney Ethan Lau. The hearing concluded that day, and the record closed on December 3, 2018, when the transcript of the hearing was filed with SOAH.

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II. APPLICABLE LAW

A person may not engage in business as a motor vehicle dealer by regularly and actively buying, selling, or exchanging vehicles at an established and permanent location without a GDN issued by the Department.¹ Likewise, a person may not act as a salvage vehicle dealer without a salvage vehicle dealer license issued by the Department.² The Department issues salvage vehicle dealer licenses with one or more endorsements based on the type of activities in which the dealer will engage.³

The Department is authorized to disqualify a person from receiving a license, suspend or revoke a license, place on probation a person whose license is suspended, or reprimand a license holder if the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.⁴ A “person” includes “a person holding 50% or more ownership interest in a business entity licensed by the [D]epartment.”⁵ If the Department probates a license suspension, it may require the license holder to report regularly to the Department on matters that are the basis of the probation or limit the license holder’s activities.⁶

Pursuant to Texas Occupations Code (Code) § 53.025, the Department adopted a rule identifying which criminal convictions directly relate to the duties and responsibilities of occupations licensed by the Department and which may indicate a lack of fitness for licensure.⁷ The rule identifies crimes under Texas Penal Code chapter 37, which include tampering with a governmental record, as directly relating to the duties and responsibilities of occupations licensed by the Department.⁸ Whether the crime of tampering with a governmental record

¹ Tex. Transp. Code §§ 503.001(4), .021; Tex. Occ. Code §§ 2301.022(17), .251(a), .255(a).

² Tex. Occ. Code (Code) § 2302.101(1).

³ Code § 2302.103; 43 Tex. Admin. Code § 221.11.

⁴ Code §§ 53.021(a)(1), 2301.651(1), (5); 43 Tex. Admin. Code § 215.88(b)(1)-(2), (i)(1).

⁵ 43 Tex. Admin. Code § 215.88(c)(5).

⁶ Code § 2301.654.

⁷ 43 Tex. Admin. Code § 215.88(j).

⁸ 43 Tex. Admin. Code § 215.88(j)(19); Tex. Penal Code § 37.10.

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directly relates to the duties and responsibilities of a licensed salvage vehicle dealer requires the Department to consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.⁹

The Department may not consider a person to have been convicted of an offense if:

- (1) the person entered a plea of guilty or nolo contendere;
- (2) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and
- (3) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.¹⁰

However, the Department may consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed and the person was discharged if (a) the person completed the period of supervision less than five years before the date the person applied for the license, and (b) after considering the factors set forth in Code §§ 53.022 and 53.023, the Department determines that the person may pose a continued threat to public safety or employment of the person in the licensed profession would create a situation in which the person has an opportunity to repeat the conduct.¹¹

⁹ Code § 53.022.

¹⁰ Code § 53.021(c).

¹¹ Code § 53.021(d)(1)(B)(i).

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In deciding whether to deny an application or revoke a license because of a conviction, the Department must determine whether that person is nonetheless fit to perform the duties and discharge the responsibilities of the licensed profession. In determining a person's fitness for licensure, the Department will consider: (1) the requirements of Code chapter 53; (2) the provisions of Code § 2301.651; (3) any specific statutory licensing requirements; (4) mitigating factors; and (5) other evidence of a person's fitness as allowed by law, including the standards identified in the Department's rule on fitness.¹²

The Department is required to consider the following factors set forth in Code § 53.023:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) other evidence of the person's fitness, including letters of recommendation from:
 - (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and
 - (C) any other person in contact with the convicted person.¹³

An applicant or licensee has the responsibility, to the extent possible, to obtain and provide to the Department the recommendations of the prosecution, law enforcement, and

¹² 43 Tex. Admin. Code § 215.89(a)(1)-(5).

¹³ Code § 53.023(a).

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correctional authorities discussed above.¹⁴ Additionally, an applicant or licensee must furnish proof in the form required by the Department that he has:

- (1) maintained a record of steady employment;
- (2) supported his dependents;
- (3) maintained a record of good conduct; and
- (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.¹⁵

III. DISCUSSION

A. Background Facts

On or about July 30, 2008, the Department issued GDN License No. P105161 to Respondent. On or about August 15, 2011, the Department issued Salvage Vehicle License No. 101547404 to Respondent. Respondent's salvage vehicle license has a used automobile dealer endorsement and a salvage vehicle broker endorsement.¹⁶ In May and June of 2017, Respondent applied to the Department to renew these licenses.¹⁷ Respondent operates a used car dealership and a vehicle inspection station at its place of business in Houston, Texas.

On November 15, 2016, in the 337th Judicial District Court of Harris County, Texas, Mr. Tabatabaei pleaded guilty to the state jail felony of tampering with a governmental record.¹⁸ The court deferred adjudication of Mr. Tabatabaei's guilt and placed him on community supervision for two years.¹⁹ On February 15, 2018, the court found that Mr. Tabatabaei's and

¹⁴ Code § 53.023(b).

¹⁵ Code § 53.023(c).

¹⁶ Staff Ex. 1.

¹⁷ Staff Exs. 3-4.

¹⁸ Staff Ex. 9 at 64-67.

¹⁹ Staff Ex. 12.

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society's best interests would be served by early termination of his supervision period and entered an order discharging Mr. Tabatabaei.²⁰

B. Evidence Regarding The Crime

Staff presented evidence regarding the facts and circumstances that resulted in Mr. Tabatabaei's arrest for tampering with a governmental record. An incident report from the Harris County Constable Precinct 4 indicates that from April 20 to April 25, 2016, Investigator Edward Martinez and members of the Harris County Emissions Task Force Unit (Task Force) conducted covert surveillance operations at Respondent's place of business.²¹ In the report, Officer Martinez stated that his search of the Texas Information Management System (TIMS) revealed that Respondent conducted 281 unlawful inspections from October 20, 2015, to April 20, 2016.²² According to Officer Martinez, during the surveillance of Respondent's place of business, he observed an unknown female performing emissions inspections using another inspector's identification with Mr. Tabatabaei's knowledge and consent. In searching the TIMS, Officer Martinez determined that Respondent's employees were using a Dodge Ram or a Toyota 4Runner to obtain false emission test results for other vehicles. Officer Martinez referred to this technique for conducting false emission tests as "clean scanning."²³

Officer Martinez's report specifically connects Mr. Tabatabaei to unlawful inspections of two vehicles, both conducted on April 25, 2016. He stated in the report that on that day he observed Mr. Tabatabaei in close proximity to the inspection bay and the unknown female as she performed emissions tests on the vehicles using clean scanning. Officer Martinez stated that Mr. Tabatabaei approached the female as she entered data into the emissions analyzer and gave her instructions and directions. The TIMS reflected that the emissions tests were performed using Mr. Tabatabaei's vehicle inspector license. According to Officer Martinez, neither Mr. Tabatabaei nor the unknown female performed the mandated safety inspections on the two

²⁰ Staff Ex. 13.

²¹ Staff Ex. 14 at 90.

²² TIMS is a computer system used to record the results of vehicle emission inspections.

²³ Staff Ex. 14 at 90-91.

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vehicles. Officer Martinez alleged that Mr. Tabatabaei “knowingly participated and allowed [the unknown female] to use his name and secret PIN number to make false entries into a governmental record” by entering test results for the two vehicles when he actually used a Dodge Ram or Toyota 4Runner to complete the inspections, and by recording that the required safety inspections were performed.²⁴

According to Officer Martinez’s report, he had made a previous arrest in 2015 at Respondent’s place of business for unlawful inspections, and he had warned Mr. Tabatabaei about the situation at that time. Mr. Tabatabaei testified that two of his employees were arrested in 2015 for conducting illegal inspections, but that he did not know about that illegal activity until they were arrested because he was only in the office a few times a week during that time because of a back injury. Mr. Tabatabaei stated that Officer Martinez never issued a warning to him, and that he fired those employees immediately.

Mr. Tabatabaei admitted that he had allowed Johanna Barrios, the unknown female referred to in Officer Martinez’s report, to use his inspector’s license to perform inspections at Respondent’s location. He testified that he hired Ms. Barrios in late October 2015, and that she was in the process of obtaining her own license for vehicle inspections. Mr. Tabatabaei stated that shortly after she was hired, Ms. Barrios repeatedly requested that he allow her to use his inspector’s license. She claimed that it would help her learn and obtain her own license more quickly. According to Mr. Tabatabaei, he was very busy with other aspects of the business and his life at that time, so he allowed Ms. Barrios to use his license, a decision he now regrets. He testified that he was given very short notice by Respondent’s landlord in March 2016 that the business would have to move, which resulted in court actions that, along with his new marriage and the impending tax deadline, took up much of his time.

Mr. Tabatabaei denied any knowledge that Ms. Barrios was conducting illegal inspections using his license. He also denied that he gave any instructions or directions to Ms. Barrios regarding the inspections she conducted that were referenced in Officer Martinez’s

²⁴ Staff Ex. 14 at 94-95.

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report. In the surveillance video taken by the Task Force on April 25, 2016, which appears to have been taken from a location several hundred feet away from Respondent's place of business, there is no audio recording of any conversations between Mr. Tabatabaei and Ms. Barrios. The video shows Mr. Tabatabaei and Ms. Barrios present at Respondent's location at the time of the clean scanning inspections. It is unclear from the video if they interacted with each other during that time, and Mr. Tabatabaei testified that he was busy with other matters and was not involved in Ms. Barrios's inspection activity.²⁵ Mr. Tabatabaei stated that when the constables showed up in May 2016 to arrest him, Ms. Barrios disappeared.

C. Evidence Regarding Fitness for Licensure

Mr. Tabatabaei has no criminal record other than his November 2016 guilty plea for tampering with a governmental record. His plea pertained to the charges that he knowingly made false records in TIMS pertaining to emissions inspections performed by Ms. Barrios on April 25, 2016.²⁶ At that time, Mr. Tabatabaei was 39 years old. He testified that he has operated Respondent's business since Respondent obtained its GDN in 2008, and has continued to operate the business since his guilty plea. His tax records support this testimony.²⁷ Mr. Tabatabaei offered certifications from various vehicle dealer associations that Respondent belongs to, as well as 2017 Gold Star Certificate awarded to Respondent by the Better Business Bureau.²⁸ According to Mr. Tabatabaei, Respondent currently has four employees.

According to Mr. Tabatabaei, he pleaded guilty and accepted deferred adjudication because he wanted to take responsibility for his mistake in allowing illegal inspections to occur at Respondent's place of business. According to Mr. Tabatabaei, he paid all of his fines and court costs and performed 120 hours of community service. He stated that since his arrest, he has worked harder to provide for his family. Mr. Tabatabaei recently married, and at the time of the hearing, his wife was eight months pregnant with their first child. He submitted proof that he

²⁵ Portions of the video were shown during the hearing, but the video was not admitted as evidence.

²⁶ Staff Ex. 9 at 61-63.

²⁷ Staff Ex. 15 at 112-17; Staff Ex. 16 at 147.

²⁸ Resp. Ex. 3-5.

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has paid taxes on his and his wife's behalf, that he is covering her pregnancy expenses, and that she is covered by his health insurance policy.²⁹ Mr. Tabatabaei also testified that he supports his elderly parents.

Mr. Tabatabaei also offered as evidence a letter from his probation officer stating that Mr. Tabatabaei complies with the terms of his probation and was not deemed a threat to society. The letter indicates that Mr. Tabatabaei's probation ended early because he had a positive attitude. According to the probation officer, Mr. Tabatabaei is a model citizen living a legitimate lifestyle and would not become involved in further criminal activity.³⁰ Mr. Tabatabaei provided receipts showing fees, court costs, and restitution he paid to his probation officer pursuant to the conditions of his community supervision.³¹

Mr. Tabatabaei expressed remorse for allowing Ms. Barrios to use his inspector's license to perform inspections, and he accepted responsibility for his conduct. He understands that he made a serious mistake in trusting Ms. Barrios, and he has learned to pay more attention to running his business and be less trusting of people as a result. Mr. Tabatabaei fired the employees who were working for Respondent at the time of his arrest, and he took more care in the interviews to fill those positions in an attempt to hire new employees that were more trustworthy. He also installed a surveillance system with 24 cameras at Respondent's place of business. Mr. Tabatabaei stated that he has instructed his employees that any illegal inspections or other wrongdoing would result in consequences. He testified that he discovered earlier this year that an employee had conducted an illegal inspection, and that he immediately fired the employee and reported the incident to the Texas Department of Public Safety.

Antonia Knight, the Licensing Manager for the Department's Motor Vehicle Division, testified regarding the decision by the Department's Enforcement Committee to deny Respondent's applications and revoke its licenses. She testified that the committee made the decision after consideration of Mr. Tabatabaei's crime and the information that he provided for

²⁹ Staff Ex. 15 at 123-29.

³⁰ Resp. Ex. 2.

³¹ Staff Ex. 12 at 81-82; Staff Ex. 15 at 130-38.

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their review. Ms. Knight testified that the committee considered the offense to be very serious. The committee found it significant that the offense occurred very recently and that the Task Force found that similar conduct had occurred over an extended period of time at the licensed location. Ms. Knight stated that Respondent's explanation of how the offense occurred was very different than the Task Force report. She noted that the committee assumed Mr. Tabatabaei had paid all outstanding fees, court costs, and restitution given that his community supervision terminated early. They also found the positive reference from his probation officer to be a significant mitigating factor. However, Ms. Knight noted that other than the brief note from the probation officer, Mr. Tabatabaei offered no other evidence of his rehabilitation. She admitted that Mr. Tabatabaei's evidence showed that he had maintained steady employment and a record of good conduct, supported his dependents, and had no other criminal activity in his past.

D. ALJ's Analysis and Recommendation

It is undisputed that Mr. Tabatabaei pleaded guilty to a crime that the Department has found to relate directly to the duties and responsibilities of a GDN license holder. Further, the Department found, and the ALJ agrees upon an analysis of the factors set forth in Code § 53.022, that the crime also directly relates to the salvage vehicle dealer occupation. Tampering with a governmental record in the context of vehicle inspections is very serious and can result in unsafe vehicles traveling on Texas roadways. The Department requires licenses to engage in used car and salvage vehicle dealing at least partially for the purpose of preventing such a scenario. Licenses to deal used and salvage vehicles, with all the attendant paperwork and filing of records with the Department and other agencies, certainly provide an opportunity to engage in tampering with governmental records. Someone who tampers with governmental records, absent extenuating circumstances, would not normally have the fitness or capacity required to perform the duties or discharge the responsibilities of a used or salvage vehicle dealer. Further, because Mr. Tabatabaei completed his community supervision less than five years before he applied to renew Respondent's licenses, and because his employment as a used and salvage vehicle would create a situation in which he could engage in tampering with governmental records, the Department may consider him to have been convicted of the crime.

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However, to determine whether the Department should deny Respondent's applications and revoke its licenses based on Mr. Tabatabaei's conviction, it must consider the Code § 53.023 factors. In that regard, Mr. Tabatabaei has no other criminal history besides the conviction at issue. He was 39 years old at the time of the offense, so it was not an act of youthful indiscretion. The offense occurred approximately two and a half years ago, and Mr. Tabatabaei has worked steadily and conducted himself appropriately since that time. As for his rehabilitation, the evidence is scant, although he expressed remorse and accepted responsibility for his mistake in allowing Ms. Barrios to use his vehicle inspector license. Mr. Tabatabaei only presented one letter of recommendation, albeit from his probation officer, to support his fitness for licensure. The evidence is clear, and Staff did not dispute, that Mr. Tabatabaei has supported his dependents, maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution.³²

Importantly, Staff did not prove that Mr. Tabatabaei knew or even should have known that Ms. Barrios was using his inspector license to conduct illegal emissions inspections by clean scanning. Officer Martinez's conclusion regarding the level of Mr. Tabatabaei's involvement in Ms. Barrios's illegal activity is speculative. There was no evidence presented to support the assertions in Officer Martinez's report that Ms. Barrios performed illegal inspections under Mr. Tabatabaei's instruction and direction. Mr. Tabatabaei admitted that he allowed Ms. Barrios to use his vehicle inspector license to perform inspections and enter information regarding those inspections into the TIMS. However, he testified that he did not know until he was arrested that Ms. Barrios had used his license to enter false information regarding those inspections into the TIMS. The ALJ finds this testimony credible.

The most troublesome aspect of Mr. Tabatabaei's offense is that it occurred in the course and scope of Respondent's business. Allowing an unlicensed person to conduct state inspections on Respondent's behalf using his license created the possibility that unsafe vehicles would pass inspection and find their way onto Texas roadways. Mr. Tabatabaei was careless and used poor

³² In the memorandum prepared by the Department's Enforcement Committee and included in Staff's evidence, the committee concluded that Mr. Tabatabaei did not prove that he had completed payment of court costs, supervision fees, and restitution. However, Ms. Knight testified that she assumed that Mr. Tabatabaei had completed such payment based on the court's order terminating his supervision.

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judgment and decision-making by permitting Ms. Barrios to conduct vehicle inspections under his license. This is especially so given the prior arrest of one of Respondent's ex-employees the previous year for conducting illegal inspections at Respondent's place of business. Although Staff presented no evidence that Mr. Tabatabaei knew that his employees performed illegal inspections, they occurred at Respondent's place of business so he bears some responsibility. However, there is insufficient evidence in the record to show that Mr. Tabatabaei intended to deceive or defraud anyone, or to breach anyone's trust, by his actions in allowing Ms. Barrios to use his license to perform inspections. The record indicates that Respondent runs a respectable business and has generally stayed free of any legal problems except for employees having performed illegal vehicle inspections.

The ALJ finds that Mr. Tabatabaei has learned a lesson from the events involving Ms. Barrios and is now more careful in hiring and monitoring Respondent's employees, and that it is highly unlikely that he will engage again in similar conduct. The ALJ also finds that Mr. Tabatabaei is fit to perform the duties and discharge the obligations of a used and salvage vehicle dealer. However, some sanction against Respondent is warranted under the circumstances. The illegal inspections performed by Ms. Barrios using Mr. Tabatabaei's license occurred at Respondent's place of business when Mr. Tabatabaei was present and resulted in financial gain to Respondent. Further, there had been illegal inspections performed by other employees at Respondent's place of business within the previous year which resulted in those employees' arrest. Given these facts, the ALJ concludes that the Department should grant Respondent's applications and renew its GDN and salvage licenses, suspend those licenses for a period of two years, and probate such suspension to allow the Department to maintain oversight over Respondent's activities to ensure it maintains proper standards of operation as a used and salvage vehicle dealer. Any instances of misconduct by Mr. Tabatabaei during the suspension period should lead to summary revocation of Respondent's licenses. The ALJ makes the following Findings of Fact and Conclusions of Law in support of this recommendation.

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PROPOSAL FOR DECISION

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IV. FINDINGS OF FACT

1. On or about July 30, 2008, the Texas Department of Motor Vehicles (Department) issued General Distinguishing Number (GDN) License No. P105161 to Discount Auto Brokers, LLC (Respondent).
2. On or about August 15, 2011, the Department issued Salvage Vehicle License No. 101547404 to Respondent with two endorsements, one for buying and selling salvaged vehicles and one for brokering sales between salvage vehicle dealers.
3. Mr. Tabatabaei also holds a vehicle inspector license issued by the Texas Department of Public Safety (DPS).
4. Respondent operates a used car dealership and a vehicle inspection station at its place of business in Houston, Texas.
5. Seyed Tabatabaei is Respondent's owner.
6. On November 15, 2016, in the 337th Judicial District Court of Harris County, Texas, Mr. Tabatabaei pleaded guilty to the state jail felony of tampering with a governmental record. The court deferred adjudication of Mr. Tabatabaei's guilt and placed him on community supervision for two years.
7. On February 15, 2018, the court found that Mr. Tabatabaei's and society's best interests would be served by early termination of his supervision period and entered an order discharging Mr. Tabatabaei.
8. A search of the Texas Information Management System (TIMS), a computer system used to record the results of vehicle emission testing, by Edward Martinez, an investigator for the Harris County Constable Precinct 4, revealed that 281 unlawful inspections were conducted at Respondent's place of business from October 20, 2015, to April 20, 2016.
9. On April 25, 2016, Respondent's employee Johanna Barrios performed two illegal vehicle inspections at Respondent's place of business. Ms. Barrios did not have a vehicle inspector license and used Mr. Tabatabaei's vehicle inspector license to perform the inspections.
10. Mr. Tabatabaei knowingly allowed Ms. Barrios to use his vehicle inspector license to perform vehicle inspections at Respondent's place of business.
11. The Harris County Constable had also arrested two of Respondent's employees in February 2015 for performing illegal vehicle inspections.

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PROPOSAL FOR DECISION

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12. Mr. Tabatabaei has no criminal record other than his guilty plea for tampering with a government record pertaining to information input into TIMS by Ms. Barrios using his vehicle inspector license for emissions inspections she performed on April 25, 2016.
13. Mr. Tabatabaei was 39 years old on April 25, 2016.
14. Mr. Tabatabaei has operated Respondent's business since he obtained his GDN in 2008, and has continued to operate the business since his guilty plea.
15. Respondent belongs to several vehicle dealer associations and was awarded a 2017 Gold Star Certificate by the Better Business Bureau.
16. Mr. Tabatabaei took responsibility for and regrets his mistake in allowing Ms. Barrios to use his vehicle inspector license and for the illegal inspections to occur at Respondent's place of business, and he has learned to be more careful and not trust people so easily.
17. Mr. Tabatabaei installed a surveillance system with 24 cameras at Respondent's place of business. Using this system, he discovered an employee performing an illegal inspection early in 2018, and he fired the employee and promptly reported the incident to the Texas Department of Public Safety.
18. Mr. Tabatabaei paid all of his fines and court costs and performed 120 hours of community service.
19. Mr. Tabatabaei's probation officer wrote a letter of recommendation stating that Mr. Tabatabaei complied with the terms of his probation and was not deemed a threat to society. The letter indicates that Mr. Tabatabaei has a positive attitude and is a model citizen living a legitimate lifestyle and would not become involved in further criminal activity.
20. Mr. Tabatabaei supports his wife, who at the time of the hearing was eight months pregnant with their first child, and his elderly parents.
21. Mr. Tabatabaei was careless and used poor judgment and decision-making by permitting Ms. Barrios to conduct vehicle inspections under his license.
22. Mr. Tabatabaei bears some responsibility for illegal inspections that occurred at Respondent's place of business.
23. Mr. Tabatabaei has learned from his mistakes, is now more careful in hiring and monitoring Respondent's employees, and is unlikely to make similar errors in the future.
24. In May and June of 2017, Respondent applied to the Department to renew its GDN and Salvage Vehicle licenses.

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PROPOSAL FOR DECISION

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25. On June 22, 2017, the staff (Staff) of the Department sent a letter to Mr. Tabatabaei informing him that his criminal record supported denial of his renewal applications and inviting him to submit information for the Department's consideration in deciding whether to renew the licenses.
26. On November 27, 2017, Respondent requested a hearing on the Department's decision to deny the renewal applications and revoke Respondent's licenses.
27. On October 22, 2018, Staff issued a Notice of Hearing and Second Amended Notices of Department Decision (NODDs) on both the GDN and salvage licenses to Respondent. The Notice of Hearing and NODDs stated the date, time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain, statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
28. On November 13, 2018, Administrative Law Judge (ALJ) Casey A. Bell convened the hearing on the merits at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Heather Pierce represented Staff, and attorney Ethan Lau represented Respondent. The hearing adjourned the same day, and the record closed on December 3, 2018, when the court reporter delivered the transcript of the hearing to ALJ Bell.

V. CONCLUSIONS OF LAW


1. The Department has jurisdiction over used and salvage motor vehicle dealers pursuant to Texas Occupations Code chapters 2301 and 2302 and Texas Transportation Code chapter 503.
2. SOAH has jurisdiction over all matters related to conducting a contested case in this matter, including the preparation of a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, pursuant to Texas Government Code chapter 2003.
3. Respondent received proper and timely notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.
4. A person may not legally engage in business or act as dealer without a GDN issued by the Department. Tex. Occ. Code (Code) §§ 2301.002(17), .251(a), .255(a); Tex. Transp. Code §§ 503.001(4), .021.
5. A person cannot act as a salvage vehicle dealer without a salvage vehicle dealer license issued by the Department. Code § 2302.101(1).
6. The Department is authorized to disqualify a person from receiving a license, suspend or revoke a license, place on probation a person whose license is suspended, or reprimand a

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PROPOSAL FOR DECISION**PAGE 16**

- license holder if the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Code §§ 53.021(a)(1), 2301.651(1), (5); 43 Tex. Admin. Code § 215.88(b)(1)-(2), (i)(1).
7. A "person" includes someone holding 50% or more ownership interest in a business entity licensed by the Department. 43 Tex. Admin. Code § 215.88(c)(5).
 8. If the Department probates a license suspension, it may require the license holder to report regularly to the Department on matters that are the basis of the probation or limit the license holder's activities. Code § 2301.654.
 9. The Department may consider Mr. Tabatabaei to have been convicted of tampering with a government record because he completed community supervision less than five years before Respondent filed its renewal applications and because he could repeat the conduct as a licensed used and salvage vehicle dealer. Code § 53.021(c), (d)(1)(B)(i).
 10. Tampering with a government record is an offense that directly relates to the duties and responsibilities of a licensed used and salvage vehicle dealer. 43 Tex. Admin. Code § 215.88(j)(19); Tex. Penal Code 37.10
 11. In determining whether that person is fit for licensure despite a disqualifying criminal conviction, the Department will consider: (1) the requirements of Code chapter 53; (2) the provisions of Code § 2301.651; (3) any specific statutory licensing requirements; (4) mitigating factors; and (5) other evidence of a person's fitness as allowed by law, including the standards identified in the Department's rule on fitness. Code §§ 53.022-.023; 43 Tex. Admin. Code § 215.89(a)(1)-(5);.
 12. Mr. Tabatabaei is fit to perform the duties and discharge the responsibilities of a used and salvage vehicle dealer, but some sanction is warranted given that his crime occurred at Respondent's place of business.
 13. The Department should renew Respondent's licenses, suspend them for two years, and probate the suspensions so long as Mr. Tabatabaei and Respondent do not engage in any misconduct during the suspensions.

SIGNED December 13, 2018.



CASEY A. BELL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**MOTOR VEHICLE DIVISION
TEXAS DEPARTMENT OF MOTOR VEHICLES**

IN THE MATTER OF	§	MVD DOCKET NO. 17-0178350.ENF
DISCOUNT AUTO BROKERS,	§	MVD DOCKET NO. 17-0178352.ENF
LLC	§	MVD DOCKET NO. 19-0000505.ENF
		SOAH DOCKET NO. 608-18-2228.ENF
		SOAH DOCKET NO. 608-18-2229.ENF

FINAL ORDER

The referenced contested case matter is before the Board of the Texas Department of Motor Vehicles (Board) in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH) and involves the General Distinguishing Number (GDN) license P105161 and Salvage Dealer licenses 101547404 and 101247404, for Discount Auto Brokers, LLC (Respondent).

In accordance with TEXAS GOV'T CODE § 2001.058(e)(1), the specific reason and legal basis for the Board's changes and omissions to the Administrative Law Judge' Law (ALJ) Conclusions of Law are as follows:

The Board deletes Conclusion of Law 8 and 13.

The ALJ misapplied the law and did not properly apply prior administrative decisions. The Board, not the ALJ, is the decision maker concerning sanctions in a contested case. *Texas State Bd. of Dental Exam'rs v. Brown*, 281 S.W.3d 692 (Tex. App.-Corpus Christi 2009). When the Board finds an applicant or license holder to be unfit to perform the duties and discharge the responsibilities of a license holder, the Board may deny the applicant's application or the license holder's application for renewal and revoke the license under TEX. OCC. CODE §§ 53.021, 2301.651, and 43 TEX. ADMIN. CODE § 215.88.

The Board amends Conclusion of Law 12 to read:

Mr. Tabatabaei is unfit to perform the duties and discharge the responsibilities of a used and salvage vehicle dealer, and a sanction is warranted given that his crime occurred at Respondent's place of business.

The ALJ misapplied the law and did not properly apply prior administrative decisions. The Board, not the ALJ, is the decision maker concerning sanctions in a contested case. *Texas State Bd. of Dental Exam'rs v. Brown*, 281 S.W.3d 692 (Tex. App.-Corpus Christi 2009). The ALJ recommended the department renew Respondent's licenses, suspend them for two years, and probate the suspension so long as Mr. Tabatabaei and Respondent do not engage in any

misconduct during the suspensions. In Conclusion of Law 10, the ALJ found that conviction for tampering with a governmental record, (TEX. PENAL CODE § 37.10, *Perjury and Other Falsification*), at Respondent's place of business directly relates to the duties and responsibilities of the licensed occupation. In Finding of Fact 8, the ALJ found that over 281 unlawful emission inspections were conducted from the Respondent's place of business from October 20, 2015 to April 20, 2016. The false information from those unlawful inspections was recorded into the Texas Information Management System using Respondent owner's license number and Respondent employee's license numbers.

The continued employment of the Respondent in the licensed occupation would create a situation in which the Respondent has an opportunity to repeat the prohibited conduct. (TEX. Occ. CODE§ 53.021; 43 TEX. ADMIN. CODE§ 215.89). The ALJ's recommended sanction in the Proposal for Decision of a probated license is too lenient to be effective. The sanction of denial of Respondent's applications for renewal, and a revocation of Respondent's GDN license is appropriate and consistent with prior Board administrative decisions.

ACCORDINGLY, IT IS ORDERED:

1. Findings of Fact 1 - 28 and Conclusions of Law 1 - 7, and 9 - 11 are adopted as stated in the PFD;
2. Conclusions of Law 8 and 13 are deleted;
3. Conclusion of Law 12 is amended;
4. Respondent's license renewal applications are denied and existing licenses (GDN license P105161 and Salvage Dealer licenses 101247404 and 101547404) are revoked; and
5. All remaining motions, exceptions, or objections, of any party, if any, are hereby denied.

Date: 6/24/2019



Guillermo "Memo" Treviño, Chair
Board of Texas Department of Motor Vehicles

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

**IN THE MATTER OF DISCOUNT
AUTO BROKERS, LLC**

§ MVD DOCKET NO. 17-0178350.ENF
§ MVD DOCKET NO. 17-0178352.ENF
§ MVD DOCKET NO. 19-0000505.ENF
§
§ SOAH DOCKET NO. 608-18-2228.ENF
§ SOAH DOCKET NO. 608-18-2229.ENF

DECISION AND ORDER
GRANTING THE MOTION FOR REHEARING

The Board of the Texas Department of Motor Vehicles (Board) has considered the Motion for Rehearing (the Motion) filed in this case by the respondent, Discount Auto Brokers, LLC.

After considering the Respondent's Motion, the Board's Order, the Administrative Law Judge's findings of fact, conclusions of law, and Proposal for Decision (PFD), the Board finds sufficient basis presented for granting the Motion.

Accordingly, **IT IS ORDERED** that the Motion for Rehearing is hereby granted.

Date: _____

8/13/2019



Guillermo "Memo" Treviño, Chair
Board of Texas Department of Motor Vehicles



To: Texas Department of Motor Vehicles Board
From: Whitney Brewster, Executive Director
Agenda Item: 6
Subject: Advisory Committee Appointments

RECOMMENDATION

It is recommended that the Texas Department of Motor Vehicles Board (TxDMV) appoint the individuals from the list of potential members for the Vehicle Title and Registration Advisory Committee as presented by the executive director.

PURPOSE AND EXECUTIVE SUMMARY

Senate Bill (SB) 604 required that the TxDMV Board establish Advisory Committees by September 1, 2019. During the August 8, 2019 meeting, the TxDMV Board adopted rules establishing five new advisory committees: Consumer Protection, Customer Service, Motor Carrier Regulation, Motor Vehicle Industry and Vehicle Titles and Registration. Sufficient applications have been received and reviewed to bring forward the Vehicle Title and Registration Advisory Committee for the TxDMV Board's consideration.

FINANCIAL IMPACT

No financial impact.

BACKGROUND AND DISCUSSION

The Sunset Advisory Commission recommended (Recommendation 1.7) that the board "establish advisory committees to provide expertise for rulemaking and other issues and adopt rules regarding standard committee structure and operating criteria." Specifically, the board is directed to:

- establish, at a minimum, advisory committees related to motor vehicle industry regulation, motor carrier industry regulation, and vehicle titles and registration;
- adopt rules regarding the purpose, structure, and use of advisory committees, including a number of specified requirements (purpose and role of committees, size and quorum requirements, composition and representation of committees, etc.); and
- distinguish appropriate situations to use advisory committees versus working groups.

The rules establishing these Advisory Committees as well as their purpose, use and structure, were adopted by the TxDMV Board in the August 8, 2019 meeting. The adoption of the rules was published in the August 23, 2019 issue of the Texas Register. The TxDMV Board is required to "appoint members to an advisory committee by selecting them from a list of potential members provided by the executive director." Further, the board is required, to the extent practical, to consider the balance of the advisory committee to ensure representation of: industries or occupations regulated or indirectly regulated by the board, consumers of services provided by the board, and different geographical regions of the state.

**Vehicle Title and Registration Advisory Committee
Names for Consideration by the TxDMV Board**

Applicant	Residency	Employer	Area of Expertise
Tawna M. Kuni	Flower Mound, TX	IAA – Senior Manager of Title Operations	Salvage Dealers; Titling
Dana Clark Moore	Leander, TX	Texas Trucking Association & Southwest Movers Association – Director of Government Relations	Consumer Issues; Registration; Motor Carrier
Ivan Nino	El Paso, TX	Manager of Flash Auto Title Registration – Full Service Deputy	Consumer Issues; Registration; Titling; Motor Vehicle and Salvage Dealers; Motor Carrier; Motor Vehicle Licensing
James Ernest Paschall	San Antonio, TX	Red McCombs Dealership – Title Supervisor	Consumer Issues; Registration; Titling; Motor Vehicle Dealers
Kristi Ann Torres	Edinburg, TX	Hidalgo County Tax Assessor Collector Office – Automobile Department Supervisor	Consumer Issues; Registration; Titling; Motor Vehicles & Salvage Dealers; Motor Carrier; Motor Vehicle Licensing
Christal Lee Vincent	Amarillo, TX	Southwestern Public Service – Fleet Operations Supervisor	Consumer Issues; Registration; Titling; Motor Vehicle Dealers; Motor Carrier; Motor Vehicle Licensing
Linda Kinney	Comfort, TX	Retired; Motor Vehicle Crime Prevention Authority – Public Member	Other – Public Member

Robert Roberti	Frisco, TX	Wells Fargo Advisors – Financial Advisor City of Frisco – Commissioner of the Planning and Zoning Commission	Other – Public Member
Keith P. Millard	Nacogdoches, TX	Mike Perry Motor Company – Used Vehicle Sales Manager	Registration; Titling; Motor Vehicle Dealers
Thomas Johnson Drake	Rockdale, TX	Auto Data Direct – National Towing Manager	Registration; Titling
Jackie Lou Polk	Lufkin, TX	Lee TranServices, Inc – Executive Vice-President	Registration; Titling; Motor Carrier; Motor Vehicle Licensing
Faron Lee Smith	Canyon Lake, TX	Assembled Vehicles Coalition of Texas – Founder Save the Texas Dune Buggy – Founder	Consumer Issues; Registration; Titling; Motor Vehicle Dealers; Motor Vehicle Licensing
Shay Adam Luedeke	Holland, TX	Bell County – Tax Assessor Collector	Registration; Titling
David Paul Fontenot	Jonestown, TX	Warren Salvage Company – President	Registration; Titling; Motor Vehicle & Salvage Dealers; Motor Vehicle Licensing; Motor Carrier



To: Texas Department of Motor Vehicles Board
From: Jeremiah Kuntz, Vehicle Titles & Registration Division Director
Agenda Item: 8
Subject: Chapter 217, Vehicle Titles and Registration
New, §§217.76-217.78
(Relating to suspension or denial of access to the Registration and Title System)

RECOMMENDATION

Approval to publish the rules in the *Texas Register* for public comment.

PURPOSE AND EXECUTIVE SUMMARY

The purpose of the proposed new and amended sections is to implement Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which authorizes the department to adopt rules and policies for the maintenance and use of the registration and titling system (RTS). Senate Bill 604 also provides that the department has sole authority to determine access to RTS. Section 217.76 also implements SB 604, Section 4.07, which requires the department, not later than March 1, 2020, in coordination with county tax assessor-collectors (TACs), to develop, adopt, and implement rules that create clear criteria for the suspension.

FINANCIAL IMPACT

None

BACKGROUND AND DISCUSSION

The proposed new sections and amendments include:

- §217.76(a) - establishes that §217.76-217.78 apply to individuals, other than department employees, and entities, with RTS access.
- §217.76(a)(1) - establishes criteria for the department to suspend or deny access to RTS.
- §217.76(a)(2) - provides that the department may suspend or deny access to RTS based on a demonstration of non-compliance with applicable statutes and rules.
- §217.76(c) - lists acceptable forms of Information that can support a reasonable suspicion.
- §217.77(a) - clarifies that the executive director or the executive director's designee has sole authority to determine access to RTS.
- §217.77(b) - provides that a TAC may request the executive director or the executive director's designee immediately suspend a county employee or full service deputy's access to RTS based on the same criteria.
- §217.77(c) - incorporates the existing notice provision in the addendum into the rule, with modifications to refer to an exception for federal law enforcement, a request for immediate termination by the TAC and for differences in style between the proposal and the addendum.
- §217.78(a) - incorporates the addendum reinstatement process agreed upon between the TACs and the department;
- §217.78(b) - provides that RTS may be reinstated if the TAC whose access has been suspended is not the subject of a pending investigation by a law enforcement entity and that access may be reinstated if the department determines no fraud, waste, or abuse was committed, the matter has been remedied to the satisfaction of the department; or the individual or entity is in compliance with applicable statutes or rules.

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Chapter 217 - Vehicle Titles and Registration

SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM**43 TAC §§217.76-217.78**

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new sections to 43 TAC Subchapter C, Registration and Title System, §§217.76-217.78, concerning access to the department's automated registration and titling system (RTS), including suspension and denial. The new sections and amendments are necessary to implement Transportation Code, §520.021 and §520.022, as added by Senate Bill (SB) 604, 86th Legislature, Regular Session (2019). Transportation Code, §520.021, authorizes the department to adopt rules and policies for the maintenance and use of the RTS and Transportation Code, §520.022, provides that the department has sole authority to determine access to RTS.

Section 217.76 is also necessary to implement SB 604, Section 4.07, which requires the department, not later than March 1, 2020, in coordination with county tax assessor-collectors (TACs), and in accordance with Subchapter C, Chapter 520, Transportation Code, as added, to develop, adopt, and implement rules that create clear criteria for the suspension or denial of access to RTS if a TAC suspects fraud, waste, or abuse relating to RTS by a TAC employee or a person deputized under Transportation Code, §520.0071. As part of the coordination process with TACs, on August 20, 2019, the department provided draft language for proposed §217.76 to the Tax Assessor-Collectors Association of Texas (TACA) and the TxDMV TAC Liaison. The proposed rule incorporates comments received.

The department has also proposed new 43 TAC §§223.1-223.3 concerning the department's "red flag" fraud reporting system in this issue of the *Texas Register*.

EXPLANATION.

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Chapter 217 - Vehicle Titles and Registration

1 Transportation Code, §520.022, provides that the department has sole authority to determine access to
2 RTS. The department interprets SB 604, Section 4.07, as requiring the department to identify the types of
3 suspected activity that will result in suspension or denial. These are stated in proposed §217.76.
4 Suspension and denial are addressed in proposed §217.77. Reinstatement is addressed in §217.78. In
5 addition, full service deputy contracting requirements in §217.163(a) and (k) are amended to align with
6 §§217.76-217.78.

7 Proposed §217.76(a) establishes that §§217.76-217.78 apply to individuals, other than
8 department employees, and entities, with RTS access. The sections do not apply to department employees
9 because their access, and denial of access, is at the will of the department. Stating that the sections do
10 not apply to them clarifies that the sections do not create procedures or requirements related to RTS
11 access, suspension, or denial, for a department employee. The reference to entities includes only entities
12 with RTS access.

13 Proposed §217.76(b) establishes the criteria for the department to suspend or deny access to RTS.
14 After reviewing comments received from TACs in the SB 604, Section 4.07, coordination process, the
15 department modified the draft text to require a reasonable suspicion and added the sources of
16 information that could validate that suspicion. A reasonable suspicion standard is consistent with the
17 "suspects" language in SB 604, Section 4.07. Requiring a final determination or knowing conduct would
18 not be consistent with the legislative instruction.

19 As with the draft language provided for review, the criteria of suspected fraud, waste, or abuse is
20 further defined to include reasonable suspicion of misappropriation of money, falsification of government
21 records, or a crime involving fraud, theft, deceit, dishonesty, misrepresentation, or that otherwise reflects
22 poorly on the person's honesty or trustworthiness. The listed types of criminal activity were in the
23 coordination process criteria document as defining "a crime of moral turpitude." Based on feedback

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Chapter 217 - Vehicle Titles and Registration

1 received from the commenters, the department removed the reference to "a crime of moral turpitude"
2 and kept the listed types of criminal activity.

3 Proposed §217.76(b)(2) also provides that the department may suspend or deny access to RTS
4 based on a demonstration of non-compliance with applicable statutes and rules, including Texas
5 Administrative Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504, or 520. Section
6 217.76(c) lists the types of acceptable forms of information that can be used to support a reasonable
7 suspicion.

8 Proposed §217.77(a) clarifies that the executive director or the executive director's designee has
9 sole authority to determine access to RTS, determine if information exists to support a reasonable
10 suspicion, and may suspend or deny RTS access, based on the criteria in §217.76. This is based on
11 Transportation Code, §520.022. Proposed §217.77(b) provides that a TAC may request the executive
12 director or the executive director's designee immediately suspend a county employee or full service
13 deputy's access to RTS based on the same criteria. Although not a criterion, commenters in the SB 604,
14 Section 4.07, coordination process suggested including a notice, such as the notice set forth in the current
15 §217.163 addendum. Proposed §217.77(c) incorporates the existing notice provision from the addendum
16 into the rule, with modifications to refer to an exception for federal law enforcement, a request for
17 immediate termination by the TAC, and for differences in style between the proposal and the addendum.

18 Commenters in the coordination process also suggested the need for a reinstatement process.
19 Proposed §217.78(a) incorporates the addendum reinstatement process which was agreed upon after
20 negotiation between the TACs and the department. The process has been modified to reflect that it
21 applies to individuals in addition to entities, and to correct differences in style between the proposal and
22 the addendum. Proposed §217.78(b) provides that access to RTS may be reinstated if the person whose
23 access has been suspended is not the subject of a pending criminal investigation by a law enforcement

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Chapter 217 - Vehicle Titles and Registration

1 entity. Access may be reinstated if the department determines no fraud, waste, or abuse was committed;
2 the matter has been remedied to the satisfaction of the department; or the person is in compliance with
3 applicable statutes or rules.
4

5 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer,
6 has determined that for each year of the first five years the proposed amendments and new sections will
7 be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or
8 administration of the proposal. Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division,
9 has determined that there will be no measurable effect on local employment or the local economy as a
10 result of the proposal.
11

12 **PUBLIC BENEFIT AND COST NOTE.** Mr. Kuntz has also determined that, for each year of the first five years
13 the proposed amendments and new sections are in effect, the public benefits include increased clarity
14 and consistency for reporting by TACs of suspected fraud, waste, or abuse, leading to an improved ability
15 for the department and law enforcement authorities to coordinate, investigate, and ultimately prevent
16 and deter fraud, waste, and abuse of RTS.

17 Mr. Kuntz anticipates that there will be no additional costs on regulated persons to comply with
18 these rules. Currently, the department is authorized to suspend and deny access to the RTS system,
19 including full service deputies, based on the required addendum in §217.163. Transportation Code,
20 §520.022, clarifies the department's sole authority to control access to the system. Access, suspension,
21 and denial will now be addressed in §§217.76-217.78.

22 Access to the system is allowed unless reasonable suspicion exists that the RTS user has
23 committed fraud, waste, or abuse, or has failed to comply with applicable statutes as required by SB 604,

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Chapter 217 - Vehicle Titles and Registration

1 Section 4.07. The criteria for suspension or denial is stated in §217.76. No additional costs arise from the
2 criteria, because not committing fraud, waste, abuse, or noncompliance are functions of the individual's
3 employment or entity's contract. The processes of notice and reinstatement in §217.77 and §217.78 are
4 taken from the current addendum and impose no new requirements.

5
6 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
7 Code, §2006.002, the department has determined that the proposed amendments and new sections will
8 not have an adverse economic effect on small businesses, micro-businesses, or rural communities because
9 the proposal creates no new costs. Therefore, the department is not required to prepare a regulatory
10 flexibility analysis under Government Code, §2006.002.

11
12 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests
13 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property
14 that would otherwise exist in the absence of government action and, therefore, does not constitute a
15 taking or require a takings impact assessment under Government Code, §2007.043.

16
17 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first
18 five years the proposed amendments and new sections are in effect, the proposed rule:

19 will not create or eliminate a government program;

20 will not require the creation of new employee positions or the elimination of existing employee
21 positions;

22 will not require an increase or decrease in future legislative appropriations to the department;

23 will not require an increase or decrease in fees paid to the department;

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will create new regulations in §§217.76-217.78 to implement Transportation Code, §520.021 and §520.022, enacted in SB 604;

will not expand existing regulations;

will not repeal existing regulations;

will not increase or decrease the number of individuals subject to the rule's applicability; and

will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on MM, DD, YYYY. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes new §§271.76-217.78 under SB 604, Section 4.06, and Transportation Code, §520.021 and §1002.001.

Senate Bill 604, Section 4.06, 86th Legislature, Regular Session (2019), provides that not later than March 1, 2020, the department shall, in coordination with county tax assessors-collectors and in accordance with Subchapter C, Chapter 520, Transportation Code, as added by this Act, develop, adopt, and implement rules that create clear criteria for the suspension or denial of access to the department's automated registration and titling system if a county tax assessor-collector suspects fraud, waste, or abuse relating to the system by an employee of the tax assessor-collector's or a person deputized under Transportation Code, §520.0071.

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Transportation Code, §520.021, authorizes the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system.

Transportation Code, §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, §520.021.

SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM**43 TAC §§217.76-§217.78****TEXT.****§217.76. Criteria for Suspension or Denial of Access to RTS**

(a) Section 217.77, 217.78, and this section apply to individuals, other than department employees, and entities, with RTS access.

(b) The department may suspend or deny any individual user's or entity's access to RTS if:

(1) information exists to support a reasonable suspicion that the individual or entity is committing fraud, waste, or abuse related to RTS, including:

(A) misappropriation of money;

(B) falsification of government records; or

(C) a crime involving fraud, theft, deceit, dishonesty, misrepresentation, or that otherwise reflects poorly on the individual's honesty or trustworthiness; or

(2) the individual or entity demonstrates non-compliance with applicable statutes and rules, including Texas Administrative Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504,

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1 or 520.

2 (c) Acceptable forms of Information that can support a reasonable suspicion include:

3 (1) information gathered in an audit under Transportation Code, §520.010 or §520.011;

4 (2) a request to suspend or deny the individual or entity access from a county tax assessor-
5 collector;

6 (3) review of transactions processed by the individual or entity; and

7 (4) oral or written information or complaints from:

8 (A) a law enforcement agency;

9 (B) another government agency;

10 (C) an association or trade group;

11 (D) an entity; or

12 (E) an identifiable individual.

13
14 §217.77. Process for Suspension or Denial of Access to RTS.

15 (a) The executive director or the executive director's designee has sole authority to:

16 (1) determine access to RTS;

17 (2) determine that information exists to support a reasonable suspicion that the individual
18 or entity is committing fraud, waste, or abuse related to RTS; and

19 (3) suspend or deny the individual's or entity's access to RTS, based on the criteria in

20 §217.76 of this title (relating to Criteria for Suspension or Denial of Access to RTS).

21 (b) A county tax assessor-collector may request the executive director or the executive director's
22 designee immediately suspend a county employee or full service deputy's access to RTS based on the
23 criteria in §217.76 of this title.

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Chapter 217 - Vehicle Titles and Registration

1 (c) The department shall inform the county tax assessor-collector before taking action to suspend
2 or deny the individual's or entity's access to RTS subsection (a) of this section, unless:

3 (1) the action is as a result of a court order;

4 (2) time is of the essence;

5 (3) revealing this action would detrimentally interfere with or compromise an active
6 investigation by the department or an enforcement agency of this state or the federal government; or

7 (4) the action is based on the county tax collector-assessor's request in subsection (b) of
8 this section.

9
10 §217.78. Reinstatement of Access to RTS.

11 (a) A county tax assessor-collector may request a review of a decision to suspend or terminate
12 RTS access by submitting a request for reinstatement in writing to the department.

13 (1) The request for reinstatement should include all supporting information that is relevant to
14 support reinstatement.

15 (2) A county tax assessor-collector may submit information in support of or relevant to a
16 request for reinstatement to the department.

17 (3) The executive director shall make a final determination on reinstatement within 21
18 calendar days from the date the department receives the request for reinstatement. If the department
19 requests additional information from the individual, entity, or county tax assessor-collector, the deadline
20 for determination of the request for reinstatement is tolled until the additional information is received.

21 (b) Unless an individual or entity is the subject of a pending criminal investigation by a law
22 enforcement entity, the individual or entity's access to RTS will be reinstated if the department
23 determines that:

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Chapter 217 - Vehicle Titles and Registration

- 1 (1) no fraud, waste, or abuse was committed;
- 2 (2) the matter has been remedied to the satisfaction of the department; or
- 3 (3) the individual or entity is in compliance with applicable statutes and rules.

4

5 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the proposal and found it to be

6 within the state agency's legal authority to adopt.

7 Issued at Austin, Texas, on Month Day, YYYY.

8

9

Tracey Beaver, General Counsel

Board Meeting Date: 10/3/2019
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Timothy Menke, Compliance & Investigations Division Director
Agenda Item: 9
Subject: Proposal of New, Chapter 223, Compliance and Investigations Division
(Relating to county tax assessor-collector reporting of suspected fraud, waste, or abuse and implementation of Sunset Advisory Commission's Recommendation 2.2)

RECOMMENDATION

Approval to publish the proposed new chapter in the *Texas Register* for public comment.

PURPOSE AND EXECUTIVE SUMMARY

The purpose of the new chapter is to implement the Sunset Advisory Commission's Recommendation 2.2, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The recommendation requires the department to adopt rules to:

- formalize the department's current "red flag" fraud warning system for county tax assessor-collectors (TACs) to report suspected fraud, waste, or abuse of the registration and title system (RTS) by an employee, a dealer, and a full service deputy (deputy); and
- provide an option for a county to request action for suspected fraud or abuse, such as immediately suspending access to RTS.

FINANCIAL IMPACT

There will be no fiscal implications related to the proposed new chapter.

BACKGROUND AND DISCUSSION

The proposed new chapter adds Subchapter A, Fraud, Waste, or Abuse, which includes:

- §223.1, Purpose and Scope - outlines the purpose and scope of the subchapter, which is to establish procedures for TACs to report suspected fraud, waste, or abuse related to motor vehicle title or registration to the department's Compliance and Investigations Division (CID).
- §223.2, Definitions - defines key terms used in the proposed new chapter, including CID, TAC, deputy, director, and RTS.
- §223.3, Submission of Request - establishes the process for TACs who wish to report suspected fraud, waste, or abuse to the CID. The rule:
 - explains that the CID may forward a submission to an appropriate law enforcement entity;
 - outlines the submission process that a TAC must follow, including:
 - where to submit the request (i.e. to a department regional service center),
 - how to submit the request (i.e. mail documents and information in an envelope marked "red flag"), and
 - what to include in the request (i.e. original transaction, detailed narrative, any video, employee or deputy information, and any other relevant information);
 - describes the reporting process for a deputy, which includes reporting to the TAC; and
 - clarifies that the CID will notify the TAC if the CID determines it will not conduct an investigation.

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Chapter 223 - Compliance and Investigations Division

SUBCHAPTER A. FRAUD, WASTE, OR ABUSE**43 TAC §§223.1-223.3**

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new Chapter 223, Compliance and Investigations Division, Subchapter A., Fraud, Waste, or Abuse, 43 TAC §§223.1-223.3, concerning the department's "red flag" fraud reporting system. The new sections are necessary to formalize the department's current "red flag" fraud reporting system and implement a management action within the Sunset Advisory Commission's Recommendation 2.2, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The department also proposes new 43 TAC §§217.76-217.78, concerning access to the department's automated registration and title system (RTS) in this issue of the *Texas Register*.

EXPLANATION.

The department originally proposed new Chapter 223 in the March 1, 2019, issue of the *Texas Register* (44 TexReg 1114) and received comments from the Tax Assessor-Collector Association of Texas (TACA). The department did not adopt the proposal and it has been withdrawn in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5387). The department is re-proposing the "red flag" rules with changes from the previously proposed version.

The Tax Assessor-Collectors Association (TACA) commented that the proposed rules stating that the department's Compliance and Investigations Division (CID) would create a policy for county tax assessor-collectors (TACs) to submit requests for investigations was inconsistent with the Sunset recommendation. TACA also suggested that the department's CID investigation and notification process

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Chapter 223 - Compliance and Investigations Division

1 mirror the dealer enforcement complaint process, because that process works well with cross
2 communication and access to investigations. Some changes were made based on the comments received
3 and to further improve the rules.

4 However, the proposed rules do not mirror the department's dealer enforcement complaint
5 process. Throughout the dealer investigation and enforcement process, investigators and enforcement
6 attorneys communicate with the complainant and respondent as necessary to work through allegations
7 to either resolve the issues or assess civil penalties. The CID, on the other hand, is a unique division with
8 no authority or duty to determine administrative violations or assess civil penalties.

9 The CID serves as a liaison with law enforcement entities on potential criminal law violations and
10 has no authority to independently enforce or prosecute criminal law violations. However, the CID attorney
11 may be sworn in as a special prosecutor by a District or County Attorney. If the CID were to share
12 information regarding ongoing criminal investigations, the division could jeopardize the investigations and
13 damage its working relationship with law enforcement. The CID may be under strict orders to keep
14 information confidential until a case is fully adjudicated.

15 Every person processing registration and title transactions in RTS has a duty to stop or prevent
16 fraud. One way to stop or prevent fraud is to refuse to process a transaction involving known or obvious
17 fraud. The proposed "red flag" rules provide a means to flag and report suspected fraud to the CID. The
18 proposed rules do not limit or expand the exercise of statutory authority of a TAC or the department.

19 Proposed §223.1 outlines the purpose and scope of the subchapter, which is to prescribe the
20 policies and procedures for TACs, including TAC employees and deputies, to report suspected fraud,
21 waste, or abuse related to motor vehicle title or registration to the CID for investigation.

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Chapter 223 - Compliance and Investigations Division

1 Proposed §223.2 establishes that the words and terms defined in Transportation Code Chapter
2 501, have the same meaning when used in the subchapter, unless the context clearly indicates otherwise.
3 The proposed section also defines terms specific to this subchapter.

4 Proposed §223.3 establishes the process for reporting suspected fraud to the CID. The process
5 requires the TAC to submit a request for rejection of the suspected fraudulent transaction through a
6 department Regional Service Center and mail, or e-mail, certain information to the CID, including the
7 original transaction, a detailed narrative, and any supporting documentation or evidence. Proposed
8 §223.3 requires a full service deputy to report suspected fraud, waste, or abuse to the TAC. The TAC may
9 then submit the request to the CID for review and possible investigation. The proposed section also
10 establishes that the CID will provide a notification to the TAC if it determines it will not conduct an
11 investigation.

12
13 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer,
14 has determined that for each year of the first five years the proposed new sections will be in effect, there
15 will be no fiscal impact to state or local governments as a result of the enforcement or administration of
16 the proposal. Tim Menke, Director of the Compliance and Investigations Division, has determined that
17 there will be no measurable effect on local employment or the local economy as a result of the proposal.

18
19 **PUBLIC BENEFIT AND COST NOTE.** Mr. Menke has also determined that, for each year of the first five
20 years the proposed new sections are in effect, the public benefits include increased clarity and consistency
21 for reporting by TACs of suspected fraud, waste, or abuse to the department, leading to an improved
22 ability for the department and law enforcement authorities to coordinate, investigate, and ultimately
23 prevent and deter fraud, waste, or abuse of RTS.

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Chapter 223 - Compliance and Investigations Division

1 Mr. Menke anticipates that there will be no additional costs for regulated persons to comply with
2 these rules. County tax assessor-collectors have reported suspected fraudulent transactions to the
3 department for review since the department's inception. The proposed rules formalize the existing
4 process. The requirement for deputies to report suspected fraudulent transactions to the TAC clarifies
5 that they will report to the TAC and not the department. This maintains the TAC's role in the process.

6
7 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
8 Code §2006.002, the department has determined that the proposed new sections will not have an adverse
9 economic effect on small businesses, micro-businesses, or rural communities because the rules create no
10 additional costs. Additionally, TACs and their employees are not for-profit businesses. Reporting
11 suspected fraudulent transactions will not have an adverse economic effect on rural communities.
12 Therefore, the department is not required to prepare a regulatory flexibility analysis under Government
13 Code §2006.002.

14
15 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests
16 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property
17 that would otherwise exist in the absence of government action and, therefore, does not constitute a
18 taking or require a takings impact assessment under Government Code §2007.043.

19
20 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
21 first five years the proposed new sections are in effect, the proposed rules:

22 will not create or eliminate a government program;

23 will not require the creation of new employee positions or the elimination of existing employee

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Chapter 223 - Compliance and Investigations Division

positions;

will not require an increase or decrease in future legislative appropriations to the department;

will not require an increase or decrease in fees paid to the department;

will create new regulations in §§223.1-223.3 to implement Transportation Code Chapters 501, 502, and 520; and more specifically, to inform the authority established in Transportation Code §520.022, enacted in Senate Bill (SB) 604, 86th Legislature, Regular Session (2019);

will not expand existing regulations;

will not repeal existing regulations;

will not increase or decrease the number of individuals subject to the rules' applicability; and

will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on MM, DD, YYYY. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes new §§223.1-223.3 under Transportation Code §§501.0041, 502.0021, 520.021, and 1002.001.

Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

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Transportation Code §502.0021 authorizes the department to adopt rules to administer Chapter 502.

Transportation Code §520.021 authorizes department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code Chapters 501, 502, and 520; and more specifically, Transportation Code §501.003 and §520.022.

TEXT.**Subchapter A. Fraud, Waste, or Abuse****43 TAC §223.1-223.3**§223.1. Purpose and Scope.

(a) The purpose of this subchapter is to establish procedures for county tax assessor-collectors to report suspected fraud, waste, or abuse to the department.

(b) This subchapter applies to a county tax assessor-collector, an employee of a county tax assessor-collector, or a deputy, who wishes to report suspected fraud, waste, or abuse to the Texas Department of Motor Vehicles.

§223.2. Definitions.

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Chapter 223 - Compliance and Investigations Division

1 (a) The words and terms defined in Transportation Code Chapter 501 have the same meaning
2 when used in this chapter, except as otherwise provided by this chapter, unless the context clearly
3 indicates otherwise.

4 (b) The following words and terms, when used in this chapter, shall have the following meanings,
5 unless the context clearly indicates otherwise:

6 (1) CID--the Compliance and Investigations Division of the Texas Department of Motor
7 Vehicles.

8 (2) County tax assessor-collector--includes an employee of a county tax assessor-
9 collector.

10 (3) Deputy--a full service deputy under Chapter 217, Subchapter H.

11 (4) Director--the director of the Compliance and Investigations Division.

12 (5) RTS--the Texas Department of Motor Vehicle's registration and title system.

13
14 §223.3. Submission of Request.

15 (a) A county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee,
16 motor vehicle dealer, deputy, or any person transacting motor vehicle-related business for or with the
17 county may submit a request to the CID for review and possible investigation. The CID may forward a
18 submission to an appropriate law enforcement entity.

19 (b) To submit a request to the CID for review and possible investigation, the county tax assessor-
20 collector must:

21 (1) request a rejection of the suspected transaction through a department regional
22 service center; and

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1 (2) mail or e-mail the following documents and information, as applicable, to the CID in
2 an envelope or e-mail message marked "Red Flag":

3 (A) the original transaction;

4 (B) a detailed narrative, including:

5 (i) a contact with the tax assessor-collector, including email address and
6 phone number;

7 (ii) the name of the employee submitting the transaction to CID;

8 (iii) a statement as to why the transaction was flagged;

9 (iv) information about the employee or deputy if the employee or deputy
10 is suspected of committing fraud, waste, or abuse;

11 (v) any statements made by the customer submitting the transaction;

12 (C) any available video surveillance footage; and

13 (D) any other relevant evidence or information pertaining to the transaction.

14 (c) If a deputy suspects fraud, waste, or abuse, by an employee, motor vehicle dealer, or any
15 person transacting motor vehicle-related business for or with the deputy, the deputy must report the
16 suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector
17 may then submit a request to the CID for review and possible investigation in accordance with subsection
18 (b) of this section.

19 (d) If the CID determines it will not conduct an investigation after reviewing a request submitted
20 by a county tax assessor-collector, the CID will provide a notification to the county tax assessor-collector.
21

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Chapter 223 - Compliance and Investigations Division

1 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the proposal and found it to be
2 within the state agency's legal authority to adopt.

3 Issued at Austin, Texas, on Month Day, YYYY.

4

5

Tracey Beaver, General Counsel

DRAFT

Board Meeting Date: 10/3/2019
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Jeremiah Kuntz, Vehicle Titles & Registration Division Director
Agenda Item: 10
Subject: Special Plate Design

RECOMMENDATION

The Vehicle Titles and Registration Division (VTR) seeks board approval or denial of one plate design submitted for your consideration. The plate design is from the marketing vendor, My Plates. The Baylor University design is a redesign of the existing Baylor University plate. This plate has been offered for sale since 2010 and 519 plates have been sold as of August 2019.

PURPOSE AND EXECUTIVE SUMMARY

Statutory authority for the board to approve vendor specialty license plates and invite the public's comment on proposed vendor plate designs are in Texas Transportation Code Section 504.851 (g) and (g-1)(1). The board's approval criteria are clarified in Administrative Codes §217.45 *Specialty License Plates, Symbols, Tabs, and Other Devices* and §217.52, *Marketing of Specialty License Plates through a Private Vendor*.

The renewed vendor contract (paragraph #11, *Inventory Management Controls*) specifies that following the board's contingent approval of a plate, the vendor must get at least 200 commitments within six months of the approval for a plate to be produced. (Equally, existing plates must maintain 200 registered to stay in the program.) My Plates' procedure is to first offer a plate to the public to register their interest. Following the board's contingent approval, My Plates then offers a plate online for prepaid orders. My Plates confirms when 200 prepaid orders are achieved. (Since the contract with My Plates was renewed in March 2014, the board has contingently approved 30 vendor plates. Of the 30, eight did not achieve the required 200 commitments and were not produced.)

TxDMV's procedure is to invite comments on all proposed plates ahead of the board's review. The department's intent is to determine if there are any unforeseen public concerns about a plate design. The department publishes a 10-day "like/dislike/comment-by-email" survey, called an eView, on its website. Although the survey counts the public's "likes" and "dislikes," it is unscientific and not used as an indicator of a plate's popularity. The vendor's OU plate, for example, received thousands of eView "dislikes" in 2010 (presumably because of college football rivalry) and has since sold over 927 plates.

The plate design was presented to the public in a September 2019 eView. No negative comments were received. The count of the public's "like/dislikes" are below with the design.

Baylor University (Redesign)

320 people liked this design and 97 did not

Current Design



Redesign



BOARD MEETING eBook
October 3, 2019
TEXAS SPECIALTY PLATE BUSINESS

Vehicle Titles and
Registration Division
Special Plates Unit
(6 FTEs) 10/19



Division Director
Jeremiah Kuntz



113

Texas Department
of Motor Vehicles

LET'S GET SPOOKTACULAR
WITH SPECIAL PLATES!
OFFERED BY MY PLATES



LONE STAR BLACK



LONE STAR ORANGE

SLP AVAILABLE 490:
MILITARY AND DV 188
RESTRICTED USE 50
STATE SPECIALTY 131
VENDOR SPECIALTY 121

TOP FIVE PLATES CURRENTLY
REGISTERED

RANK	PLATE	# REGISTERED	DESIGN
1	LARGE STAR WHITE/BLACK	45,670	
2	CLASSIC BLACK	31,629	
3	TEXAS BLACK 1845	20,102	
4	LONE STAR BLACK	12,574	
5	ANIMAL FRIENDLY	9,663	

RELEASED SEPTEMBER 1ST



173RD AIRBORNE BRIGADE



DV 173RD AIRBORNE BRIGADE



ARMY OF OCCUPATION MEDAL



DV ARMY OF OCCUPATION
MEDAL



MASTER ARMY AVIATOR



DV MASTER ARMY AVIATOR



NUCLEAR DETERRENCE
OPERATIONS SERVICE MEDAL



DV NUCLEAR DETERRENCE
OPERATIONS SERVICE MEDAL



F-35 FIGHTER JET

SPECIAL PLATES UNIT CUSTOMER SERVICE FY 2019

48,503
Personalized Plate
Applications Reviewed
(10% declined)

38,755
Telephone Calls

97
Walk-in Customers

15,049
Email

2,209
Refunds

18
Public Information/
Open Records

15,049
Correspondence
(including plate applications)



Board Meeting Date: 10/3/2019

ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Jeremiah Kuntz, Vehicle Titles & Registration Division Director
Agenda Item: 11.A
Subject: Delegation of Authority to the Executive Director for the Execution of the Specialty License Plate Marketing Contract

RECOMMENDATION

TxDMV staff recommend that the Board approve the delegation of authority to the Executive Director, after consultation with the Board Chairman, to negotiate, approve, and execute the Specialty License Plate Marketing Contract in an amount not to exceed any appropriation contained in the current state biennial budget, as well as any future state biennial budget, for this item.

PURPOSE AND EXECUTIVE SUMMARY

Texas law authorizes TxDMV to enter into a contract with a vendor for the marketing and sale of specialty license plates.

FINANCIAL IMPACT

The Texas Legislature appropriated more than \$5,000,000 for fiscal year 2020 and for fiscal year 2021 to TxDMV for the purpose of making contract payments to the vendor selected by TxDMV for the marketing and sale of specialty license plates.

BACKGROUND AND DISCUSSION

When a contract has a value that exceeds \$1,000,000, Texas law requires the governing board of a state agency to approve the contract, which must be signed by the presiding officer of the governing body. However, Texas law also authorizes the governing board to delegate to the executive director of the agency the approval and signature authority for any contracts that have a value that exceeds \$1,000,000.



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Board Meeting Date: 10/3/2019

ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Linda M. Flores, CPA, Chief Financial Officer, Finance & Administrative Services Division Director
Agenda Item: 11.B.
Subject: Dallas/Carrollton 5-Year Lease Renewal

RECOMMENDATION

Authorize the Department's Executive Director or her designee to negotiate and execute, in conjunction with the Texas Facilities Commission (TFC), the contract renewal for the Dallas/Carrollton Regional Service Center lease for an additional five-year term, effective April 1, 2020 through March 31, 2025.

PURPOSE AND EXECUTIVE SUMMARY

Requesting the TxDMV Board grant authority approval to the Executive Director to approve the renewal purchase order/contract associated with the Dallas/Carrollton Regional Service Center lease for the next five-year term.

FINANCIAL IMPACT

Total maximum projected cost is \$894,892.80 for the full five-year renewal term.

BACKGROUND AND DISCUSSION

See *TxDMV Facilities Services Report* regarding the Dallas/Carrollton Regional Service Center.



Texas Department of Motor Vehicles

TxDMV Facilities Services



4075 Shirley Battey showing new 1955 license plates. April, 1955.



6099 1917 License Plate First Issued By The Texas High-

Finance & Administrative Services

October 2019

TxDMV Facilities Services

Dallas/Carrollton Regional Service Center

Lease Renewal

Authority: In accordance with Government Code, Chapter 2167, the Texas Facilities Commission (TFC) holds authority for leasing and renewing commercially leased property on behalf of state agencies.

Timeframe: The new lease would be effective April 1, 2020 through March 31, 2025.

Budget/Expenditures:

- Property Location: 1925 E. Beltline Road, Suite 8518, Carrollton, Texas 75006
- Square Footage: 7,865
- Monthly lease payment is all inclusive (i.e., utilities, janitorial and general maintenance are included in the rent)
- CPI = Consumer Price Index is a clause in the contract, which allows the lessor to request an increase in lease payments due to increased economic changes. CPI is calculated by TFC and added to the monthly payment each year. TxDMV estimates this cost to be about \$2,160 per year.
- Total Projected Cost : Five years - \$894,892.80

Renewal Date April 2020	Monthly Rent	Annual Rent	CPI (Estimated \$180 per month)	Total
2020-2021	\$10,414.88	\$124,978.56	\$2,160.00	\$127,138.56
2021-2022	\$12,574.88	\$150,898.56	\$2,160.00	\$153,058.56
2022-2023	\$14,734.88	\$176,818.56	\$2,160.00	\$178,978.56
2023-2024	\$16,894.88	\$202,738.56	\$2,160.00	\$204,898.56
2024-2025	\$19,054.88	\$228,658.56	\$2,160.00	\$230,818.56
Grand Total				\$894,892.80

Business Operations: The Dallas/Carrollton Regional Service Center is the home of 25 TxDMV FTEs (23 Vehicle Titles and Registration, 1 Compliance and Investigations and 1 Enforcement employees). The Regional Service Center serves the public by providing:

- Replacement titles;
- Bonded title rejection letters;
- Apportioned registration (IRP credentials and temporary operating authority for established accounts);
- Annual permits (NAFTA);
- Investigating and resolving Texas title errors;
- Etc.

TxDMV Facilities Services

Photo Gallery 1925 E Beltline Road, Suite 518, Carrollton, Texas 75006

Entrance



Lobby



TxDMV Facilities Services

Lobby



Customer Counter



TxDMV Facilities Services

ADA Compliant Customer Counter



Customer Kiosk Area



TxDMV Facilities Services

Customer Service Representative Work Areas



Customer Service Representative Work Areas



TxDMV Facilities Services

Employee Break Room



Employee Break Area





To: Texas Department of Motor Vehicles Board
From: Linda M. Flores, CPA, Chief Financial Officer, Finance & Administrative Services Division Director
Agenda Item: 11.C
Subject: FY 2019 Fourth Quarter Financial Report (BRIEFING ONLY) – Linda M. Flores and Sergio Rey

PURPOSE

The TxDMV Board is briefed quarterly on revenue collections and department expenditures. This report contains sections detailing year-to-date status as well as actual versus projections of revenues and expenditures. The year-end report includes a section dedicated to the TxDMV Fund.

Attached is the FY 2019 Year-End Financial Summary Report for the period ending August 31, 2019.

EXECUTIVE SUMMARY

The TxDMV is self-sufficient and supports all its expenditures through revenues deposited to TxDMV Fund 0010, with the exception of the Automobile Burglary and Theft Prevention Authority (ABTPA). ABTPA is fully funded through fees deposited to the credit of the General Revenue Fund.

As of the end of FY 2019, the key highlights of the department's revenues and expenditures are:

- The department's total revenue deposits (all funds) were \$1.97 billion, a 2.5% increase compared to FY 2018.
- TxDMV Fund (Fund 0010) collections totaled \$166.81 million, a 0.3% decrease compared to FY 2018.
- All Fund (General Revenue, State Highway and TxDMV Fund) expenditures (including obligations and encumbrances) totaled \$158.3 million. This includes expenditures from carry-forward funds as well as current year.
- The department collected sufficient revenue throughout FY 2019 to support its expenditures during the same time-period.
- The TxDMV Fund year-end balance is projected to total \$135.6 million.

FINANCIAL SUMMARY

TOTAL REVENUES (All Funds)

TxDMV total revenue deposits totaled \$1.97 billion through year-end FY 2019. This amount comprises:

- \$1,688.77 million for the State Highway Fund (Fund 0006);
- \$ 114.89 million for the General Revenue Fund (Fund 0001); and
- \$ 166.81 million for the TxDMV Fund (Fund 0010).

Total deposits in all funds increased by 2.5% compared to FY 2018.

TxDMV FUND 0010 REVENUES

FY 2019 year-end regular fee collections and online service fees for the TxDMV Fund 0010 totaled \$179,949,974. This amount comprises:

- \$166,808,063 in regular fee collections (including revenues from titles, registered vehicles, oversize/overweight permits, business dealer licenses, processing and handling and miscellaneous fees); and
- \$13,141,911 in collections of online service fees.

TxDMV Fund regular fee revenues decreased by 0.3% compared to FY 2018. The slight decrease in FY 2019 revenues compared to FY 2018 is due to lower processing and handling fee and lower business dealer license fee revenues.

EXPENDITURES/OBLIGATIONS

Total year-end obligations through August 31, 2019 totaled \$158.3 million (\$128.3 million in expenditures, obligations of \$13.1 million for online service fees and \$21.4 million in encumbrances). Significant expenditure categories continue to include salaries, contract services for plate production, printing costs for Vehicle Titles and Registration forms, postage and Data Center Services costs. Included in expenditures is approximately \$4.9 million for contract payments to the MyPlates vendor. Contract payments to the MyPlates vendor which are contingent upon revenues collected.

The FY 2019 capital project budget obligations includes expenditures of approximately \$13.9 million and encumbrances of approximately \$6.7 million; for a total obligated amount of \$20.6 million. This includes \$10.3 million in obligations associated with Data Center Services; \$6.2 million in Automation obligations; \$2.9 million in County Technology projects; \$354,000 in Agency Growth and Enhancement; \$195,000 for Cybersecurity Initiative; and \$99,000 for PC Replacement. The remaining unobligated funds in Automation, HQ Maintenance and HQ Security and Badge projects are eligible to carry forward to FY 2020.

The projected lapse as of the end of FY 2019 is approximately \$30.0 million. The largest portion (\$12.2 million) of the lapse is attributable to not utilizing the reserve for Texas.gov fees. Charges for credit card fees associated with Texas.gov online registrations were not realized because Texas.gov retained the fees from the revenue transactions and remitted the balance to TxDMV. Other large contributors to lapsed funds include less than anticipated costs for license plate production and salary and payroll-related costs from vacant positions.

MyPlates STATUS

For the year ending August 31, 2019, \$14.3 million in General Revenue Fund deposits were processed for vendor specialty plates. General Revenue Fund deposits associated with the MyPlates contract from November 2014 to August 2019 (since the current contract's inception) totaled \$58.2 million. The year-to-date deposits, since the contract began, exceeded the \$15 million contract guarantee by \$43.2 million.

The current MyPlates contract expires November 2019.



Texas Department *of* Motor Vehicles

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FY 2019 Financial Summary

Ending August 31, 2019

Finance and Administrative Services Division

October 3, 2019



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Actual Revenue (All Funds)

BOARD MEETING BOOK All Funds Revenue Collections by the TxDMV

October 3, 2019 1:27

Year-End FY 2018 vs Year-End FY 2019 All Funds Actual Revenue through August 31

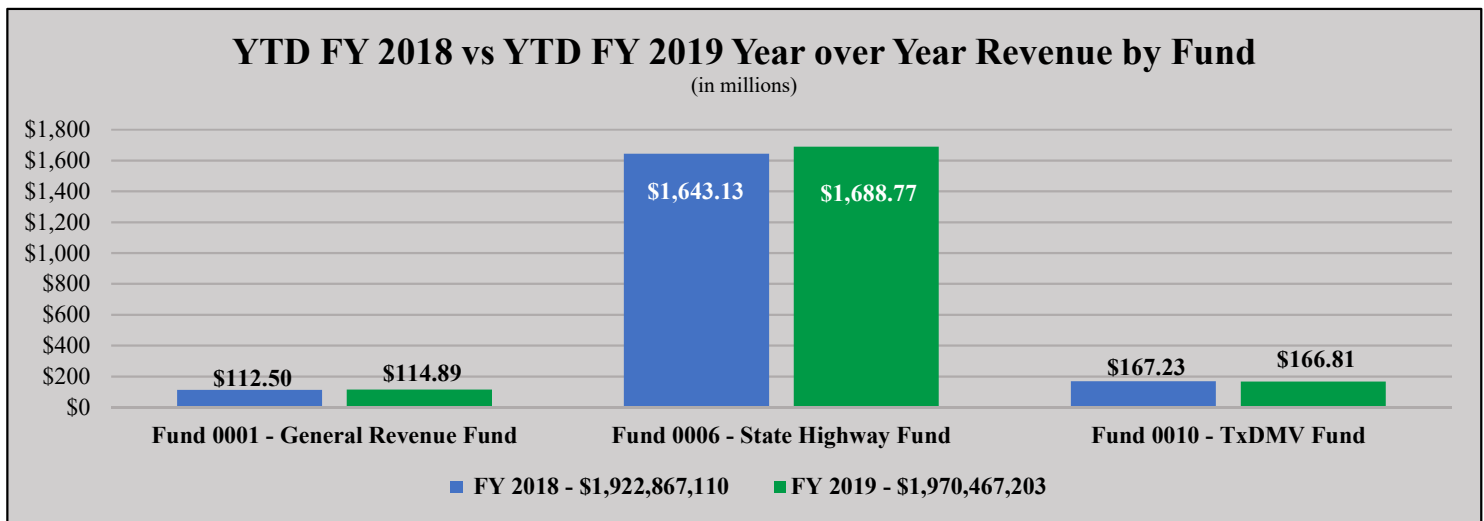
TxDMV collects revenue from registrations, titles, dealer licenses, oversize/overweight permits, motor carrier credentials and other fees for deposit into the:

General Revenue (GR) Fund (Fund 0001)

State Highway Fund (Fund 0006)

TxDMV Fund (Fund 0010)

Total revenue collections were \$1.97 billion through the fourth quarter of FY 2019.



Key items of note:

- Of the \$1.97 billion in revenue collected for all funds, TxDMV deposited \$166.81 million into the TxDMV Fund, which represents 8.5% of the total revenues collected. The General Revenue Fund received 5.8% of the revenue, and the State Highway Fund received 85.7%.
- Year-to-date FY 2019 revenue collections deposited into the TxDMV Fund, the State Highway Fund and the General Revenue Fund increased by 2.5% (\$47.60 million) from FY 2018. This is in line with the Comptroller of Public Accounts' projections of more moderate growth rate in the Texas economy.
- The largest component of Fund 0006 is registration fees. This revenue component has reflected an increase in the number of registered vehicles along with an increase in population. Registration revenue was up \$33.72 million, or 2.2%, over the same time period in FY 2018.
- Oversize/overweight revenue increased by 9.7% from FY 2018. The number of permits issued in FY 2019 was 865,171 compared to 809,113 issued in FY 2018, a net increase of 6.9% or 56,058 more permits. Oversize/Overweight permits are consumer driven; however, the number of permits issued closely correlates with economic factors such as the stability in oil and gas industry, a moderate increase in new housing construction, combined with growth in manufacturing and refining, resulted in more permits issued in FY 2019.
- Based on revenue collections through the fourth quarter, the TxDMV revenue deposited in FY 2019 to Fund 0001, Fund 0006 and Fund 0010 exceeded projections by 4.4%, 2.6% and 4.5%, respectively.



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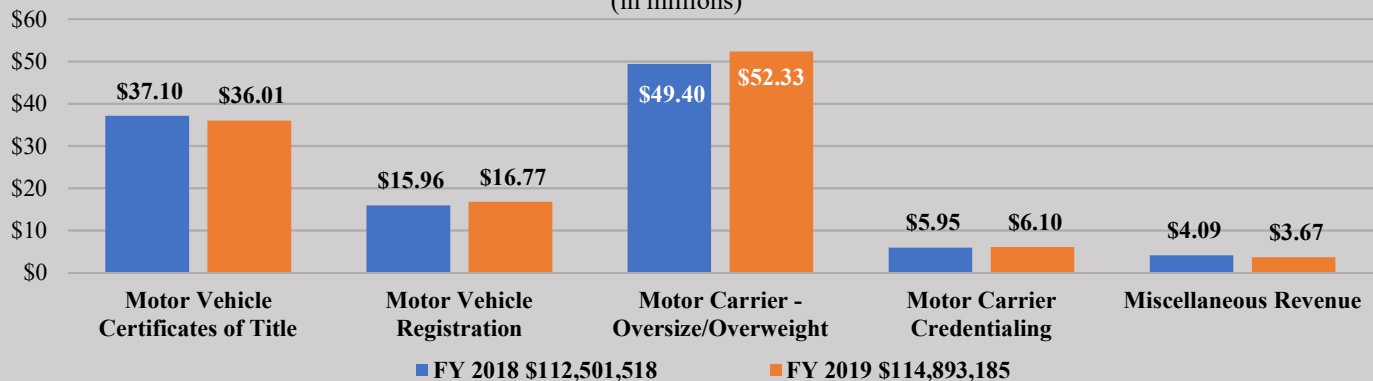
Comparison of FY 2019 to FY 2018 Actual General Revenue and State Highway Funds

General Revenue Fund and the State Highway Fund

Year-to-Date (YTD) Revenue FY 2019 vs FY 2018 through August 31

FY 2018 vs FY 2019 for Fund 0001 - General Revenue Fund

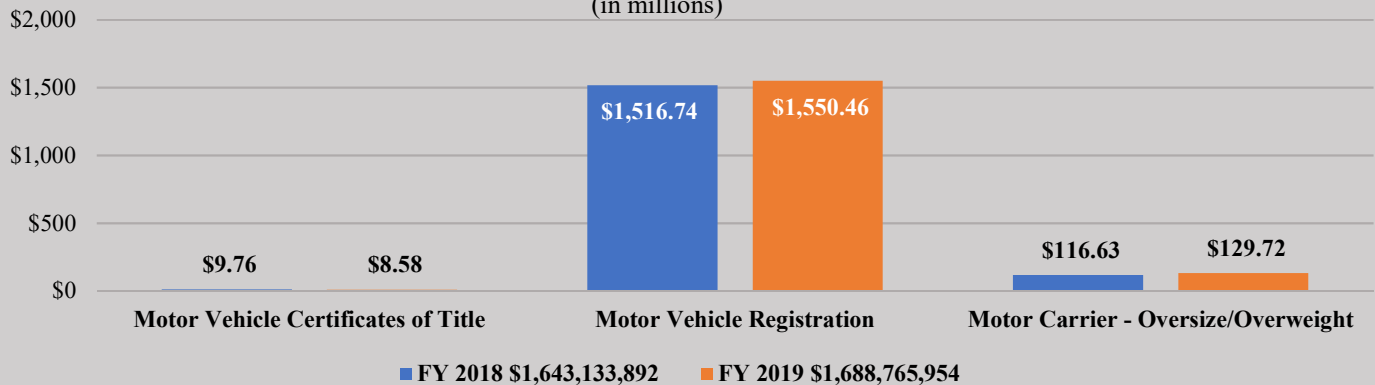
(in millions)



- FY 2019 revenue collections of \$36.01 million from title fees were 2.9% (\$1.08 million) lower than FY 2018. This is the result of an increased level of title transactions in FY 2018 due to replacement of vehicles damaged by Hurricane Harvey. FY 2019 titles issued reflects titles more in line with historical levels.
- FY 2019 motor vehicle registration revenue includes \$14.26 million in deposits generated through the specialty-plate contract with MyPlates.
- The \$52.33 million in oversize/overweight revenue represents a 5.9% increase in FY 2019 when compared to FY 2018. Oversize/Overweight permits are consumer driven; however, the number of permits issued closely correlates with economic factors such as the stability in oil and gas industry, a moderate increase in new housing construction, combined with growth in manufacturing and refining, resulted in more permits issued in FY 2019.
- Based on TxDMV revenue collections, the General Revenue Fund deposits exceeded projections by 4.4%.

FY 2018 vs FY 2019 for Fund 0006 - State Highway Fund

(in millions)



- In FY 2019, the department collected \$1.69 billion in State Highway Fund revenue, which is 2.8% more than in FY 2018.
- The majority of Fund 0006 revenue, \$1.55 billion (91.8%), is from motor vehicle registrations. The number of registered vehicles continues to increase and is in line with state population growth.
- Oversize/overweight revenue of \$129.72 million has increased 11.2% in FY 2019 compared to FY 2018. Permit counts continued to trend upward due to factors as listed above.
- Based on TxDMV revenue collections, State Highway Fund deposits exceeded projections by 2.6%.

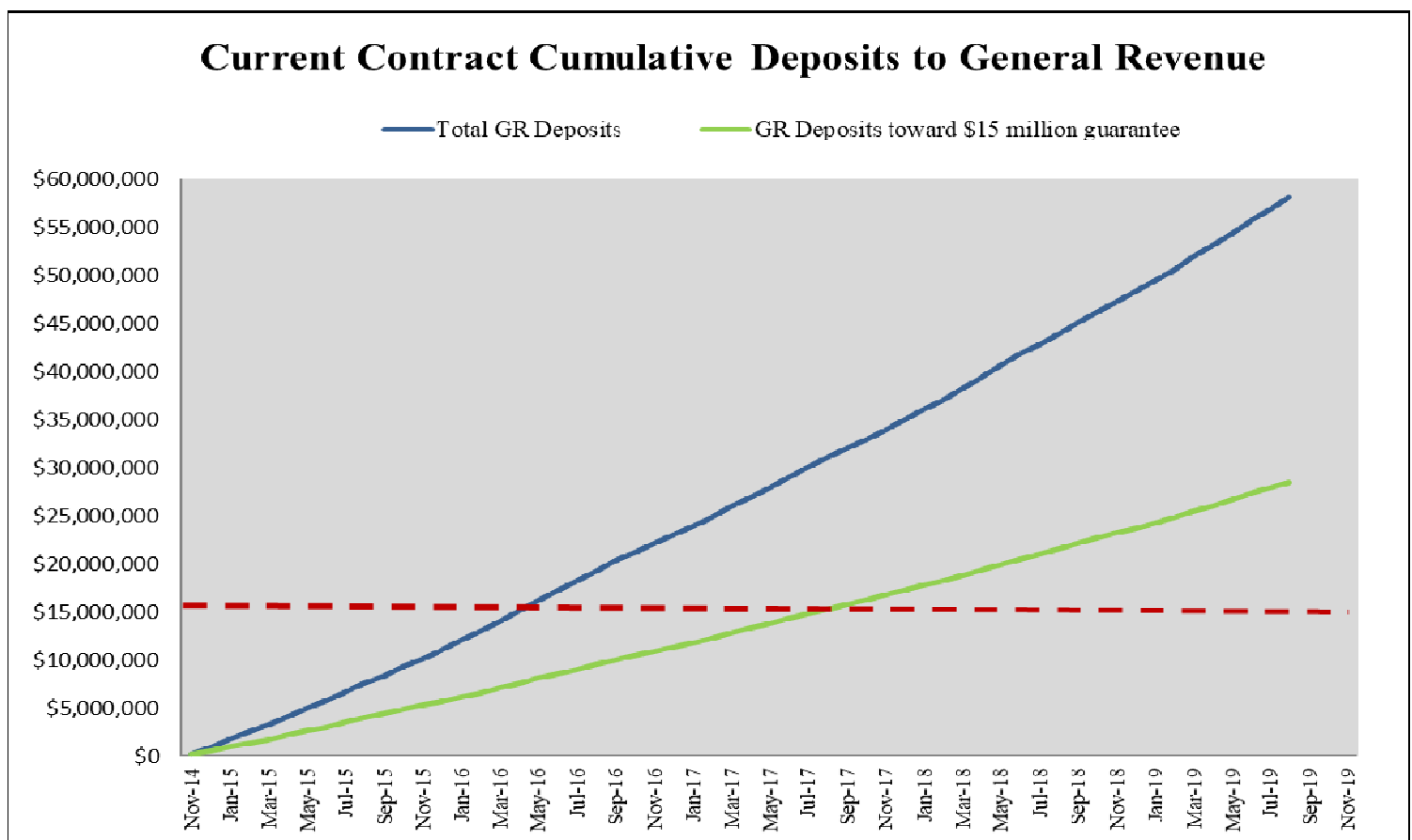


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Vendor License Plate Revenue

Section 504.851 of the Texas Transportation Code allows the Texas Department of Motor Vehicles to enter into a contract with a private vendor to market and sell specialty license plates for issuance on non-commercial vehicles registered in Texas. In 2014, the department awarded a second five-year contract to MyPlates, which continues sales from November 2014 through November 2019. The program offers an opportunity for motorists to add individual expression and creativity to their vehicles. The department's governing board must approve all plate designs and prices. Department oversight ensures that MyPlates provides a quality product at a reasonable price that maximizes revenue gain to the State.

All plates are made at the Wynne Correctional Unit in Huntsville (operated by the Texas Department of Criminal Justice). Plates are available in a variety of Texas themes and colors, meet strict design specifications and contain law-enforcement security features.



- Through August 2019, cumulative vendor deposits to the General Revenue Fund totaled \$58,186,706, since the inception of the 2014 contract.
- MyPlates met the \$15 million contractual guarantee the third week of August 2017.
- General Revenue Fund deposits from the sale of vendor specialty plates are determined by plate type and plate term, with the State receiving 40% of revenue from new-order plate sales with a term of one year, 60% from all plate sales with a term greater than one year, 95% of all renewal sales, 60% of all auction sales, and 10% of all ancillary products.



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TxDMV Fund 0010 Financial Status Highlights

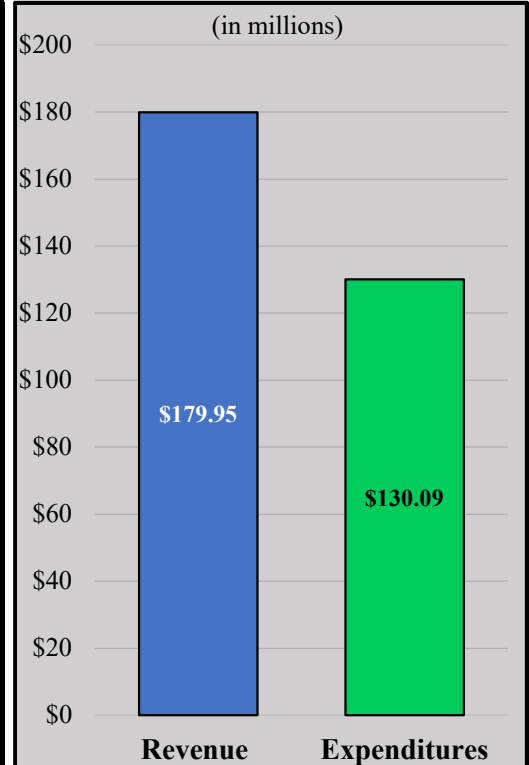
TxDMV Fund 0010 Financial Status Highlights

Year-To-Date (YTD) Fiscal Year 2019

<i>Fund 0010 Revenue</i>	Year-to-date
Motor Vehicle Certificates of Title	\$ 43,119,638
Motor Vehicle Registration	\$ 36,664,581
Motor Carrier - Oversize/Overweight	\$ 16,916,065
Business Dealer Licenses	\$ 7,906,911
Miscellaneous Revenue	\$ 5,442,400
Processing and Handling Fee	\$ 56,758,468
Total Fee Collections (Subtotal)	\$ 166,808,063
Service Fees (Texas.gov, Credit Card Fees)	\$ 13,141,911
Total Revenue Available	\$ 179,949,974

Fund 0010 Expenditures

TxDMV Operational Expenditures	\$	104,809,401
Fringe Benefits	\$	12,136,771
Service Fees (Texas.gov, Credit Card Fees)	\$	13,141,911
Total Operational Expenditures	\$	130,088,083



- The department's revenue of \$179.95 million exceeded the department's expenditures by \$130.09 million.
- Interest on the TxDMV Fund balance continued to drive the miscellaneous component, producing \$2.73 million in revenue.
- The inclusion of revenue from antique license plates positively impacted TxDMV Fund registration revenue collections. The antique license plate fees were redirected from the State Highway Fund beginning in late FY 2018 after the department determined that such revenue should be deposited to the TxDMV Fund in accordance with statutes.
- Based on TxDMV revenue collections, TxDMV Fund deposits exceeded projections by 4.5%.
- The TxDMV Fund balance at the end of the fourth quarter is \$135.61 million. This balance includes the FY 2019 beginning balance of \$85.75 million, as shown in the table below:

TxDMV Fund Balance

FY 2019 Beginning Fund Balance	\$ 85,746,398
Revenue	\$ 179,949,974
<i>less</i> Expenditures	\$ 130,088,083
Ending Fund Balance	\$ 135,608,289



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TxDMV Fund 0010 Details

TxDMV Fund 0010 Highlights

YTD Fourth Quarter FY 2019 vs YTD Fourth Quarter FY 2018 TxDMV Fund Actual Revenue

Revenue Category	Year over Year			
	FY 2018 Actual	FY 2019 Actual	% Difference	
Motor Vehicle Certificates of Title	\$ 43,441,426	\$ 43,119,638	-0.7%	↓
Motor Vehicle Registration	38,696,773	36,664,581	-5.3%	↓
Motor Carrier Oversize/Overweight	15,349,386	16,916,065	10.2%	↑
Business Dealer Licenses	8,157,612	7,906,911	-3.1%	↓
Miscellaneous Revenue	3,314,581	5,442,400	64.2%	↑
Processing and Handling Fee	58,271,922	56,758,468	-2.6%	↓
Subtotal	\$ 167,231,700	\$ 166,808,063	-0.3%	↓
Service Fees	\$ 12,102,492	\$ 13,141,911	8.6%	↑
Total	\$ 179,334,192	\$ 179,949,974	0.3%	↑

- FY 2019 certificates of title revenue is down 0.7% from FY 2018, returning to historical levels after an increase in FY 2018 salvage-title transactions due to vehicles damaged by Hurricane Harvey combined with higher auto sales in FY 2018.
- Motor vehicle registration revenue was down 5.3% in FY 2019 compared to the same time period in FY 2018. This was primarily due to a decrease in antique-plates revenue becoming annual in FY 2019 (\$1.55 million) rather than the previous five-year renewal process used FY 2018 (\$4.22 million).
- Business dealer license revenue was down 3.1% (\$250,701) compared to FY 2018, due to a slight decrease in the number of licenses issued for franchised and used-car dealers in FY 2019. This department has determined that FY 2018 figures likely represented an all time high.
- The largest component of the TxDMV Fund is the processing and handling (P&H) fee, contributing 34.0% of the revenue collected from regular fees. P&H fee collections were less this year primarily because of the discontinuance of online 30-day and one-trip temporary permits, as detailed on the next page.

Revenue Category	Projections vs Actuals			
	FY 2019 Projections	FY 2019 Actual	% Difference	
Motor Vehicle Certificates of Title	\$ 41,397,000	\$ 43,119,638	4.2%	↑
Motor Vehicle Registration	33,291,000	36,664,581	10.1%	↑
Motor Carrier Oversize/Overweight	15,259,000	16,916,065	10.9%	↑
Business Dealer Licenses	8,420,000	7,906,911	-6.1%	↓
Miscellaneous Revenue	3,158,000	5,442,400	72.3%	↑
Processing and Handling Fee	58,082,000	56,758,468	-2.3%	↓
Subtotal	\$ 159,607,000	\$ 166,808,063	4.5%	↑
Service Fees	\$ 12,281,024	\$ 13,141,911	7.0%	↑
Total	\$ 171,888,024	\$ 179,949,974	4.7%	↑

- FY 2019 fee revenue collections in the TxDMV Fund exceeded projections by 4.5%.
- Miscellaneous revenue reflected a significant revenue increase compared to last year. One of the largest components year-to-date for miscellaneous revenue was interest on the TxDMV Fund (\$2,728,987). This revenue exceeded projections due to a higher-than-expected fund balance and interest rate increase. Interest rate in 2018 was an average of 1.70% versus 2.43% in 2019.

TxDMV Fund 0010 Highlights

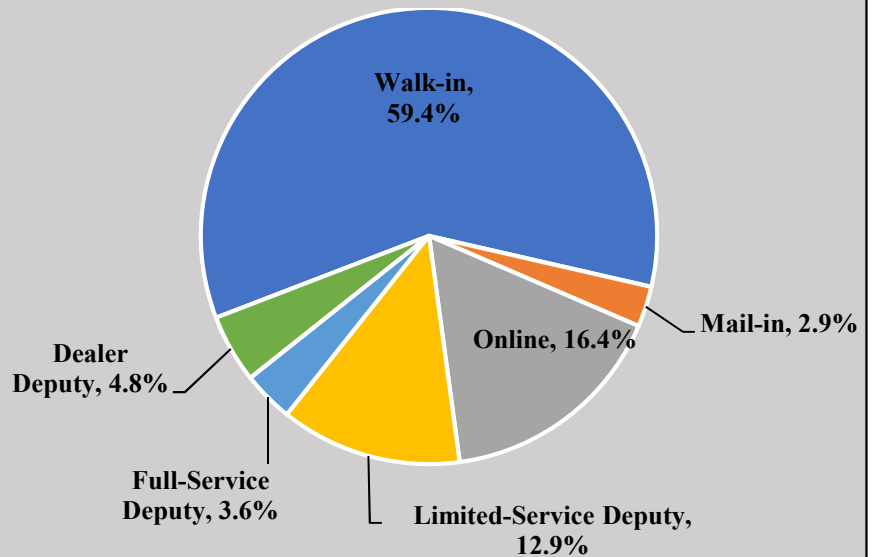
Processing and Handling Fee

FY 2019 Processing and Handling Revenue through August: \$56,758,468

➤ In FY 2018, TxDMV became aware of unauthorized use of online 30-day and one-trip temporary permits and discontinued those particular transactions in the fourth quarter of the fiscal year; the discontinuation remains in effect. This resulted in a reduction of revenue when comparing FY 2019 to FY 2018. The department will reconsider online 30-day and one-trip temporary permits when additional security measures can be implemented.

➤ Processing and handling fee revenue in the TxDMV Fund saw a decrease in FY 2019 of 2.6% compared to FY 2018 while also seeing a decline in projections of 2.3% in FY 2019.

Processing and Handling Fee Transaction Mix from Annual Registration



Processing and Handling Fee for FY 2018 (First Full Year)

Walk-in	60.8%	Ltd-Svc Deputy	12.3%
Mail-in	3.4%	Full-Svc Deputy	3.6%
Online	15.0%	Dealer Deputy	4.9%

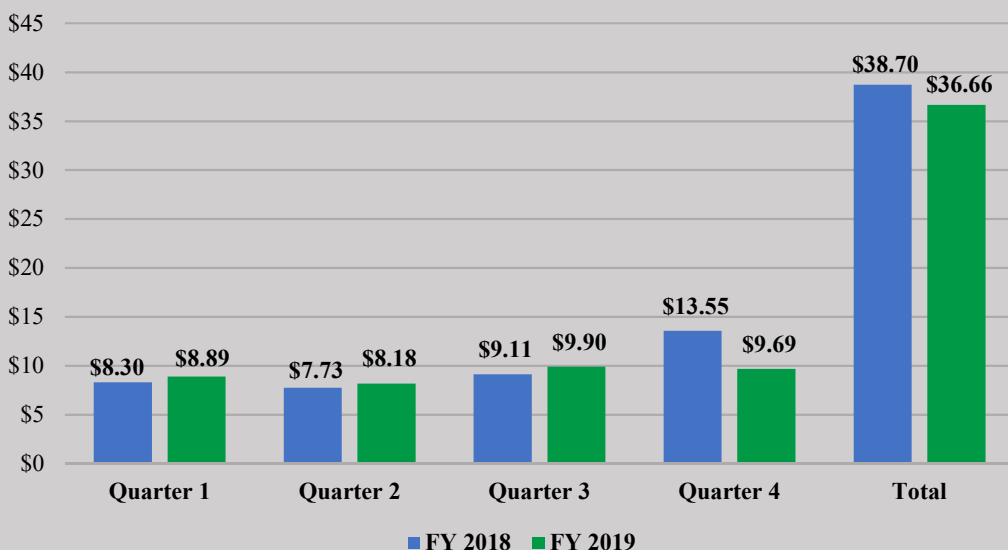
Motor Vehicle Registration

FY 2019 Registration Revenue through August: \$36,664,581

TxDMV Fund Registration Revenue

Year over Year

(in millions)



➤ Year-to-date FY 2019 registration revenue was 5.3% (\$2,032,192) lower than FY 2018 collections and was 10.1% (\$3,373,581) higher than FY 2019 projections.

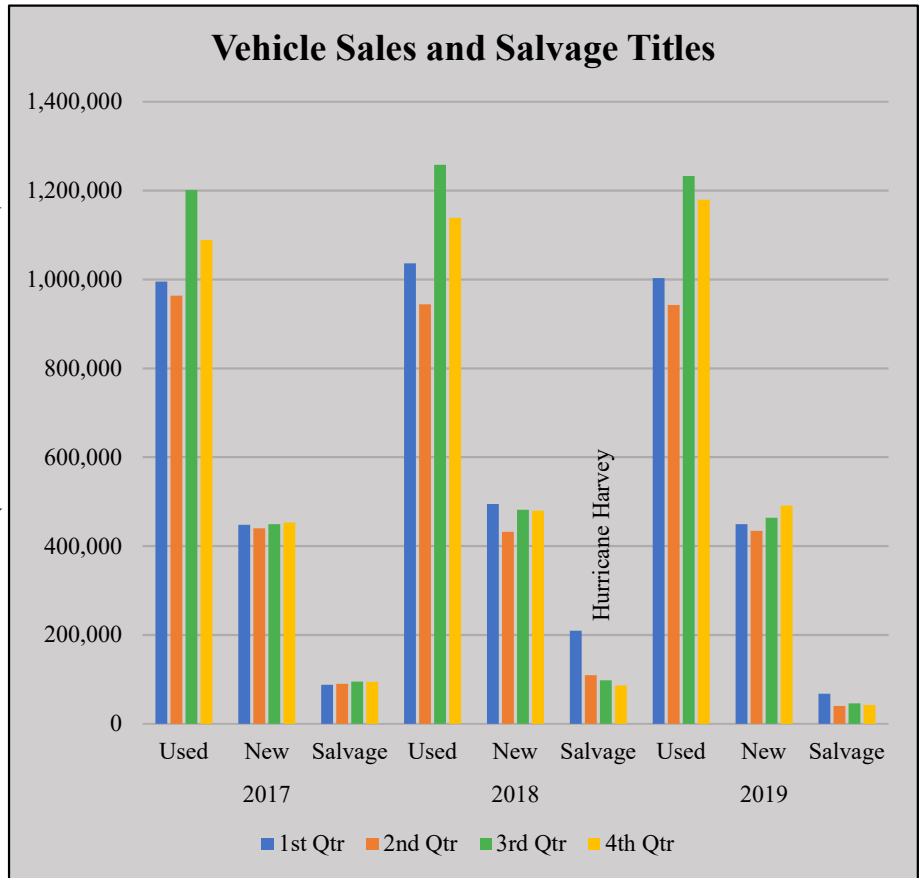
➤ The fourth-quarter decrease from FY 2018 to FY 2019 reflects a net transfer of antique-plate revenue into Fund 0010 in FY 2018, with FY 2019 reflecting a more typical revenue amount.

TxDMV Fund 0010 Highlights

YTD Fourth Quarter TxDMV Fund 0010 Activity Highlights Motor Vehicle Certificates of Title

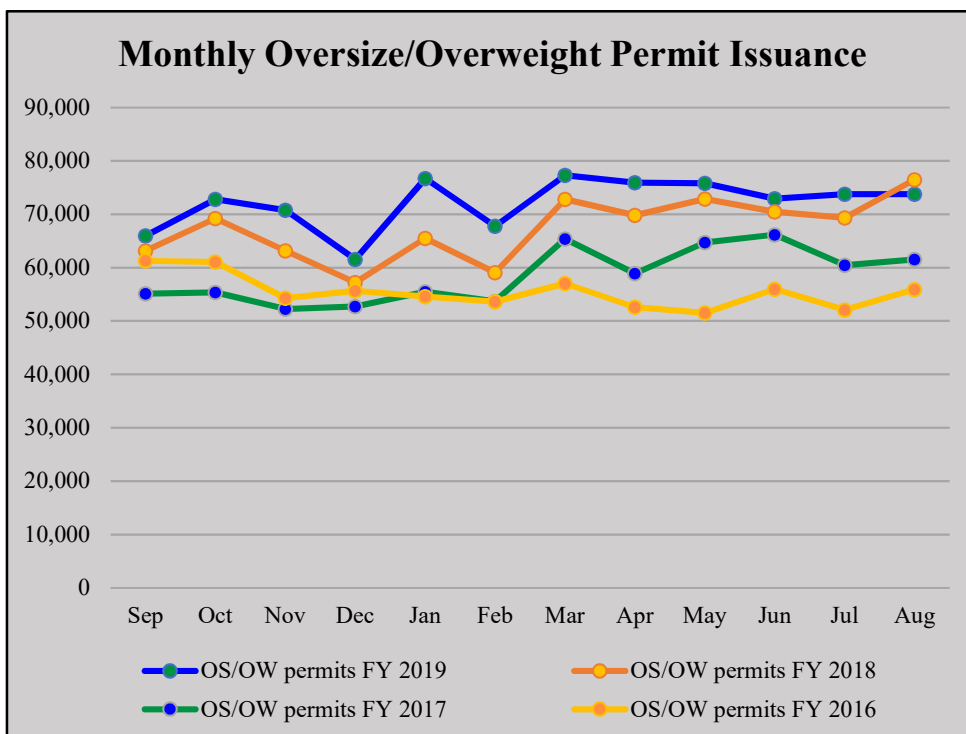
FY 2019 Certificates of Title Revenue through August: \$43,119,638

- There was a spike in title transactions in FY 2018 as a result of damage caused by Hurricane Harvey. FY 2019 revenue has returned to more historical levels. FY 2019 TxDMV Fund certificates of title revenue was down 0.7% compared to FY 2018.
- Revenue from the original-title fee makes up the largest component of certificates of title revenue. FY 2019 revenue was collected from the issuance of approximately 6.7 million original titles. Original-title issuance is driven by new and used vehicle sales.
- Compared to FY 2018, auto sales in FY 2019 decreased by 1.1%, with used-car sales down 0.4% and new-car sales down 2.6%, all contributing to a year-over-year decline in revenue.



Motor Carrier Oversize/Overweight

FY 2019 Oversize/Overweight Revenue through August: \$16,916,065



- Oversize/overweight revenue increased by 10.2% from FY 2018 in the TxDMV Fund. The number of permits issued in FY 2019 was 865,171 compared to 809,113 issued in FY 2018, a net increase of 6.9% or 56,058 more permits. Oversize/Overweight permits are consumer driven; however, the number of permits issued closely correlates with economic factors such as the stability in oil and gas industry, a moderate increase in new housing construction, combined with growth in manufacturing and refining, resulted in more permits issued in FY 2019.



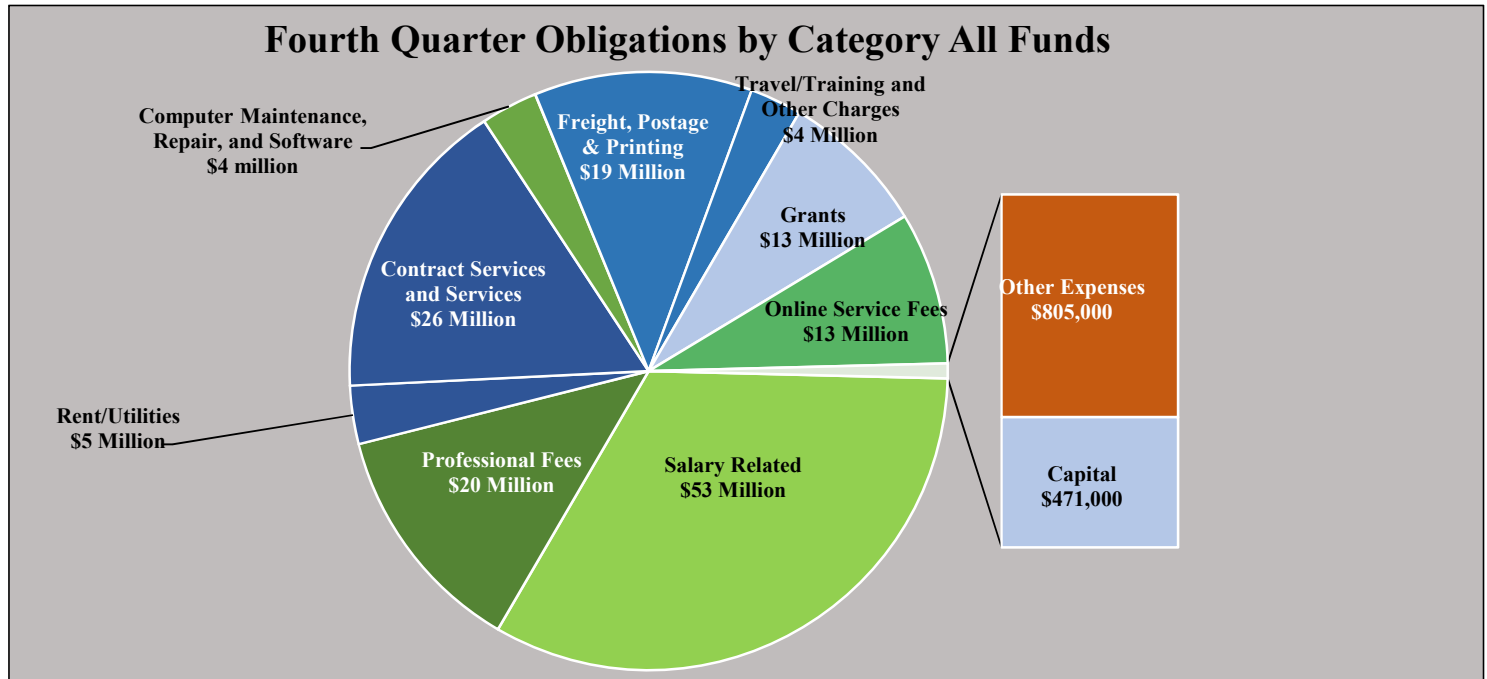
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TxDMV Budget

YTD Fourth Quarter Obligations

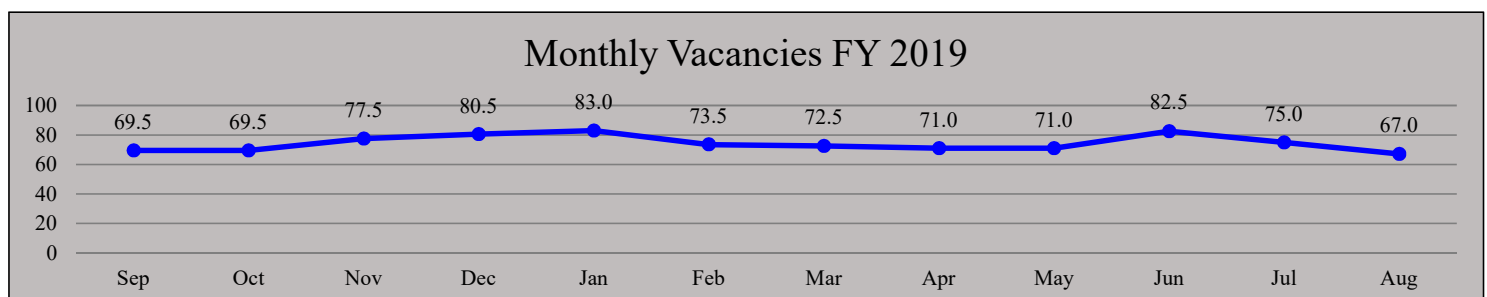
- Fourth quarter TxDMV obligations for all funds totaled \$158.3 million (expenditures of \$123.8 million, obligations of \$13.1 million for online service fees and \$21.4 million in encumbrances).



- Major year-to-date obligations in FY 2019 are listed in the table above. Obligations for freight/postage/printing (primarily postage/printing), contract services, professional fees, salary related and grants constitute 90% of the department's obligations as of the end of the fourth quarter.
- Printing expenditures are primarily for titling and registration forms and imaging costs. Contract services includes costs of license plate production, registration decal production and MyPlates contract obligations. Professional fees are associated with data center services and capital project contractors working on department technology initiatives.

YTD Fourth Quarter Full-Time Equivalents

- Total filled positions have increased from 705.5 Full-Time Equivalents (FTEs) in August 2018 to 712 FTEs as of August 2019. Vacancies have decreased by 4 FTEs, or 5.6% from the third quarter of FY 2019.
- In FY 2020, the approved department FTE count will increase from 779 to 802: nine FTEs for Customer Relations, twelve FTEs for Information Technology Services and two FTEs for Vehicle Titles and Registration for digital license plates.
- TxDMV hired 16 summer interns for the department. The interns were spread across multiple divisions and were employed from May to August, 2019. The interns were temporary positions and did not impact the FTE count.



TxDMV Fund Status

TxDMV Fund Projected Year End Balance

- Projected FY 2019 year-end appropriated salary and operating categories are expected to be less than budgeted by a total of \$30.0 million.
- The projected cash fund balance for the TxDMV Fund at the end of the biennium is \$135.6 million.

Budget Category	Item	Estimated Lapse to Budget
Reserve for Texas.gov Fees	Payments to Texas.gov not required	\$ 12,200,000
License Plates	Less than anticipated costs	\$ 5,400,000
Capital Funds	Project costs were less than projected	\$ 3,300,000
Facility Operations and Maintenance	Transition of HQ facility services now projected FY 2020	\$ 2,500,000
Salary and Payroll Related Costs	Lapse from vacant positions	\$ 2,450,000
General Operating	Accumulated total from all other remaining budget categories	\$ 2,300,000
Agency Wide Reserve	Agency Wide Reserve funds	\$ 1,900,000
Totals		\$ 30,050,000

FY 2019 Year-End Status

- As of the end of the fiscal year 2019, the estimated lapse in budgeted funds is approximately \$30.0 million.
- The largest portion of the estimated lapse (41% of the total lapse) is attributable to not utilizing the reserve for Texas.gov fees. Charges for credit card fees associated with Texas.gov online registrations were not realized because Texas.gov retained the fees from the revenue transactions and remitted the balance to TxDMV.
- License Plates costs are less than anticipated due to a lower demand for replacement plates as a result of the rule change that does not require automatically replacing vehicle license plates every seven years.
- Facility Operations and Maintenance expenditures were less than budgeted. TxDOT and TxDMV continue to collaborate on an orderly transition of facility related tasks which are directly funded by TxDMV.
- The lapses in Capital funds is estimated to be approximately \$3.3 million and are primarily due to project costs being less than projected in the County Technology capital budget and Growth and Enhancement capital budget.
- Other major drivers of the lapse funding include salary and payroll costs from vacancies (\$2.4 million); general operating savings from various operating budget categories (\$2.3 million); and remaining funds in reserve (\$1.9 million).

YTD Fourth Quarter Capital Budget and Projects

Capital Project Budget Status

	Revised Budget	Expenditures	Encumbrances	Available Budget
Technology	\$ 17,338,475	\$ 11,793,733	\$ 2,102,242	\$ 3,442,500
Automation	\$ 12,890,842	\$ 1,808,622	\$ 4,411,810	\$ 6,670,410
Other Capital Project	\$ 5,350,546	\$ 314,860	\$ 258,801	\$ 4,776,885
All Capital Grand Total	\$ 35,579,863	\$ 13,917,215	\$ 6,772,853	\$ 14,889,795

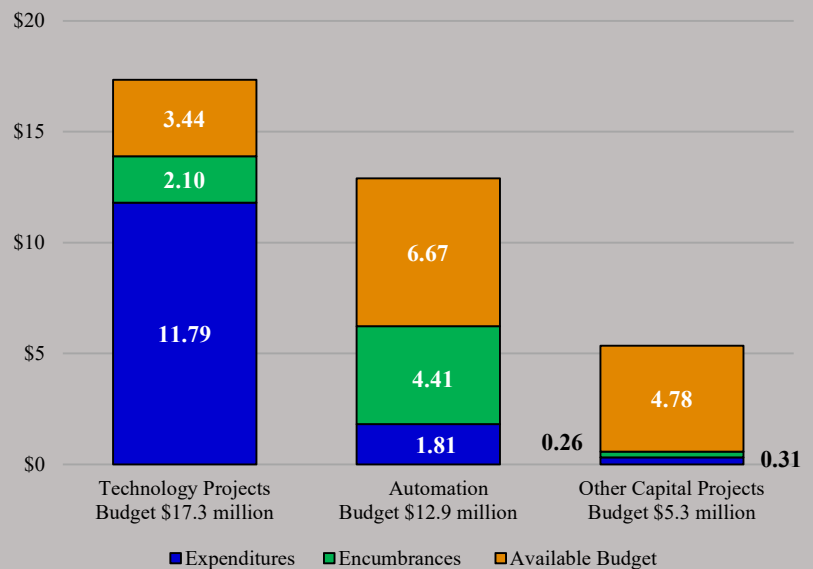
Capital Budget Status

The capital budget totals \$35,579,863.

- Expenditures of \$13.9 million and encumbrances of \$6.8 million total obligations of \$20.7 million.
- During the 4th Quarter two new Automation projects were approved for a total of \$943,000 that will provide software enhancements for the Information Technology Services Division (ITSD).
- The HQ Maintenance capital budget was increased in the 4th Quarter by \$511,000 through a transfer from facility maintenance operations due to a delay in planned projects. The HQ Maintenance capital budget balance will carry forward to FY 2020.

Fourth Quarter Capital Budget Status

(in millions)



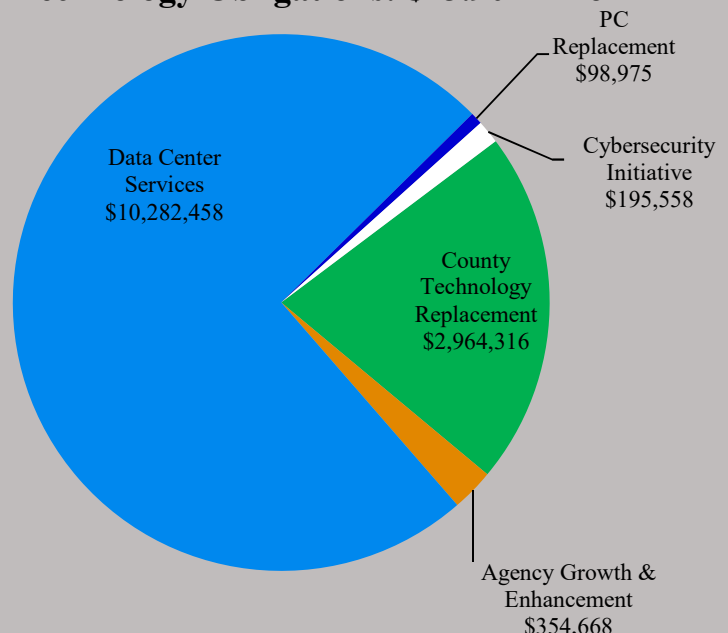
YTD Fourth Quarter Technology Capital Projects

Technology Highlights

The obligations in the Technology category consists of:

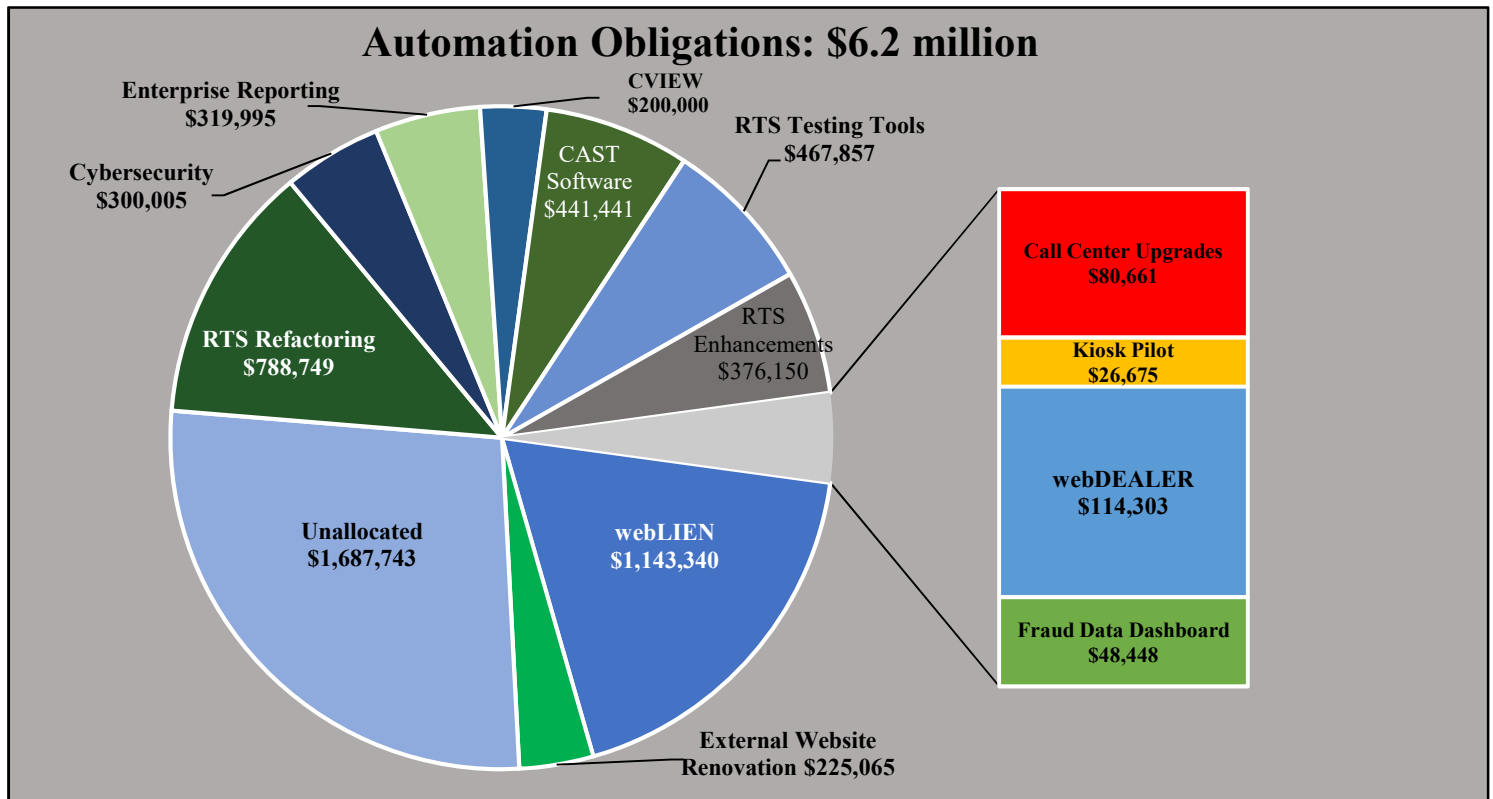
- Data Center Services (DCS), the largest component (\$10.3 million), provides management of applications, hardware and technology services for TxDMV.
- The majority of expenditures and encumbrances include Data Center Services; and toner and technical support for the counties. During the fourth quarter work continued on upgrading to Windows 10 at the Tax Assessor-Collector Offices and is expected to be completed in FY 2020.

Technology Obligations: \$13.90 million



TxDMV Capital Projects

YTD Fourth Quarter Automation Capital Projects



- The TxDMV Automation Project consists of \$6.2 million in obligations. The primary obligations are for webLIEN, Registration and Title System (RTS) Refactoring, RTS Enhancements, Computer Aided Software Testing (CAST), RTS Testing Tools software acquisition and future Automation initiatives (Unallocated).
- New projects were approved in the 4th Quarter for Computer Aided Software Testing (CAST) and RTS Testing Tools. Both projects will provide software to increase ITSD testing and quality assurance capability.
- The Kiosk pilot project is being reevaluated by ITSD and will carry forward into FY 2020.
- Automation balances will be transferred into FY 2020 using unexpended balance authority. An estimated \$7.8 million will carry-forward into FY 2020 to complete current projects and provide funds for future initiatives.

YTD Fourth Quarter Other Capital Projects

- Other Capital Projects budget of \$4.8 million consists of: \$4.7 million for HQ maintenance; \$325K for agency vehicles; and \$305K for HQ Security/Badge.
- HQ maintenance has \$29,768 in obligations as of August 31, 2019. Weatherization, roof replacement and Security & Badge system projects have entered the planning phase with projected completion dates in FY 2020.
- Multiple HQ Projects are in the assessment and vendor procurement stages for FY 2019 and these remaining projects have projected completion dates in FY 2020 and FY 2021.



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To: Texas Department of Motor Vehicles Board
From: Linda M. Flores, CPA, Chief Financial Officer, Finance & Administrative Services Division Director
Agenda Item: 11.D
Subject: Procurement and Contract Management Audit Update

RECOMMENDATION

To brief the TxDMV Board of progress to implement audit recommendations associated with procurement and contract processes.

PURPOSE AND EXECUTIVE SUMMARY

The department's procurement and contract processes have been examined by internal and external auditors. The reviews resulted in 23 recommendations.

- Sixteen (16) recommendations were completed by the September 1, 2019 deadline;
- 2 recommendations are due 11-30-2019;
- 3 recommendations are due by 12-31-2019;
- 1 recommendation is due 01-2020 and lastly,
- 1 recommendation is due 12-31-2020.

FINANCIAL IMPACT

Not applicable

BACKGROUND AND DISCUSSION

Senate Bill 20 by Jane Nelson enacted by the 84th Legislature and Senate Bill 65 by Jane Nelson enacted by the 86th Legislature have resulted in increased oversight and requirements for agency procurements and contracts. Both bills reform state agency contracting by clarifying accountability, increasing accountability, increasing transparency and ensuring a fair competitive process.



Texas Department *of* Motor Vehicles

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Procurement and Contract Audit Updates

Finance and Administrative Services Division

October 2019

IMPLEMENTATION OF PROCUREMENT AUDIT RECOMMENDATIONS

Summary

One Internal Audit performed by TxDMV Staff.

- Eight (8) recommendations;
- Four (4) implemented by 9-1-2019;
- Three (3) due by 12-31-2019, and
- One due by 12-31-2020.

Two external audits performed by State Auditor's Office and Texas Comptroller's Office.

- Fifteen (15) recommendations;
- Twelve (12) implemented by 8-30-2019;
- Two (2) due 11-30-2019;
- One due 01-2020.

The following information details the Audits and their purpose.

Internal Audit

TxDMV Report #19-10: Procurement and Contract Management

Purpose: The objectives of the audit were to determine the following:

- To determine whether the procurement process is achieving desired outcomes.
- To determine whether the contract management process is achieving desired outcomes.

**4 of 8 recommendations Implemented; 3 recommendations due 12-31-2019;
1 recommendation due 12-31-2020.**

- **1.1:** By 9-1-2019 - The Finance and Administrative Services Division should develop and document a process for how to assign requisitions to Purchasing Section staff.
 - Implementation Date **8-1-2019**
- **1.2:** By **12-31-2019** - The Finance and Administrative Services Division should develop purchasing strategies that include specific purchasing timeframes to consolidate certain high volume, low-dollar transactions. In process of strategy development.
- **1.3:** By **12-31-2019** - The Finance and Administrative Services Division and the Office of General Counsel should create a risk-based process to determine which purchases

or contracts (including solicitations) should go through an OGC review prior to execution. Draft current process has been to submit all contracts that require Executive Director signature to OGC.

- **2.1:** By 9-1-2019 - The Finance and Administrative Services Division should revise the Peer Review Checklist to include all relevant requirements of the Comptroller Procurement and Contract Management Guide, including a conflict of interest disclosure and review of vendor franchise tax standing. By 9-1-2019
 - Implementation Date **8-1-2019**
- **2.2:** By **12-31-2019** - The Finance and Administrative Services Division should develop a monitoring process to ensure the peer review process is consistently applied and completed timely. Purchasing staff has been informed in weekly meetings to conduct peer review before dispatching PO. PO Checklist has been updated.
- **3.1:** By 9-30-2019 - The Department should create a monitoring process for contract management that includes information on deliverables, reporting time frames, and contract manager oversight of the contract monitoring. The monitoring process should also include information and procedures on how to handle follow-up action, corrective action monitoring, site visits, and status/activity reports.
 - Implementation Date **8-30-2019**
- **3.2:** By **12-31-2020** - The Department should ensure that staff obtain required contract manager certification if they are managing contracts with a combined value exceeding \$5,000,000. Identification of division contract managers is being compiled to determine which individuals in the department should obtain certification.
- **4.1:** By 9-1-2019 - The Finance and Administrative Services Division should develop and implement a reconciliation or review process to ensure all required purchase orders are reported to the LBB.
 - Implementation Date **8-30-2019**

External Audits

A. State Auditor Office (SAO) Report #19-029: A Report on Selected Contracts at the TxDMV

Purpose: Auditors selected two Department of Motor Vehicles (Department) contracts to audit for this report:

1. My Plates contract. This contract was originally procured in 2009 by the Department of Transportation and was renewed under the Department on November 19, 2014. The contract is for the design, sale, and marketing of specialty license plates until November 18, 2019. The contract requires My Plates to reimburse the Department for costs related to programming prior to production, plate design or redesign, and production for each plate per order year.

Revenue generated from the sale of specialty license plates is divided between the State and My Plates. My Plates guarantees through the contract that the State shall receive at least \$15 million in revenue share payments by the end of the contract renewal term.

2. Insight Public Sector contract. The Department contracted with Insight Public Sector for the 2016 Registration and Titling System County Equipment Refresh Project (CERP). The objective of CERP was to replace existing Department equipment located at more than 500 county tax assessor-collector offices across the state.

The total contract amount is \$6,961,134, with \$5,761,134 for the equipment and installation and \$1,200,000 for maintenance services over a 4-year period. The contract term is July 26, 2016, through August 6, 2020.

Four (5) of (8) recommendations have been completed; Internal Audit Division is reviewing documentation. Two (2) recommendations due 11-30-2019; 1 recommendation due 01-31-2020.

- **Chapter 1: Future Contract** - The Department Monitored Some Areas of Its Specialty License Plate Contract, But It Should Identify and Monitor Other Key Areas
 - 4/23/19-Purchasing developed a Contract Monitoring template. New solicitation RFP 608-19-0002 requires monthly monitoring, an annual performance review against the Contractor's marketing plan.
 - In addition, the current MyPlates contract expires in November 2019, and the Department has begun planning on how to monitor the new Specialty License Plate contract. For the new Specialty License Plate contract, the Department will enhance the contract monitoring process to include a formalized contract monitoring plan based on a risk assessment and implement a post award contract conference to ensure contractors are aware of all contract requirements, including subcontracting reporting requirements. The draft Request for Proposal (RFP) for the Specialty License Plate contract has been modified to simplify the submission of auction proceeds and ensure compliance with third-party agreements. The RFP will require the selected vendor to use the Department's template for its license

agreements with third parties to ensure that all required clauses are included in the license agreements. The RFP will also require the selected vendor to collect payment from winning auction bidders and submit their plate orders within seven calendar days of the completion of an auction, and require the vendor to make payment to the state the same day the vendor places the order for the license plates with the state. These modifications to payment collections are in response to the difficulty experienced under the current contract provisions. Implementation Date [01-31-2020](#).

- **Chapter 1: License Plate Sales Revenue** - The Department should improve its monitoring activities of sales revenue and revenue allocation – Implementation Date [11-30-2019](#).
- **Chapter 1: Risk Assessment** – [5-31-2019](#) (Implemented before 5-31-2019, closed by IAD 6-27-2019)
 - The Department should perform a risk assessment and develop a monitoring plan to ensure compliance with key contract requirements. Risk Assessment template is completed in advance of a project start and a Contract Monitoring tool will be used throughout the contract period.
- **Chapter 1: Subcontracting Requirements** - The Department should improve its monitoring activities of subcontracting requirements – Implementation Date [11-30-2019](#).
 - HUB Coordinator created HSP forms for determining subcontracting opportunities, evaluating HSPs and HSP Revision form for Prime Contractor. Subcontracting expenditures will be tracked monthly for contracts/PO's that contain a HUB Subcontracting Plan. The new Assistant HUB Coordinator will be responsible.
- **Chapter 2: HUB subcontracting** - Chapter 2-A – Implementation Date [8-30-2019](#).
 - The Department Adequately Performed Oversight Activities for the Insight Contract HUB Coordinator created HSP Revision form for Prime Contractor to use and submit for TxDMV review prior to HSP changes.
 - TxDMV's Assistant HUB Coordinator separated from the department in March 2019 and a job posting is scheduled to close on Monday, July 1, 2019. This has resulted in a delay to complete the audit response originally set June 30, 2019. The department will complete the audit response as follows by August 30, 2019:
 - The HUB Subcontracting Plan (HSP) monitoring process includes:
 - - HUB staff attend post-award contract conference to discuss monthly reporting requirements
 - - HUB staff maintains and monitors the submission of the monthly Progress Assessment Report (PAR) forms

- - HUB staff provides written communication to the Contractor regarding missing monthly PAR forms
- Implementation Date 8-30-2019.
- **Chapter 2: LBB Reporting** - Chapter 2-B: The Department Should Ensure That It Consistently Reports Contracts as Required – Implementation Date 6-30-2019.
 - Purchasing staff has been trained and provided LBB Contract Reporting Requirements, and LBB Contracts Database New Interface User Guide, February 2019. A compliance check team will cross reference LBB with TxDMV website.
- **Chapter 2: Contract Terms** - Chapter 2-A: The Department Adequately Performed Contract Planning and Procurement, Formation – Implementation Date 8-30-2019.
 - Purchasing and the Office of General Counsel updated competitive solicitation templates.

B. Comptroller of Public Accounts (CPA) Report #608-18-01 Post-Payment

Purpose: To determine whether the Department's expenditures complied with certain state laws and rules concerning expenditures and with the processing requirements of the Uniform Statewide Accounting System (USAS), Centralized Accounting and Payroll/Personnel System (CAPPS) and the Statewide Project Reporting System (SPRS).

All 7 recommendations were implemented by 8-31-2019; Internal Audit Division is reviewing documentation.

Bid and Evaluation Criteria Not Followed

- Implementation Date **8-31-2019**.
- Purchasing has created a PO File Checklist which is reviewed/signed by Purchaser and a Peer Reviewer.

Missing Centralized Master Bidders List Search

- Implementation Date **8-31-2019**.
- Purchasing has created a PO File Checklist which is reviewed/signed by Purchaser and a Peer Reviewer.

Missing Electronic State Business Daily Posting

- Implementation Date **8-31-2019**.
- Purchasing has created a PO File Checklist which is reviewed/signed by Purchaser and a Peer Reviewer.

Missing Historically Underutilized Business Subcontracting Plan

- Implementation Date **8-31-2019**.
- Purchasing continues review of contract files for HSP compliance.

Missing System for Award Management Search

- Implementation Date **8-31-2019**.
- Purchasing has created a PO File Checklist which is reviewed/signed by Purchaser and a Peer Reviewer.

Missing Department of Information Resources Exemption

- Implementation Date **8-31-2018**.
- Purchasing provided internal staff training 8-31-2018.

Purchase Order Created After Invoice

- Implementation Date **9-30-2019**.
- Purchasing provided Procurement training to Agency staff September 2018 and June 2019 and created a Non-Compliant Corrective Action Plan Tracking Log.



Board Meeting Date: 10/3/2019

ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Sandra Menjivar-Suddeath, Internal Audit Division Director
Agenda Item: 11.E
Subject: Internal Audit Charter

RECOMMENDATION

Recommendation to approve the TxDMV Internal Audit Charter

PURPOSE AND EXECUTIVE SUMMARY

The Texas Department of Motor Vehicles (TxDMV) Internal Audit Charter outlines the vision, mission, goals, purpose, authority, scope, and responsibilities of the internal audit function. It establishes the independence and objectivity of the internal audit function to provide assurance services (audits) and advisory services (consulting) to the TxDMV Board and TxDMV Management. It further gives authority to the internal audit function to have full access to records, personnel, and physical properties needed to conduct assurance and advisory services.

FINANCIAL IMPACT

None.

BACKGROUND AND DISCUSSION

The Texas Internal Auditing Act (Govt Code 2102.008) requires that the internal audit function adhere to the International Standards for the Professional Practice of Internal Auditing (Standards). Those standards require the internal audit function have an internal audit charter that is periodically updated and outlines the purpose, mission, authority, independence/objectivity, and responsibilities for the internal audit function. The internal audit charter should also outline the board's and management's responsibilities related to the internal audit function.

The current TxDMV Internal Audit Charter was approved by the TxDMV Board in October 2018 and does not reflect current leadership of the TxDMV Board and the Finance & Audit Committee. In addition, changes were made to clarify scope and authority of the internal audit function.



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Internal Audit Charter

Introduction

This charter sets forth the mission, purpose, authority, and responsibility of the internal audit activity (i.e., Internal Audit Division) at the Texas Department of Motor Vehicles (TxDMV). The charter establishes the Internal Audit Division's position within the TxDMV; authorizes access to records, personnel, and physical properties needed to conduct engagements; and defines the scope of the internal audit activities. The Internal Audit Division helps enhance and protect organizational value by providing risk-based and objective assurance, advice, and insight. The Internal Audit Division also helps TxDMV accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of governance, risk management, and control processes.

Audit Standards

The Internal Audit Division will govern itself by adherence to the mandatory elements of the Institute of Internal Auditors' *International Professional Practices Framework*, including the Core Principles for the Professional Practice of Internal Auditing, the Code of Ethics, the International Standards for the Professional Practice of Internal Auditing, and the Definition of Internal Auditing. Internal Audit will also follow the *Generally Accepted Government Auditing Standards* (GAGAS) as promulgated by the U.S. Government Accountability Office (GAO). The Internal Audit Director will report annually to TxDMV executive management and the TxDMV Board regarding the Internal Audit Division's conformance to the auditing standards.

In addition, internal audit division will adhere to the TxDMV's policies and procedures and the Internal Audit Division's standard operating procedures.

Vision, Mission, and Goals

Vision

To be a future focused internal audit function protecting and serving the Department and its customers.

Mission

To identify emerging strategic risks, support adaptability in an evolving environment, and foster trusted relationships and an ethical environment.

Goals

The Internal Audit Division will use a proactive future-based approach to provide opinions on industry risks, current events, and the anticipated impacts to the Department through audits and advisory services. The Internal Audit Division will also strategically assess its effectiveness and progressively improve roles through actively engaging in outreach and

providing opportunities for feedback. In addition, the Internal Audit Division will conduct informational campaigns, including training on detecting fraud, waste and abuse; and investigate internal fraud, waste, and abuse allegations.

Purpose

The Internal Audit Division provides assurance services to the TxDMV Board by conducting audits of the Department's functions, operations, and information systems. Assurance services may include financial audits, compliance audits, economy and efficiency audits, effectiveness audits, and investigations. The Internal Audit Division also offers advisory services, the nature and scope of which may be agreed upon with TxDMV executive management or the Board. An advisory service is intended to add value and improve agency operations and may include, but are not limited to, advice and counsel, facilitation, and training. In addition, the Division will investigate suspected internal fraud, waste, or abuse allegations as necessary.

Authority

The Internal Audit Division, with strict accountability for confidentiality and safeguarding records and information, is authorized full, free, and unrestricted access to all of TxDMV records, physical properties, and personnel pertinent to carrying out any engagement. All employees are expected to assist the Internal Audit Division in any assessment, engagement, or audit, as appropriate. The Internal Audit Division will also have free and unrestricted access to the TxDMV Board and its members and any TxDMV related records they possess for assessments, engagements, or audits, as appropriate.

The Internal Audit Director is authorized to do the following:

- Access (unrestricted), in the performance of authorized audits and other engagements and with strict accountability for safekeeping and confidentiality, to all TxDMV activities, records, manual and automated systems, properties, and personnel, as appropriate.
- Audit or review any function, activity, or unit of the TxDMV, including vendors, contractors, and subcontractors (to the extent as related to the vendor/contractor/subcontractor deliverables and/or statements of work in applicable TxDMV contracts).
- Communicate and interact directly with the TxDMV Board and present any matter that may warrant immediate attention or action.
- Present any matter and have direct access to the TxDMV Executive Director and General Counsel that may warrant immediate attention or action.
- Allocate audit resources, set frequencies, select subjects, determine scopes of work, and apply the techniques required to accomplish the audit objectives, and issue reports.
- Obtain the necessary assistance of personnel in TxDMV units as appropriate, as well as other specialized services from within or outside of TxDMV that the Internal Audit Director engages for consulting with internal audit or providing assurance services in accordance

with departmental policies and procedures.

The Internal Audit Division is not authorized to complete the following:

- Perform any operational duties for TxDMV.
- Initiate or approve financial transactions external to the internal audit function.
- Direct the activities of any TxDMV employee not employed by the Internal Audit Division, except to the extent such employees have been assigned to the internal audit function or to otherwise assist the Internal Audit Director.

Independence and Objectivity

To assure the independence of the internal audit function, the Internal Audit Director reports functionally to the TxDMV Board and its Finance and Audit Committee and administratively to the Executive Director.

In carrying out authorized assessments, engagements, or audits, the Internal Audit Division will remain independent and free from control on matters of audit selection, scope, procedures, frequency, timing, or final report content to permit maintenance of an independent and objective state of mind. The Internal Audit Division will also remain free from all restrictions that threaten the ability of internal auditors to carry out their responsibilities in an unbiased manner.

The Internal Audit Division and its staff will exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined. Internal auditors will make a balanced assessment of all relevant circumstances and not be influenced by their own interests or by others in forming judgments.

The Internal Audit Division and its staff will have no direct operational responsibility or authority over any of the activities audited. Accordingly, they will not implement internal controls, develop procedures, install systems, prepare records, or engage in any other activity related to non-audit functions that may impair internal auditor's independence. Internal auditor will not assess specific operations for which they had responsibility within the previous year.

The Internal Audit Division and its staff will conduct the following:

- Disclose any impairment of independence or objectivity, in fact or appearance, to appropriate TxDMV staff, the board, or agencies as appropriate.
- Exhibit professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined.
- Take necessary precautions to avoid being unduly influenced by their own interests or by others in forming judgments.
- Establish safeguards to limit impairments to independence or objectivity if the Internal

Audit Director has or is expected to have roles and/or responsibilities that fall outside of internal auditing.

The Internal Audit Director will confirm to the TxDMV Board at least annually, the organizational independence of the Internal Audit Division.

The Internal Audit Director will disclose to the TxDMV Board or the Finance & Audit Committee any interference and related implications in determining the scope of internal auditing, performing work, and/or communicating results.

Scope

The scope of Internal Audit Division encompasses, but is not limited to, objective examinations of information for the purpose of providing independent assessments to the TxDMV Board, management, and oversight entities on the adequacy and effectiveness of governance, risk management, and control processes for TxDMV and fraud, waste, and abuse activities. Internal audit assessments include collaborating with appropriate TxDMV legal staff and division employees in evaluating whether:

- Risks, relating to the achievement of TxDMV's strategic objectives, are appropriately identified and managed.
- Actions of TxDMV staff and contractors follow TxDMV's policies, procedures, and applicable laws, regulations, and governance standards.
- Results of operations or programs are consistent with established goals and objectives.
- Operations or programs are being carried out effectively and efficiently.
- Information and the means used to identify, measure, analyze, classify, and report such information are reliable and have integrity.
- Resources and assets are acquired economically, used efficiently, and protected adequately.
- Established processes and systems enable compliance with the policies, procedures, laws, and regulations that could significantly impact TxDMV
- Fraud, waste, and abuse may have occurred.

The Internal Audit Director will report periodically to TxDMV executive management and the TxDMV Board regarding:

- The Internal Audit Division's purpose, authority, and responsibility
- The Internal Audit Division's plan and performance relative to its plan
- The Internal Audit Division's conformance with audit standards
- Significant risk exposures and control issues, including fraud, waste, and abuse risks, governance issues, and other matters requiring the attention of, or requested by, the

TxDMV Board

- Results of audit engagements or other activities
- Resource requirements
- Any risk accepted that may be unacceptable

The Internal Audit Director will also coordinate activities, where possible, and considers relying upon the work of other internal and external assurance and consulting service providers as needed. Opportunities for improving the efficiency of governance, risk management, and control processes may be identified during engagements. These opportunities will be communicated to the appropriate level of management.

Responsibilities

The **TxDMV Board** will perform the following duties:

- Approve the internal audit charter.
- Approve the risk-based internal audit plan.
- Approve the annual internal audit budget and resource plan.
- Receive communications from the Internal Audit Director on the Internal Audit Division's performance relative to the plan and other matters.
- Approve decisions regarding the appointment and removal of the Internal Audit Director.
- Provide an annual performance evaluation of the Internal Audit Director.
- Approve the remuneration of the Internal Audit Director.
- Review the resources dedicated to the internal audit program and determine if adequate resources exist to ensure that risks identified in the annual risk assessment are adequately covered within a reasonable time frame.
- Make appropriate inquiries of management and the Internal Audit Director to determine whether there is inappropriate scope or resource limitation.

The **Internal Audit Director** will perform the following duties:

- Submit, at least annually, a risk-based internal audit plan for review and approval.
- Communicate the impact of resource limitations on the internal audit plan.
- Review and adjust the internal audit plan, as necessary, in response to changes in TxDMV's business, risks, operations, programs, systems, and controls.
- Communicate any significant interim changes to the internal audit plan to the TxDMV Board and executive management.
- Ensure each engagement of the internal audit plan is executed, including the

establishment of objectives and scope, the assignment of appropriate and adequately supervised resources, the documentation of work programs and testing results, and the communication of engagement results with applicable conclusions and recommendations to appropriate parties.

- Follow up on engagement results and management action plans, and reporting periodically any corrective actions not effectively implemented.
- Ensure the principles of integrity, objectivity, confidentiality, and competency are applied and upheld.
- Ensure the Internal Audit Division collectively possesses or obtains the knowledge, skills, and other competencies needed to meet the requirements of the internal audit charter.
- Ensure trends and emerging issues that could impact TxDMV are considered and communicated as appropriate.
- Ensure emerging trends and successful practices in internal auditing are considered.
- Establish and ensure adherence to policies and procedures designed to guide the Internal Audit Division.
- Ensure conformance of the Internal Audit Division with audit standards.
- Act as agency liaison for all external auditors and monitors.
- Establish a quality assurance program by which the Internal Auditor assures the TxDMV Board that operations of internal auditing activities are acceptable.
- Prepare final reports of findings and recommendations for review by the TxDMV Executive Director, the TxDMV Board, and subsequent distribution to the Office of the Governor, Legislative Budget TxDMV Board, Sunset Advisory Commission, and State Auditor's Office as specified by the Texas Internal Auditing Act.
- Prepare an annual report for review by the TxDMV Board and submission pursuant to the requirements of the Act.
- Conduct, annually, a Quality Assurance and Improvement Program (QAIP) and participate in comprehensive external peer reviews.
- Conduct economy and efficiency audits and program results audits as directed by the TxDMV Board.
- Serve as a contact for fraud, waste and abuse allegations.
- Investigates internal fraud, waste, and abuse allegations.
- Notify the TxDMV Board and management of the results for any fraud, waste, and abuse activities or investigations.
- Review State Auditor's Office Hotline complaints, taking appropriate action, and reporting out results.
- Carry out advisory services as may be requested by the TxDMV Board that are not

prohibited by statute or professional standards.

- Carry out any advisory services as may be requested by management that are not prohibited by statute or professional standards and for which resources are available as determined by the Internal Audit Director.

TxDMV management is responsible for the following activities:

- Establishing and maintaining effective controls to ensure that goals and objectives are met, services are provided effectively, and assets are safeguarded
- Providing information to internal audit as requested
- Maintaining a process to ensure timely management responses and that appropriate action is taken on audit recommendations
- Informing the Internal Audit Director of reviews, evaluations, assessments, audits, or inspections scheduled by local, state, or national agencies and/or external consultants or auditors evaluating programs or controls

Quality Assurance and Improvement Program

The Internal Audit Division will maintain a quality assurance and improvement program that covers all aspects of the Internal Audit Division. The program will include an evaluation of the Internal Audit Division's conformance with audit standards on an annual basis. The program will also assess the efficiency and effectiveness of the Internal Audit Division and identify opportunities for improvement, including reporting on key performance indicators. The Internal Audit Director will communicate to TxDMV executive management and the TxDMV Board on the Internal Audit Division's quality assurance and improvement program, including results of internal assessments (both ongoing and periodic) on an annual basis and external assessments conducted at least once every three years by a qualified, independent assessor or assessment team from outside TxDMV.

APPROVAL

Whitney H. Brewster
Executive Director

Sandra Menjivar-Suddeath, CIA, CISA, CGAP
Internal Audit Director

This charter is approved by the Board of the Texas Department of Motor Vehicles on October 3, 2019.

Guillermo "Memo" Treviño, Chairman
Board of Texas Department
of Motor Vehicles

Brett Graham, Chair
Finance and Audit Committee
Board of Texas Department of Motor
Vehicles



Texas Department of Motor Vehicles

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Internal Audit Charter

Introduction

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Audit Standards

The Internal Audit Division will govern itself by adherence to the mandatory elements of the Institute of Internal Auditors' *International Professional Practices Framework*, including the Core Principles for the Professional Practice of Internal Auditing, the Code of Ethics, the International Standards for the Professional Practice of Internal Auditing, and the Definition of Internal Auditing. Internal Audit will also follow the *Generally Accepted Government Auditing Standards* (GAGAS) as promulgated by the U.S. Government Accountability Office (GAO). The Internal Audit Director will report annually to TxDMV executive management and the TxDMV Board regarding the Internal Audit Division's conformance to the auditing standards.

In addition, internal audit division will adhere to the TxDMV's policies and procedures and the Internal Audit Division's standard operating procedures.

Vision, Mission, and Goals

Vision

To be a future focused internal audit function protecting and serving the Department and its customers.

Mission

To identify emerging strategic risks, support adaptability in an evolving environment, and foster trusted relationships and an ethical environment.

Goals

The Internal Audit Division will use a proactive future-based approach to provide opinions on industry risks, current events, and the anticipated impacts to the Department through audits and advisory services. The Internal Audit Division will also strategically assess its effectiveness and progressively improve roles through actively engaging in outreach and providing opportunities for feedback. In addition, the Internal Audit Division will conduct informational campaigns, including training on detecting fraud, waste and abuse; and

investigate internal fraud, waste, and abuse allegations.

Purpose

The Internal Audit Division provides assurance services to the TxDMV Board by conducting audits of the Department's functions, operations, and information systems. Assurance services may include financial audits, compliance audits, economy and efficiency audits, effectiveness audits, and investigations. The Internal Audit Division also offers advisory services, the nature and scope of which may be agreed upon with TxDMV executive management or the Board. An advisory service is intended to add value and improve agency operations and may include, but are not limited to, advice and counsel, facilitation, and training. In addition, the Division will investigate suspected internal fraud, waste, or abuse allegations as necessary.

Authority

The Internal Audit Division, with strict accountability for confidentiality and safeguarding records and information, is authorized full, free, and unrestricted access to all of TxDMV records, physical properties, and personnel pertinent to carrying out any engagement. All employees are expected to assist the Internal Audit Division in any assessment, engagement, or audit, as appropriate. The Internal Audit Division will also have free and unrestricted access to the TxDMV Board and its members and any TxDMV related records they possess for assessments, engagements, or audits, as appropriate.

The Internal Audit Director is authorized to do the following:

- Access (unrestricted), in the performance of authorized audits and other engagements and with strict accountability for safekeeping and confidentiality, to all TxDMV activities, records, manual and automated systems, properties, and personnel, as appropriate.
- Audit or review any function, activity, or unit of the TxDMV, including vendors, contractors, and subcontractors (to the extent as related to the vendor/contractor/subcontractor deliverables and/or statements of work in applicable TxDMV contracts).
- Communicate and interact directly with the TxDMV Board and present any matter that may warrant immediate attention or action.
- Present any matter and have direct access to the TxDMV Executive Director and General Counsel that may warrant immediate attention or action.
- Allocate audit resources, set frequencies, select subjects, determine scopes of work, and apply the techniques required to accomplish the audit objectives, and issue reports.
- Obtain the necessary assistance of personnel in TxDMV units as appropriate, as well as other specialized services from within or outside of TxDMV that the Internal Audit Director engages for consulting with internal audit or providing assurance services in accordance with departmental policies and procedures.

The Internal Audit Division is not authorized to complete the following:

- Perform any operational duties for TxDMV.
- Initiate or approve financial transactions external to the internal audit function.
- Direct the activities of any TxDMV employee not employed by the Internal Audit Division, except to the extent such employees have been assigned to the internal audit function or to otherwise assist the Internal Audit Director.

Independence and Objectivity

To assure the independence of the internal audit function, the Internal Audit Director reports functionally to the TxDMV Board and its Finance and Audit Committee and administratively to the Executive Director.

In carrying out authorized assessments, engagements, or audits, the Internal Audit Division will remain independent and free from control on matters of audit selection, scope, procedures, frequency, timing, or final report content to permit maintenance of an independent and objective state of mind. The Internal Audit Division will also remain free from all restrictions that threaten the ability of internal auditors to carry out their responsibilities in an unbiased manner.

The Internal Audit Division and its staff will exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined. Internal auditors will make a balanced assessment of all relevant circumstances and not be influenced by their own interests or by others in forming judgments.

The Internal Audit Division and its staff will have no direct operational responsibility or authority over any of the activities audited. Accordingly, they will not implement internal controls, develop procedures, install systems, prepare records, or engage in any other activity related to non-audit functions that may impair internal auditor's independence. Internal auditor will not assess specific operations for which they had responsibility within the previous year.

The Internal Audit Division and its staff will conduct the following:

- Disclose any impairment of independence or objectivity, in fact or appearance, to appropriate TxDMV staff, the board, or agencies as appropriate.
- Exhibit professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined.
- Take necessary precautions to avoid being unduly influenced by their own interests or by others in forming judgments.
- Establish safeguards to limit impairments to independence or objectivity if the Internal Audit Director has or is expected to have roles and/or responsibilities that fall outside of internal auditing.

The Internal Audit Director will confirm to the TxDMV Board at least annually, the organizational independence of the Internal Audit Division.

The Internal Audit Director will disclose to the TxDMV Board or the Finance & Audit Committee any interference and related implications in determining the scope of internal auditing, performing work, and/or communicating results.

Scope

The scope of Internal Audit Division encompasses, but is not limited to, objective examinations of evidence information for the purpose of providing independent assessments to the TxDMV Board, management, and oversight entities on the adequacy and effectiveness of governance, risk management, and control processes for TxDMV and fraud, waste, and abuse activities. Internal audit assessments include collaborating with appropriate TxDMV legal staff and division employees in evaluating the following whether:

- Risks, relating to the achievement of TxDMV's strategic objectives, are appropriately identified and managed.
- Actions of TxDMV staff and contractors follow TxDMV's policies, procedures, and applicable laws, regulations, and governance standards.
- Results of operations or programs are consistent with established goals and objectives.
- Operations or programs are being carried out effectively and efficiently.
- Information and the means used to identify, measure, analyze, classify, and report such information are reliable and have integrity.
- Resources and assets are acquired economically, used efficiently, and protected adequately.
- Established processes and systems enable compliance with the policies, procedures, laws, and regulations that could significantly impact TxDMV
- Fraud, waste, and abuse may have occurred.

The Internal Audit Director will report periodically to TxDMV executive management and the TxDMV Board regarding:

- The Internal Audit Division's purpose, authority, and responsibility
- The Internal Audit Division's plan and performance relative to its plan
- The Internal Audit Division's conformance with audit standards
- Significant risk exposures and control issues, including fraud, waste, and abuse risks, governance issues, and other matters requiring the attention of, or requested by, the TxDMV Board

- Results of audit engagements or other activities
- Resource requirements
- Any risk accepted that may be unacceptable

The Internal Audit Director will also coordinate activities, where possible, and considers relying upon the work of other internal and external assurance and consulting service providers as needed. Opportunities for improving the efficiency of governance, risk management, and control processes may be identified during engagements. These opportunities will be communicated to the appropriate level of management.

Responsibilities

The **TxDMV Board** will perform the following duties:

- Approve the internal audit charter.
- Approve the risk-based internal audit plan.
- Approve the annual internal audit budget and resource plan.
- Receive communications from the Internal Audit Director on the Internal Audit Division's performance relative to the plan and other matters.
- Approve decisions regarding the appointment and removal of the Internal Audit Director.
- Provide an annual performance evaluation of the Internal Audit Director.
- Approve the remuneration of the Internal Audit Director.
- Review the resources dedicated to the internal audit program and determine if adequate resources exist to ensure that risks identified in the annual risk assessment are adequately covered within a reasonable time frame.
- Make appropriate inquiries of management and the Internal Audit Director to determine whether there is inappropriate scope or resource limitation.

The **Internal Audit Director** will perform the following duties:

- Submit, at least annually, a risk-based internal audit plan for review and approval.
- Communicate the impact of resource limitations on the internal audit plan.
- Review and adjust the internal audit plan, as necessary, in response to changes in TxDMV's business, risks, operations, programs, systems, and controls.
- Communicate any significant interim changes to the internal audit plan to the TxDMV Board and executive management.
- Ensure each engagement of the internal audit plan is executed, including the establishment of objectives and scope, the assignment of appropriate and adequately supervised resources, the documentation of work programs and testing results, and the

communication of engagement results with applicable conclusions and recommendations to appropriate parties.

- Follow up on engagement results and management action plans, and reporting periodically any corrective actions not effectively implemented.
- Ensure the principles of integrity, objectivity, confidentiality, and competency are applied and upheld.
- Ensure the Internal Audit Division collectively possesses or obtains the knowledge, skills, and other competencies needed to meet the requirements of the internal audit charter.
- Ensure trends and emerging issues that could impact TxDMV are considered and communicated as appropriate.
- Ensure emerging trends and successful practices in internal auditing are considered.
- Establish and ensure adherence to policies and procedures designed to guide the Internal Audit Division.
- Ensure conformance of the Internal Audit Division with audit standards.
- Act as agency liaison for all external auditors and monitors.
- Establish a quality assurance program by which the Internal Auditor assures the TxDMV Board that operations of internal auditing activities are acceptable.
- Prepare final reports of findings and recommendations for review by the TxDMV Executive Director, the TxDMV Board, and subsequent distribution to the Office of the Governor, Legislative Budget TxDMV Board, Sunset Advisory Commission, and State Auditor's Office as specified by the Texas Internal Auditing Act.
- Prepare an annual report for review by the TxDMV Board and submission pursuant to the requirements of the Act.
- Conduct, annually, a Quality Assurance and Improvement Program (QAIP) and participate in comprehensive external peer reviews.
- Conduct economy and efficiency audits and program results audits as directed by the TxDMV Board.
- Serve as a contact for fraud, waste and abuse [allegations](#).
- [Investigates internal fraud, waste, and abuse allegations.](#) ~~investigations activities and investigating any reported cases.~~
- Notify the TxDMV Board and management of the results for any fraud, waste, and abuse ~~elimination~~ activities or investigations.
- Review State Auditor's Office Hotline complaints, taking appropriate action, and reporting out results.
- Carry out advisory services as may be requested by the TxDMV Board that are not

prohibited by statute or professional standards.

- Carry out any advisory services as may be requested by management that are not prohibited by statute or professional standards and for which resources are available as determined by the Internal Audit Director.

TxDMV management is responsible for the following activities:

- Establishing and maintaining effective controls to ensure that goals and objectives are met, services are provided effectively, and assets are safeguarded
- Providing information to internal audit as requested
- Maintaining a process to ensure timely management responses and that appropriate action is taken on audit recommendations
- Informing the Internal Audit Director of reviews, evaluations, assessments, audits, or inspections scheduled by local, state, or national agencies and/or external consultants or auditors evaluating programs or controls

Quality Assurance and Improvement Program

The Internal Audit Division will maintain a quality assurance and improvement program that covers all aspects of the Internal Audit Division. The program will include an evaluation of the Internal Audit Division's conformance with audit standards on an annual basis. The program will also assess the efficiency and effectiveness of the Internal Audit Division and identify opportunities for improvement, including reporting on key performance indicators. The Internal Audit Director will communicate to TxDMV executive management and the TxDMV Board on the Internal Audit Division's quality assurance and improvement program, including results of internal assessments (both ongoing and periodic) on an annual basis and external assessments conducted at least once every three years by a qualified, independent assessor or assessment team from outside TxDMV.

APPROVAL

Whitney H. Brewster
Executive Director

Sandra Menjivar-Suddeath, CIA, CISA, CGAP
Internal Audit Director

This charter is approved by the Board of the Texas Department of Motor Vehicles on October 34, 2019.

Guillermo "Memo" Treviño
Raymond Palacios, Jr., Chairman
Board of Texas Department
of Motor Vehicles

Brett Graham
Luanne Garaway, Chair
Finance and Audit Committee
Board of Texas Department of Motor

Vehicles



To: Texas Department of Motor Vehicles Board
From: Sandra Menjivar-Suddeath, Internal Audit Division Director
Agenda Item: 11.F
Subject: Internal Audit Division Status

RECOMMENDATION

Briefing Only – No recommendation.

PURPOSE AND EXECUTIVE SUMMARY

The status update provides information on current Internal Audit Division (IAD) activities. The October 2019 update contains the fiscal year (FY) 2020 Internal Audit Plan status and external coordination efforts.

FINANCIAL IMPACT

None.

BACKGROUND AND DISCUSSION

At every TxDMV Board meeting, IAD provides an update and status on current activities, including the annual Internal Audit Plan status. The annual Internal Audit Plan status includes information on the engagement type, the objective(s), anticipated report release date, and the current audit phase. For the October 2019 update, the IAD is providing information on the FY 2020 Internal Audit Plan status and external coordination efforts.

FY 2020 Internal Audit Plan status

The IAD completed two reports and began three engagements:

- FY 2019 Annual Activities Report – A required annual report that summarizes the internal audit activity for the previous fiscal year (*Completed*)
- Quality Assurance and Improvement Program Report – A required internal assessment to evaluate whether the internal audit function is meeting audit standards and achieving efficiency and effectiveness objectives. (*Completed*)
- Patch Management Audit – An audit to evaluate the Department's patch management processes. (*Planning*)
- Titles and Registration Customer Support Audit – An audit to evaluate the Department's customer support functions for the Titles and Registration program. (*Planning*)
- FY 2020 Internal Audit Follow-Up - An engagement to verify if outstanding audit recommendation have been fully implemented. (*Fieldwork*)

External Coordination

The Texas Workforce Commission – Civil Rights Division will be conducting a compliance review.



Fiscal Year (FY) 2020 Audit Plan Status

Engagement	Description	Status
FY 2019 Annual Audit Activities Report	The required report summarizes the internal audit activities conducted in FY 2019.	<i>Completed</i> Report attached.
FY 2019 Quality Assurance and Improvement Program	To assess if the Internal Audit Division is meeting auditing standards and provide information on the division's performance.	<i>Completed</i> Report attached.
Patch Management Audit	The audit will assess whether the Department has processes to maintain current application and server configurations and apply appropriate patches.	<i>Planning</i> Anticipated Issuance: January 2020
Titles and Registration Customer Support Audit	The audit will evaluate the consistency of title and registration of customer support to Tax Assessor-Collector offices and the general public as well as the design of the Department's decentralized customer support function. The audit will also evaluate the communication and planning processes.	<i>Planning</i> Anticipated Issuance: January 2020
FY 2020 Internal Audit Follow-Up	This engagement verifies if outstanding audit recommendations have been fully implemented. Currently, IAD is reviewing internal audit recommendations that had a completion date or were implemented between September 1 – December 31, 2019.	<i>Fieldwork</i>

External Coordination

- The Texas Workforce Commission – Civil Rights Division will be conducting a compliance review.



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Fiscal Year 2019 Annual Audit Activities Report 20 – 01

Internal Audit Division
September 2019

Fiscal Year 2019 Annual Audit Activities, 20-01

Executive Summary

BACKGROUND

On an annual basis, the Internal Audit Division (IAD) submits its internal audit report to statutorily required parties. The parties that receive a copy of this report include the State Auditor's Office, Legislative Budget Board, and the Governor's Office. In addition, the report is posted on the Texas Department of Motor Vehicles (TxDMV) website.

The report provides information on the assurance (audit) services, consulting (advisory) services, and other activities that were conducted in fiscal year 2019.

The report is developed using the guidelines set forth by the State Auditor's Office.

RESULTS

In fiscal year (FY) 2019, the IAD conducted 11 engagements. These engagements include 9 audit and advisory service engagements, an internal audit plan, and an annual activities report.

The FY 2020 Internal Audit plan, which was approved by the TxDMV Board on August 8, 2019, consists of several items including 7 engagements for the first half, 7 potential engagements for the second half, divisional initiatives, and added value services. These items listed in the audit plan were identified using a risk-based methodology and cover risk related to contract management and information technology risks.

As required in the guidelines set forth by the State Auditor's Office, this report includes information on the external reviews coordinated by the IAD as well as a brief description of actions taken by TxDMV to comply with the fraud reporting and investigation coordination requirements.

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Compliance with Texas Government Code Section 2102.015

The Internal Auditing Act, Texas Government Code §2102.015, requires that within 30 days of approval an entity should post its audit plan and internal audit annual report on its internet web site. The Texas Department of Motor Vehicles (TxDMV) Board approved the *Fiscal Year 2020 Internal Audit Plan* on August 8, 2019, and the TxDMV web master posted the plan to the website after that. Similarly, the TxDMV Board obtains a presentation on the *Fiscal Year 2019 Annual Internal Audit Report* on October 3, 2019, and the TxDMV web master will post the report on the TxDMV website after the Board approval.

In addition, all public audit and follow - up reports are made available on the TxDMV website. The Internal Audit Plan, Annual Activities Report, and other audit reports can be found at <https://www.txdmv.gov/motorists/consumer-protection/internal-audit-division>.

Fiscal Year 2019 Internal Audit Plan Summary

In fiscal year (FY) 2019, the IAD completed 9 audit and advisory service engagements. The 9 engagements conducted by IAD included 6 audit engagements, 2 advisory service engagements, and 1 follow-up engagement.

The Internal Audit Division post every non-confidential audit report on the TxDMV website. Each report includes a summary of any concerns resulting from the audit plan or annual report and actions taken to address those issues. In addition, the reports are summarized below:

- **19-02 Employee Classification and Hiring**: The audit objective was to determine whether the hiring process is sufficiently agile to address current and emerging staffing needs. IAD found that employee classification and hiring processes are at a level 2 maturity level, where procedures are followed by several employees, but the results may not be consistent, the process is not completely documented, and has not been sufficiently evaluated to address risks. IAD issued seven recommendations. These recommendations included clarifying the job classification review process, monitoring the contract performance of the background check vendor, identifying potential bias in the screening, and evaluating the hiring process timeframes.
- **19-03 Lemon Law Investigation & Resolution Process**: The audit objectives were to determine whether the Lemon Law process provides equitable and objective resolution and to determine whether the Lemon Law process is achieving objectives. IAD found that the Lemon Law process is at a level 2 maturity level, where the process is repeatable but intuitive. The function developed a process where similar procedures are followed by several employees, but the results may not be consistent. The process is not completely documented and has not been sufficiently evaluated to address risks. The process developed for Lemon Law has been set up to provide impartial, equitable, and objective resolution. Both the Enforcement Division and the Office of Administrative Hearings have taken steps to show their impartiality and provide equitable and objective resolution to consumers and manufacturers. However, the process has not been sufficiently developed

to ensure that appropriate roles and responsibilities have been established. IAD also found that technology has not been fully leveraged and communication on the process to consumers and manufacturers could be improved. Finally, a formal process to identify and disclose conflict of interest has not been established. IAD issued ten audit recommendations to improve case management and communication.

- **19-04 Enterprise Project Management:** This engagement was an advisory service. See the Consulting Services Section for more details.
- **19-05 Information Security Risk Management:** The audit objective was to determine whether the Department has sufficient processes in place to identify and assess information security threats. IAD found that the Information Security Risk Management process is at a level 2 maturity level, where similar procedures are followed by several employees, but the results may not be consistent. IAD had four audit results and issued 11 audit recommendations to improve the Department's information security risk management processes. Out of the 11 recommendations, 7 recommendations were rated High.
- **19-06 Payment Card Industry (PCI) Compliance:** The audit objective was to determine whether TxDMV is compliant with PCI requirement 5. IAD found that the process is at a level 2 maturity rating. TxDMV has taken several steps to protect against malware and virus. The audit had one result and an observation. To address the result, IAD issued three audit recommendations. Two recommendations were rated HIGH.
- **19-07 Compliance and Investigations Division:** The objectives of the audit were to determine whether CID established appropriate and valid objectives to meet desired outcomes and evaluate whether CID structure is sufficient to prevent, detect, and investigate fraud, waste, and abuse. IAD found the CID processes are at a level 2 maturity level. The audit had three audit results and two observations related to access and sampling procedures. To address the results, IAD issued four recommendations. Three audit recommendations were rated HIGH.
- **19-09 FY 2019 Internal Audit Follow-Up:** The audit objective was to verify the implementation status of internal and external audit recommendations. For the time period, TxDMV implemented 56 of the 62 (90%) internal and external audit recommendations that were due. Specifically, TxDMV implemented all 25 (100%) external audit recommendations and implemented 31 of the 37 (84%) internal audit recommendations that were due from July 2018 to May 2019.
- **19-10 Procurement and Contract Management:** The audit objectives were to determine whether the procurement process (e.g., purchasing process) is achieving desired outcomes and whether the contract management process is achieving desired outcomes. IAD found that the purchasing and contract management processes are at a level 2 maturity rating. While purchasing and contract monitoring processes have been established to provide oversight, facilitation, and management of activities, these processes have not been fully effective due to how the processes were designed. These processes, also, do not ensure

full compliance with applicable laws and regulations or allow for effective monitoring of purchasing or contracts. Eight audit recommendations were made to improve the purchasing and contract management processes. Six of these recommendations were rated HIGH.

- **19-11 Accounts Receivables:** This engagement was an advisory service. See the Consulting Services Section for more details.

Internal Audit Plan for Fiscal Year 2019

The status of the FY 2019 audit plan engagements is outlined below in Table 1.

Table 1. FY 2019 Internal Audit Plan Status

Engagement Code and Name	Report Date
19-01 Annual Audit Report and Quality Assurance Program	October 2018
19-02 Employee Classification and Hiring	January 2019
19-03 Lemon Law Investigation & Resolution Process	January 2019
19-04 Enterprise Project Management Advisory Service	June 2019
19-05 Information Security Risk Management Audit	May 2019
19-06 Payment Card Industry (PCI) Compliance Audit	September 2019
19-07 Compliance and Investigations Division Audit	September 2019
19-09 FY 2019 Internal Audit Follow-Up Audit	August 2019
19-10 Procurement and Contract Management Audit	July 2019
19-11 Accounts Receivable Advisory Service	August 2019
19-12 Internal Audit Plan	August 2019

Internal Audit Plan Deviation

The FY 2019 Internal Audit Plan had hours set aside to allow for management and board requests. The hours set aside were used on two engagements: Procurement and Contract Management Audit and the Accounts Receivable Advisory Service.

Compliance with Texas Government Code, Section 2102.005(b)

Although changes to Texas Government Code, Section 2102.005(b) were not in effect until September 2019, the IAD used the following methods to ensure compliance with contract processes and controls for monitoring agency contracts:

- Audited Procurement and Contract Management processes.
- Reviewed contract terms for background checks in the Employee Classification and Hiring Audit.
- Conducted follow up activities on external recommendations related to contract activities.

Consulting Services and Nonaudit Services Completed

Consulting Services

The IAD conducted two advisory services, or consulting services, during FY 2019. The advisory services related to the Enterprise Project Management Processes and Accounts Receivables.

Enterprise Project Management

In FY 2019, TxDMV underwent a reorganization that placed the formerly independent Enterprise Project Management Office (EPMO) within the Information Technology Services Division (ITSD). ITSD management requested the Internal Audit Division evaluate the current enterprise project governance structure and staff roles and responsibilities, as well as to research alternative project governance models.

The TxDMV conducts several enterprise projects each biennium. Each enterprise project is managed through three key teams: Project, Leadership, and the Executive Steering Committee (ESC). These teams report to the Governance Team, which is responsible for managing the Department's project portfolio. This structure creates transparency for individual projects, but creates inefficiencies due to member overlap as well as unclear roles and authority. IAD identified four alternative governance models: a streamlined version of the current Governance structure, the Information Technology Investment Management Framework (ITIL), the Technology Business Management framework, and a principles-based Agile governance structure.

No recommendations were issued.

Accounts Receivable

The Finance and Administrative Services Division and the Executive Office requested that IAD evaluate the accounts receivable function in the Department and provide information on the revenue collection processes. The scope of the advisory service was FY 2018 accounts receivable activities.

The advisory service identified that TxDMV's accounts receivable function is spread across six divisions. The six divisions along with the Tax Assessor-Collectors Offices, are responsible for collecting and monitoring the different types of accounts receivable. TxDMV has 28 receivable accounts where payments are collected in advance or in arrears of services rendered. The collection and monitoring of receivable accounts are done through 18 different applications, however none of the systems were designed for conducting accounts receivable activities.

No recommendations were issued.

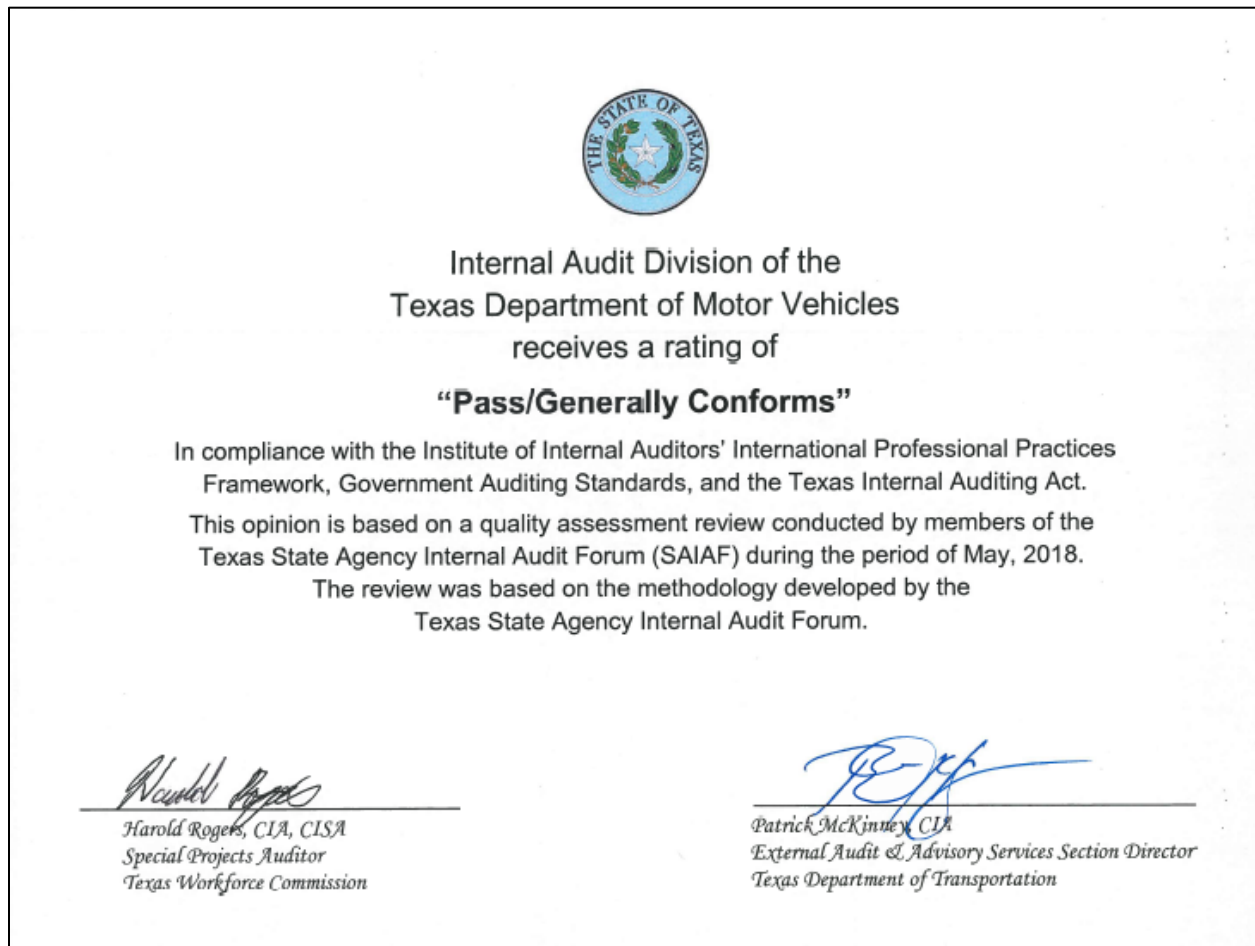
Nonaudit Services

IAD performed nonaudit services during FY 2019. The nonaudit services include facilitating external audit coordination, providing advice on several agency workgroups, and participating as non-voting member in the enterprise project governance process.

External Quality Assurance Review

IAD underwent an external quality assurance review (peer review) in May 2018. Representatives of the State Agency Internal Audit Forum performed the peer review in accordance with current peer review policies and procedures. On May 2018, IAD received a rating of “pass” out of three possible ratings: pass, pass with deficiencies, or fail (see Figure 2).

Figure 2. Peer Review Certificate



The report noted one opportunity for improvement; the opportunity and the Internal Audit Division Director's response is as follows:

Opportunity for Improvement:

The Internal Audit Division should consider performing a periodic project related to the agency's ethics-related objectives, programs, and activities.



Director's Response:

The Internal Audit Division (IAD) will consider performing a project related to the agency's ethics-related objectives, programs, and activities. The Internal Audit Division is currently

conducting a fraud, waste, and abuse risk assessment for the Department to determine if we have sufficient processes to mitigate current fraud, waste, and abuse risks. In addition, the Internal Audit Division plans on periodically performing informational campaigns on ethics for the Department.

Figure 3, Peer Review Opinion, is an excerpt from the TxDMV Internal Audit Division External Quality Assurance Review – May 2018.

Figure 3. Peer Review Opinion

<p>Texas Department of Motor Vehicles Internal Audit Division External Quality Assurance Review – May 2018</p>			
<p>Overall Opinion</p>			
<p>Based on the information received and evaluated during this external quality assurance review, it is our opinion that the Texas Department of Motor Vehicles Internal Audit Division receives a rating of "Pass/Generally Conforms" and is in compliance with the Institute of Internal Auditors (IIA) <i>International Standards for the Professional Practice of Internal Auditing</i> and <i>Code of Ethics</i>, the United States Government Accountability Office (GAO) <i>Government Auditing Standards</i>, and the Texas Internal Auditing Act (Texas Government Code, Chapter 2102). This opinion, which is the highest of the three possible ratings, means that policies, procedures, and practices are in place to implement the standards and requirements necessary for ensuring the independence, objectivity, and proficiency of the internal audit function.</p>			
<p>We found that the Internal Audit Division is independent, objective, and able to render impartial and unbiased judgments on the audit work performed. The staff members are qualified, proficient, and knowledgeable in the areas they audit. Individual audit projects are planned using risk assessment techniques; audit conclusions are supported in the working papers; and findings and recommendations are communicated clearly and concisely.</p>			
<p>The Internal Audit Division is well managed internally. In addition, the Division has effective relationships with the Board and is well respected and supported by management. Surveys and interviews conducted during the quality assurance review indicate that management considers Internal Audit a useful part of the overall agency operations and finds that the audit process and report recommendations add value and help improve the agency's operations.</p>			
<p>The Internal Audit Division has reviewed the results of the peer review team's work and has accepted them to be an accurate representation of the Division's operations.</p>			
<p>Acknowledgements</p>			
<p>We appreciate the courtesy and cooperation extended to us by the Internal Audit Director, Internal Audit Division staff, the Board members, the Executive Director, and the senior managers who participated in the interview process. We thank each person who completed surveys for the quality assurance review. The feedback from the surveys and the interviews provided valuable information regarding the operations of the Internal Audit Division and its relationship with management.</p>			
 Harold Rogers, CIA, CISA Special Projects Auditor Texas Workforce Commission SAIAF Peer Review Team Leader	6/1/18 Date	 Patrick McKinney, CIA External Audit & Advisory Services Section Director Texas Department of Transportation SAIAF Peer Review Team Member	6/1/18 Date

Internal Audit Plan for Fiscal Year 2020

The TxDMV Board approved the Fiscal Year 2020 Internal Audit Plan on August 9, 2019. The audit plan included 7 engagements for the first half of the fiscal year, 7 potential engagements for the second half of the fiscal year, division initiatives, and added value services. Table 2 and 3 provide information on the engagements.

FY 2020 Engagements

Table 2. FY 2020 Engagements – First Half

Engagement Area	Preliminary Engagement Information	Strategic Goal(s)	Impacted Division(s)
Application Services Section Audit <i>750 hours</i>	The audit will evaluate how the section prioritizes and balances support needs. In addition, it will evaluate communication and planning processes.	Customer Centric Optimized Services and Innovation	Information Technology Services Division (ITSD)
Patch Management Audit <i>700 hours</i>	The audit will assess how application and server configurations are current. In addition, the audit will evaluate communication and planning processes. This audit was identified as an area of review in the Cybersecurity road map.	Optimized Services and Innovation	ITSD
Title and Registration Customer Support Audit <i>1000 hours</i>	The audit will evaluate the consistency of customer support. In addition, it will evaluate communication and planning processes.	Customer Centric	Consumer Relations Division (CRD) Vehicle Titles & Registration (VTR) Division Finance & Administrative Services (FAS) Division ITSD
Temporary Tags Advisory Service <i>625 hours</i>	This advisory service will provide strategies to further	Optimized Services and Innovation	VTR ITSD

Engagement Area	Preliminary Engagement Information	Strategic Goal(s)	Impacted Division(s)
	combat temporary tag fraud.		Compliance & Investigations Division (CID)
Annual Audit Activities 25 hours	A statutorily required review that summarizes internal activities conducted in FY 2019. The State Auditor's Office prescribes the report format and information.	Performance Driven	Department-wide
Quality Assurance and Improvement Program 50 hours	An internal assessment to determine compliance with audit standards and provide information on IAD's performance. IAD's performance includes an evaluation of Key Performance Indicators and Capability Model.	Performance Driven	IAD
Audit Recommendation Implementation Status Follow-Up 75 hours	An engagement to verify if outstanding audit recommendations have been fully implemented. Quarterly reporting for internal audit recommendations will be done.	Optimized Services and Innovation Customer Centric Performance Driven	Department-wide

Table 3. FY 2020 Engagements – Potential Second Half

Engagement Area	Preliminary Engagement Information	Strategic Goal(s)	Impacted Division(s)
VTR Strategic Alignment Audit	A potential audit to evaluate whether VTR sufficiently plans to achieve objectives.	Customer Centric Performance Driven	VTR

Engagement Area	Preliminary Engagement Information	Strategic Goal(s)	Impacted Division(s)
Title Litigation Advisory Service	A potential advisory service to evaluate the title litigation processes.	Customer Centric	Office of General Counsel (OGC) VTR
Payment Card Industry (PCI) Audit	A potential audit to evaluate whether the Department is compliant with PCI Requirement 2: Vendor-supplied defaults. This audit was identified as an area of review in the Cybersecurity roadmap.	Performance Driven	ITSD
Mailroom Audit	A potential audit to evaluate mail room operations.	Performance Driven	FAS
OGC Structure Audit	A potential audit to evaluate whether the Office of General Counsel is appropriately structured to achieve objectives.	Customer Centric Optimized Services and Innovation	OGC
Staff Recruitment and Workforce Planning Audit	A potential audit to evaluate if the Department appropriately plans to recruit and retain staff.	Optimized Services and Innovation Performance Driven	Human Resources Division
Supervisory Training Audit	A potential audit to evaluate supervisory training to ensure supervisors understand their roles and responsibilities.	Performance Driven	Human Resources Division

Division Initiatives

In addition to audit engagements, IAD conducts several divisional initiatives to help the division provide more risk coverage. In the first half of the fiscal year, IAD will be conducting the following division initiatives:

- **Senate Bill 65 Implementation:** IAD will identify how to implement statutorily required monitoring of procurement and contract functions.
- **Key Risk Indicators:** IAD will be finalizing processes to conduct continuous risk evaluation for the following items:
 - *Fraud Indicators:* IAD will monitor TxDMV leave balances and payment information.
 - *Regional Service Center (RSC) Transactions:* IAD will be monitoring RSC transactions to identify potential fraud or inefficiencies.
 - *Procurement and Contract Management Monitoring:* IAD will monitor procurement and contracts to identify potential high-risk procurements that might warrant additional review.
 - *ITS Division Monitoring:* IAD will evaluate how to monitor ITS Division workload.
- **Cybersecurity Co-Sourcing:** IAD is in the process of procuring audit services to conduct cybersecurity engagements.
- **TeamCentral Reporting:** IAD is working on developing customized reporting from its audit software.
- **Staff Development Plans and Training:** IAD staff take training and create development plans to obtain required knowledge, skills, and abilities.

Added Value Services

IAD also provides added value services throughout the years. These added value services include fraud, waste, and abuse items, external audit coordination, adhoc advisory, workgroup participation, and department training.

Risk Assessment Methodology

The audit plan was developed using a risk-based methodology, which incorporated input from TxDMV board members, executive management, division management, and risks identified by audit staff through previous fiscal year engagements and observations. IAD also analyzed TxDMV information and reviewed internal audit and industry publications to identify and rank potential audit topics by risk. Projects' risk rankings were developed using the following factors and risk guidelines reviewed and discussed with TxDMV executive management:

- Revenue or expense impact
- Asset or liability impact
- Operational effectiveness and efficiency impact

- Legal or regulatory impact
- Brand or reputational impact
- Degree of change in the program, function, or process
- Degree of complexity
- Degree of centralization
- Control design strength

In total, 162 Department risks were identified through the risk assessment. Each risk was scored using the above factors. The risk scores ranged from zero, which is the lowest risk score, to six, which is the highest risk score. An inherent risk score of four or higher is considered high risk for the Department. Low and medium risk scores range from 0 to 4.

Hours were calculated using historical data and auditor's judgement. Hours are an estimate and could be adjusted during the fiscal year. As the internal audit plan only includes the first half of the fiscal year, the IAD has identified the hours that are available for the second half of the year. Currently, the IAD estimates that 1,300 hours are available for the second half of the internal audit plan.

SAO Related Items

The FY 2020 Internal Audit plan includes items to monitor contract management and technology risks. For contract management, the plan includes follow-up activities that will review and assess contract management recommendations that have been implemented. IAD's Key Risk Indicators initiative will also review high risk procurement and contracts.

IAD will be evaluating technology risk in the Department through its engagements in Patch Management, Application Services Section Review, and Follow-Up audits.

External Audit Services Procured in Fiscal Year 2019

TxDMV received 10 external audits in FY 2019. Only one of those external audits was procured (Weaver). The list below provides information on the external audits received:

- **Federal Highway Administration** - Heavy Vehicle Use Tax Audit
- **Federal Motor Carrier Safety Administration** - Innovative Technology Deployment (ITD) Core Compliance Review
- **State Auditor's Office** - Information Technology Position Classification Audit
- **State Auditor's Office** - WebDEALER Review
- **State Auditor's Office** - An Audit on Selected Contracts at the Department of Motor Vehicles
- **State Office of Risk Management** - An Onsite Consultations for the Houston Regional Service Center
- **Texas Comptroller of Public Accounts** - Contract Management Audit
- **Texas Comptroller of Public Accounts** - Promotional Item Purchase Order Audit
- **Texas Department of Public Safety** - Driver Records Information Audit
- **Weaver** - Verification and Valuation of the Single State Registration System (SSRS) revenue

Reporting Suspected Fraud and Abuse

Fraud Reporting Requirements

To comply with fraud reporting requirements in the General Appropriations Act (86th Legislature, Article IX-37, Section 7.09), the TxDMV has taken the following actions:

- Provides information on the home page of the TxDMV website (www.txdmv.gov) on how to report suspected fraud, waste, and abuse directly to the State Auditor's Office (SAO)
- Includes in the agency's Human Resources Manual information on how to report suspected fraud involving state funds to the SAO. Employees are directed by agency policy to report any suspected incidents of fraud to their manager, the Internal Audit Director, and the SAO
- Provides a link on the Internal Audit Division's intranet page to the SAO fraud hotline website.
- Provides information on the Internal Audit Division's internet page about reporting fraud.

The Department formed the Compliance and Investigations Division (CID) to handle external fraud.

Investigation Coordination Requirements

The IAD coordinates compliance with Texas Government Code, Section 321.022 (Coordination of Investigations) by submitting a quarterly report to the State Auditor's Office on the disposition of allegations received.

The IAD also evaluates all instances of fraud, waste, or abuse reported to the IAD to determine appropriate action. If the Internal Audit Director has reasonable cause to believe that fraudulent or unlawful conduct has occurred in relation to the operation of the TxDMV, the Director will work with appropriate parties and notify the SAO.

Appendix 1: Report Distribution

Report Distribution

In accordance with the Texas Internal Auditing Act, this report is distributed to the Board of the Texas Department of Motor Vehicles, Governor's Office of Budget, Planning, and Policy, Legislative Budget Board, State Auditor's Office, and the Sunset Advisory Commission. The report was also distributed to the Department's executive management team.



Texas Department
of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Fiscal Year 2019 Quality Assurance and Improvement Program Report

20 – 02

Internal Audit Division

September 2019

**Fiscal Year 2019 Quality Assurance and Improvement Program, 20-02****Executive Summary****BACKGROUND**

The Internal Audit Division (IAD) follows the audit standards prescribed by the (1) Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing (IIA Standards), the Definition of Internal Auditing, the *Core Principles for the Professional Practice of Internal Auditing* and the *Code of Ethics*; (2) U.S. Government Accountability Office's (GAO) Generally Accepted Government Auditing Standards (GAGAS); and (3) Texas Internal Auditing Act, Texas Government Code, Chapter 2102 (Act). These audit standards require IAD develop and maintain a Quality Assurance and Improvement Program (QAIP) that includes both internal and external assessments.

Internal assessments are ongoing monitoring of the performance of the internal audit activity that includes an annual self-assessment review. The IIA Standards require the results of internal assessments be communicated to the governing board at least annually.

This report provides a summary of IAD's fiscal year 2019 activities and compliance with applicable audit standards.

RESULTS

IAD complies with the IIA Standards, the Definition of Internal Auditing, the Core Principles for the Professional Practice of Internal Auditing, the IIA's Code of Ethics, GAGAS, and the Act.

In addition, IAD met most of its Key Performance Indicators (KPIs) in fiscal year (FY) 2019. IAD met 9 of the 10 KPIs in FY 2019.

In addition, IAD made progress towards achieving its desired level in the Capability Model by finalizing the strategic plan and incorporating both quantitative and qualitative measures.

The report also includes a section related to the internal fraud, waste, and abuse allegations and dispositions and a section related to progress made on external assessment recommendations.

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Background

The Texas Department of Motor Vehicles (TxDMV) - Internal Audit Division (IAD) follows the audit standards prescribed by (1) the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing (IIA Standards), the Definition of Internal Auditing, the Core Principles for the Professional Practice of Internal Auditing and the Code of Ethics; (2) U.S. Government Accountability Office's (GAO) Generally Accepted Government Auditing Standards (GAGAS); and (3) Texas Internal Auditing Act, Texas Government Code, Chapter 2102 (Act). These audit standards require IAD develop and maintain a Quality Assurance and Improvement Program (QAIP) that includes both internal and external assessments:

- Internal assessments are ongoing monitoring of the performance of the internal audit activity that includes an annual self-assessment review. The IIA Standards require the results of internal assessments be communicated to the governing board at least annually.
- External assessment (Peer Review) is a review of the IAD. A qualified, knowledgeable, and independent Peer Review team conducts the review. The Peer Review team will determine if the division is in conformance with applicable standards. The Peer Review team may provide feedback on operational and strategic issues. The last Peer Review was conducted in May 2018.

Internal Assessments

The IAD internal assessment includes ongoing monitoring as well as an annual self-assessment. The ongoing monitoring includes a review of all audit documentation, audit recommendations, and reports for each engagement conducted by IAD in a fiscal year prior to completing an engagement file.

The annual self-assessment includes verifying IAD followed all required compliance and performance audit standards. In addition, IAD provides progress and result information on the following:

- Key Performance Indicators (KPIs)
- Institute of Internal Auditors (IIA) – Internal Audit Capability Model for the Public Sector (Capability Model)
- Fraud, Waste, and Abuse allegations and dispositions
- External Assessment recommendation

External Assessments

Every three years, the IAD Director begins the process to obtain a Peer Review team. The Peer Review team issues a public report rendering an overall opinion on whether IAD complied with

the audit standards and whether QAIP provides reasonable assurance that IAD complies with applicable professional standards in all material aspects. IAD received its most recent Peer Review in May 2018.

Audit Engagement Team

The review was performed by Jennifer Weinstein (Audit Intern), Jacob Geray (Internal Auditor), Frances Barker (Internal Auditor), Jason Gonzalez (Senior Auditor), Derrick Miller (Senior Auditor), and Sandra Menjivar-Suddeath (Internal Audit Director).

Internal Assessment Results

IAD staff conducted a review to determine if the IAD followed all required applicable compliance and performance audit standards during fiscal year (FY) 2019. In addition, IAD staff analyzed data collected throughout the fiscal year to report on the division's KPIs, Capability Model, a fraud, waste, and abuse allegations, and progress made on implementing external assessment recommendations.

Overall Conclusion

Based on the review, IAD complies with the IIA Standards, the definition of internal auditing, the Core Principles for the Professional Practice of Internal Auditing, the IIA's Code of Ethics, GAGAS, and the Act. No opportunities for improvement were noted in the review.

In addition, IAD met 9 of its 10 Key Performance Indicators and has made progress on achieving the optimized level of the Capability Model and implementing the external assessment recommendation. IAD also reviewed, investigated, or tracked 89 internal fraud, waste, and abuse allegations.

Compliance Audit Standards

A review of the IAD's audit charter, standard operating procedures, and engagement control programs was conducted to determine if the IAD followed all compliance audit standards. Compliance standards include the following items:

- **Purpose, Authority, and Responsibility** - The internal audit function must be formally defined in an internal audit charter, consistent with the Mission of Internal Audit and the mandatory elements of the International Professional Practices Framework (the Core Principles for the Professional Practice of Internal Auditing, the Code of Ethics, the Institute of Internal Auditors (IIA) Standards, and the Definition of Internal Auditing).
- **Independence and Objectivity** - The internal audit function must be independent and perform work in an objective manner.
- **Proficiency and Due Professional Care** - Engagements must be performed by staff that are proficient and have due professional care.
- **Quality Assurance and Improvement Program** - A quality assurance and improvement program must be established and must enable an evaluation of the internal audit function's conformance with the audit standards and any applicable other requirements. The program should, also, assess the efficiency and effectiveness of the internal audit function and identify opportunities for improvement for the function.
- **Managing the Internal Audit Activity** - The internal audit function must be effectively managed to ensure it adds value to the organization.

- **Nature of Work** - The internal audit function must evaluate and contribute to the improvement of the organization's governance, risk management, and control processes using a systematic, disciplined, and risk-based approach.
- **Monitoring Progress** - A system to monitor the disposition of results must be established, maintained, and communicated.

Based on the review, IAD met all the compliance audit standards.

Performance Audit Standards

The IAD must also meet performance audit standards. To determine whether performance audit standards were met, the IAD Director selected one completed engagement (Employee Classification and Hiring audit) and reviewed it. Specifically, a staff member not associated with the engagement determined whether the audit engagement complied with performance audit standards. IAD must comply with the following performance audit standards:

- **Engagement Planning** - A plan must be developed and documented for each engagement.
- **Performing the Engagement** - Internal auditors must identify, analyze, evaluate, and document sufficient information to achieve the engagement's objectives.
- **Communicating Results** - Results from the audit engagements must be communicated to management and those in charge with governance.

Based on audit documentation, the IAD met all performance audit standards.

Key Performance Indicators

IAD has 10 Key Performance Indicators (KPIs) that it uses to measure the function's effectiveness and efficiency. These KPIs were approved and developed in consultation with the TxDMV Board Chair and the Finance & Audit Committee Chair in FY 2018. The 10 KPIs and targets are noted in Table 1.

Table 1. Key Performance Indicators

KPI #	KPI	Target
1	Audit Recommendations Implemented	80%
2	Internal Audit Plan Completion	80%
3	Engagements within 10% of budgeted hours	90%
4	Percent of overall client satisfaction after an engagement	80%

KPI #	KPI	Target
5	Percent of client survey that agree audit had clear and timely communication on the audit results and report	80%
6	Percent of client survey that agree audit had sufficient knowledge about the audited area	80%
7	Percent of clients that believe that the audit recommendations were useful and beneficial after implementation	80%
8	Percent of relevant certifications held by staff	80%
9	Number of Internal Audit Division educational efforts conducted	2
10	Percent of staff working on operational initiatives	100%

Audit Recommendations Implemented

IAD tracks the number of internal audit recommendations implemented by TxDMV. The implementation rate shows TxDMV's commitment to improving processes as well as IAD effectiveness.

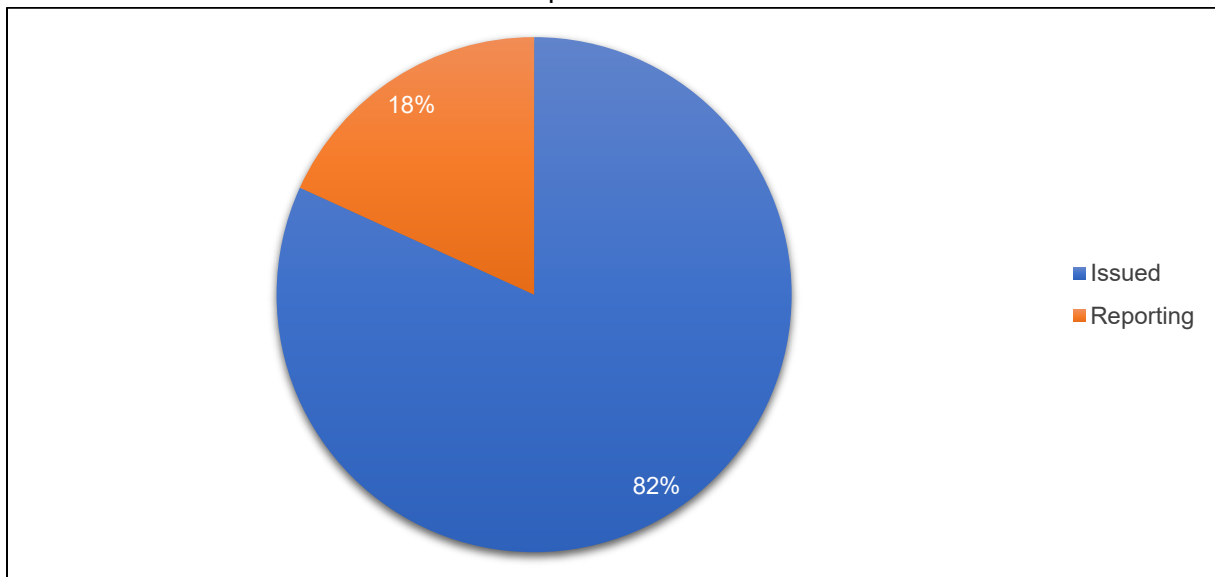
As reported in the FY 2019 Internal Audit Follow-Up report, IAD verified the implementation status of 62 internal audit recommendations. IAD verified TxDMV had fully implemented 56 internal audit recommendations (90%) and started 6 audit recommendations (10%).

Audit Plan Completion

IAD measures how well it tracked against the approved Internal Audit Plan. The IAD must complete at least 80% of the internal audit plan by the end of the fiscal year. Due to the nature of audit reporting, audit completion is defined by the number of engagements that were issued or in the reporting phase at the end of the fiscal year divided by the number of engagements listed on the audit plan.

In FY 2018, the IAD had completed the entire audit plan (11 audit engagements) by the end of the fiscal year. 9 engagements had been fully completed and two engagements were in the reporting phase as depicted Chart 2.

Chart 2. FY 2019 Internal Audit Plan Completion Status

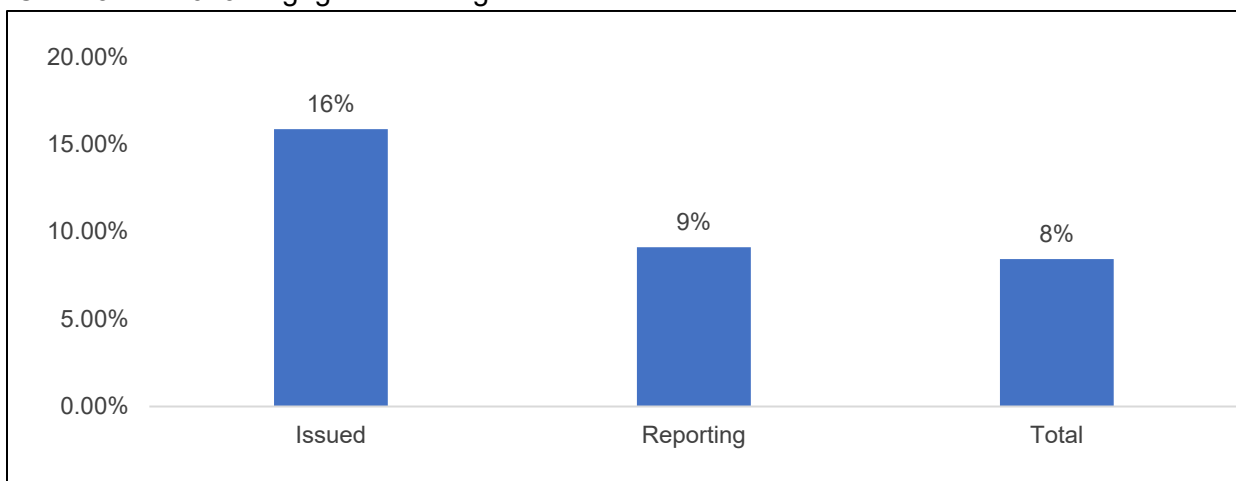


Engagement Budgets

To measure IAD's efficiency, the IAD monitors the hours spent on engagements against the initial engagement budget. Engagements must come within 10% of the initial engagement budget. The initial engagement budget is the budget given during the planning phase of the engagement.

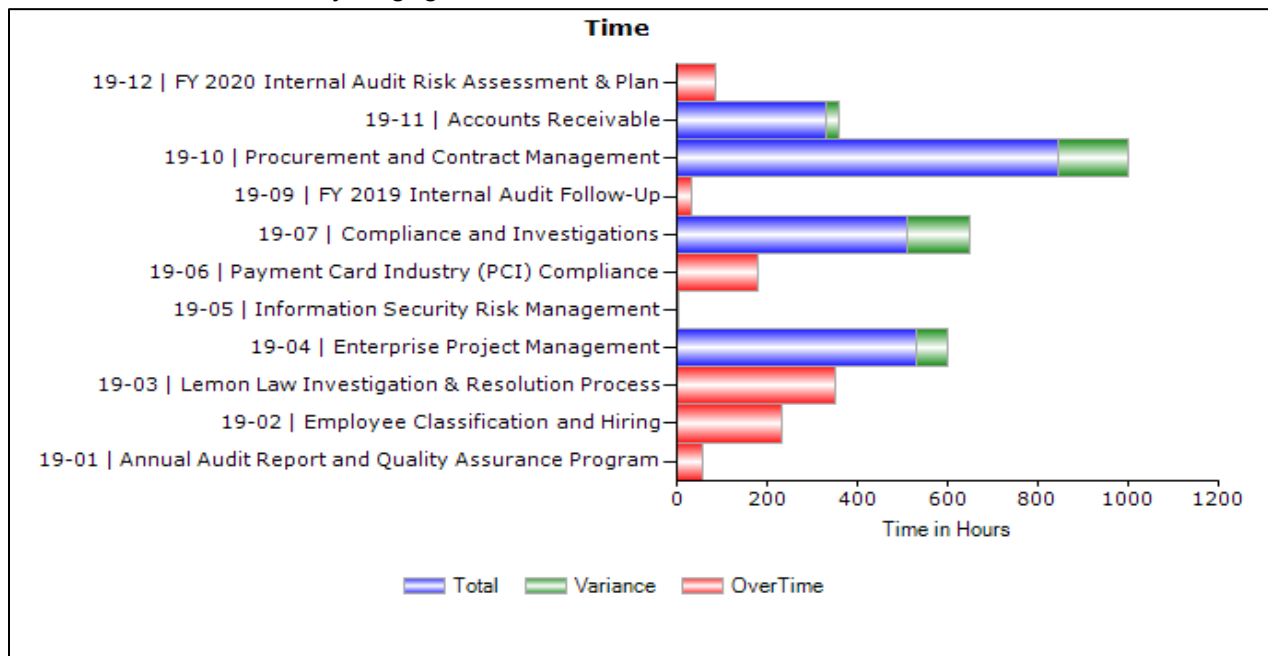
In FY 2019, the IAD met its target for overall Engagement Budget. At the end of the FY 2019, the overall Engagement Budget variance was 8% for all engagements that were completed or in the reporting phase. The variance, however, grows when separating out issued and reporting phase engagements. Issued engagements had a 16% variance for budget hours and reporting phase engagements had a 9% variance. Chart 3 depicts the overall engagement budget, issued engagements, and reporting phase engagement variances.

Chart 3. FY 2019 Engagement Budget Variance



Further analysis of the data, by engagement, shows significant variability between planned and actual hours for each engagement. The variance per engagement is depicted in Chart 4.

Chart 4. Time Variance by Engagement



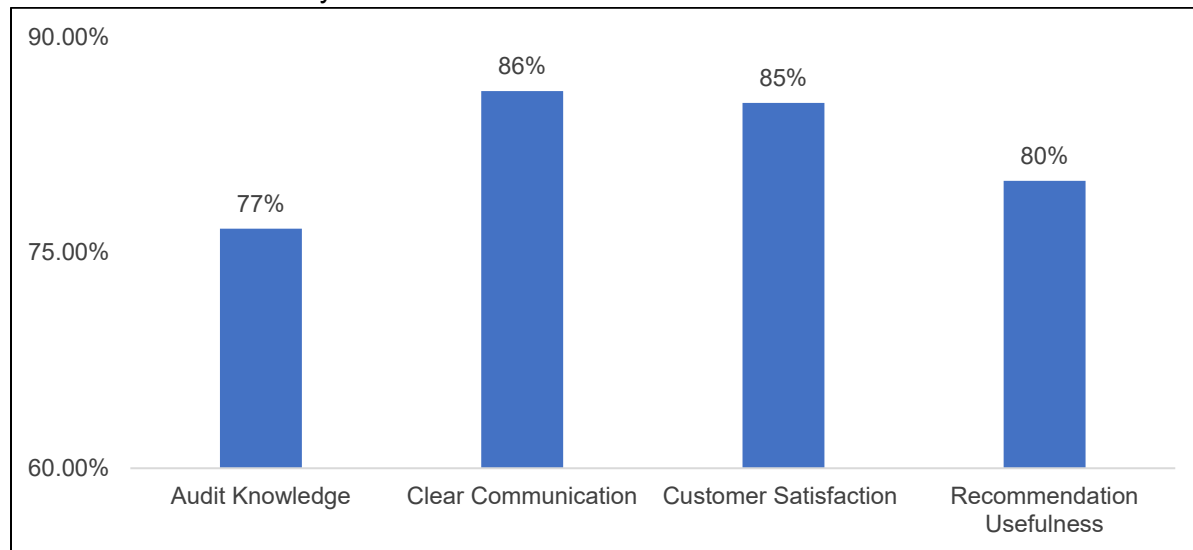
IAD had modified how it assigns engagement hours to improve this KPI.

Survey

For four KPIs, IAD uses surveys to determine if the TxDMV division staff feel that the IAD possessed sufficient knowledge to conduct engagements (audit knowledge); provided clear and timely communication (clear communication); performed satisfactory on the engagement (customer satisfaction); and, whether recommendations implemented were useful and beneficial after implementation (recommendation usefulness). The current KPI for each survey is at least 80% in agreement.

In FY 2019, IAD met its KPIs for customer satisfaction, clear communication, and recommendation usefulness. IAD did not meet its KPI related to audit knowledge. IAD believes the KPI was not met due its workload and the survey response rate. IAD only received 8 responses for 4 surveys although 7 surveys were sent to 39 recipients. Chart 5 depicts the overall survey results for the four KPIs.

Chart 5. FY 2019 Survey Results



Staff Certification

To ensure IAD has staff that can perform the necessary audit work, the IAD measures staff certifications. The current KPI is that 80% of the recognized certifications must be present with audit staff.

In FY 2019, 80% of the recognized certification were present with audit staff. Audit staff had the following certification:

- Certified Internal Auditor
- Certified Information Systems Auditor
- Certified Government Auditing Professional
- Certified Fraud Examiner

The only certification not present was the Certified Public Accountant.

Audit Educational Efforts

To ensure staff and stakeholders understand the role of the IAD, IAD measures how many educational efforts are completed in a fiscal year. The IAD should perform at least two education efforts a year.

In FY 2019, IAD conducted four internal audit educational efforts, but conducted an additional three education efforts on fraud to Tax-Assessor Collectors. The seven events are noted in Table 2.

Table 2. FY 2019 Educational Events

Date	Topic	Audience
September 2018	Ethics and Process Monitoring	Tax Assessor - Collectors
October 2018	TxDMV Fraud Topics	Tax Assessor – Collectors
October 2018	TxDMV Fraud Topics	County Auditors
March 2019	TeamCentral Recommendation Implementation	TxDMV Staff
May 2019	Internal Audit Month	TxDMV Staff
July 2019	TeamCentral Recommendation Implementation	TxDMV Staff
August 2019	Audit 101: You are being Audited, what now?	TxDMV Staff

Operational Initiatives

IAD had three Operational Initiatives it worked on during FY 2019. Those three initiatives were led and participated by staff members. The three initiatives and staff involved are listed in Table 3.

Table 3. Operational Initiatives Information

Initiative	Staff Involved	Time frame
Strategic Plan	Frances Barker, Jacob Geray	Single-Year
Record Management	Jason Gonzalez	Multi-Year
TeamCentral Reporting	Derrick Miller, Frances Barker	Single-Year; Carried-Forward

Internal Audit Capability Model for the Public Sector (Capability Model)

Since the 2018 Peer Review, IAD tracks its effectiveness progress through the *Capability Model for the Public Sector*. After the 2018 Peer Review, IAD was at a *Level 2, Infrastructure*. IAD improved to a *Level 3, Integrated* by the end of FY 2018. In FY 2019, IAD maintained its *Level 3, Integrated*. IAD did improve in two individual categories: Professional Practices and Performance Management and Accountability. The current progress on the Capability Model is denoted in Figure 1.

Figure 1. FY 2019 TxDMV IAD Capability Model

	Services and Role of IA	People Management	Professional Practices	Performance Management and Accountability	Organizational Relationships and Culture	Governance Structures
Level 5 – Optimizing	★ IA Recognized as Key Agent of Change	★ Leadership Involvement with Professional Bodies Workforce Projection	★ Continuous Improvement in Professional Practices Strategic IA Planning	★ Outcome Performance and Value to Organization Achieved	★ Effective and Ongoing Relationships	★ Independence, Power, and Authority of the IA Activity
Level 4 – Managed	Overall Assurance on Governance, Risk Management, and Control	Contributes to Management Development IA Activity Supports Professional Bodies Workforce Planning	Audit Strategy Leverages Organization's Management of Risk	Integration of Qualitative and Quantitative Performance Measures	CAE Advises and Influences Top-level Management	Independent Oversight of the IA Activity CAE Reports to Top-level Authority
Level 3 – Integrated	Advisory Services Performance/Value-for-Money Audits	Team Building and Competency Professionally Qualified Staff	Quality Management Framework Risk-based Audit Plans	Performance Measures Cost Information IA Management Reports	Coordination with Other Review Groups Integral Component of Management Team	Management Oversight of the IA Activity Funding Mechanism
Level 2 – Infrastructure	Compliance Auditing	Individual Professional Development Skilled People Identified and Recruited	Professional Practices and Processes Framework Audit Plan Based on Management/ Stakeholder Priorities	IA Operating Budget IA Business Plan	Managing within the IA Activity	Full Access to the Organization's Information, Assets, and People Reporting Relationship Established
Level 1 – Initial	Ad hoc and unstructured; isolated single audits or reviews of documents and transactions for accuracy and compliance; outputs dependent upon the skills of specific individuals holding the position; no specific professional practices established other than those provided by professional associations; funding approved by management, as needed; absence of infrastructure; auditors likely part of a larger organizational unit; no established capabilities; therefore, no specific key process areas					
★	Indicates the Internal Audit Division Desired State					
	Indicates the activity has been fully institutionalized by the Internal Audit Division					
	Indicates the activity is in progress by the Internal Audit Division					
	Indicates the activity has not been started by the Internal Audit Division					
Circle indicates current maturity level						

IAD conducted the following activities to help maintain and improve in two categories on the *Capability Model*:

- Documenting Strategic Vision through the Strategic Plan
- Linking IAD vision with the Department's vision
- Measuring against all established KPIs

- Increased involvement in professional bodies

IAD continues to work towards a *Level 5*, Optimizing. In FY 2020 Internal Audit Plan, IAD discussed its Key Risk Indicator and TeamCentral Reporting initiatives. These initiatives will help IAD achieve its desired state. IAD, however, will not achieve its desired state until the Department has fully formalized its risk appetite and risk management processes. The Department continues to work towards formalizing those processes.

Fraud, Waste, and Abuse Allegations and Dispositions

As part of IAD's role, the division investigates and tracks internal fraud, waste, and abuse allegations. The allegations are received from multiple sources, including internal complaints, State Auditor's Office, and internal reviews.

In FY 2019, the IAD reviewed, investigated, or tracked 89 internal fraud, waste, and abuse allegations. Most of these allegations came through the State Auditor's Office and dealt with consumer issues, such as title transfer. Chart 6 and 7 provide information on the types of complaints received from the State Auditor's Office as well as complaint referral source.

Chart 6. Fraud, Waste, and Abuse Referrals

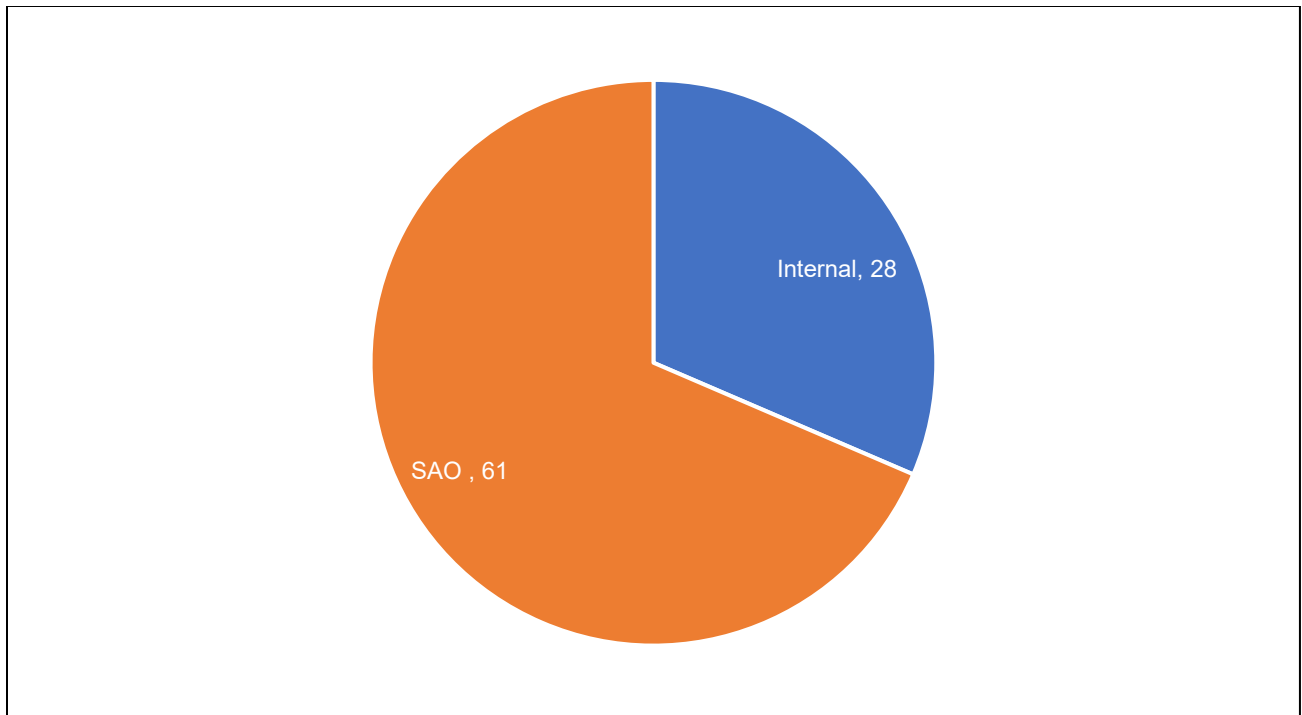
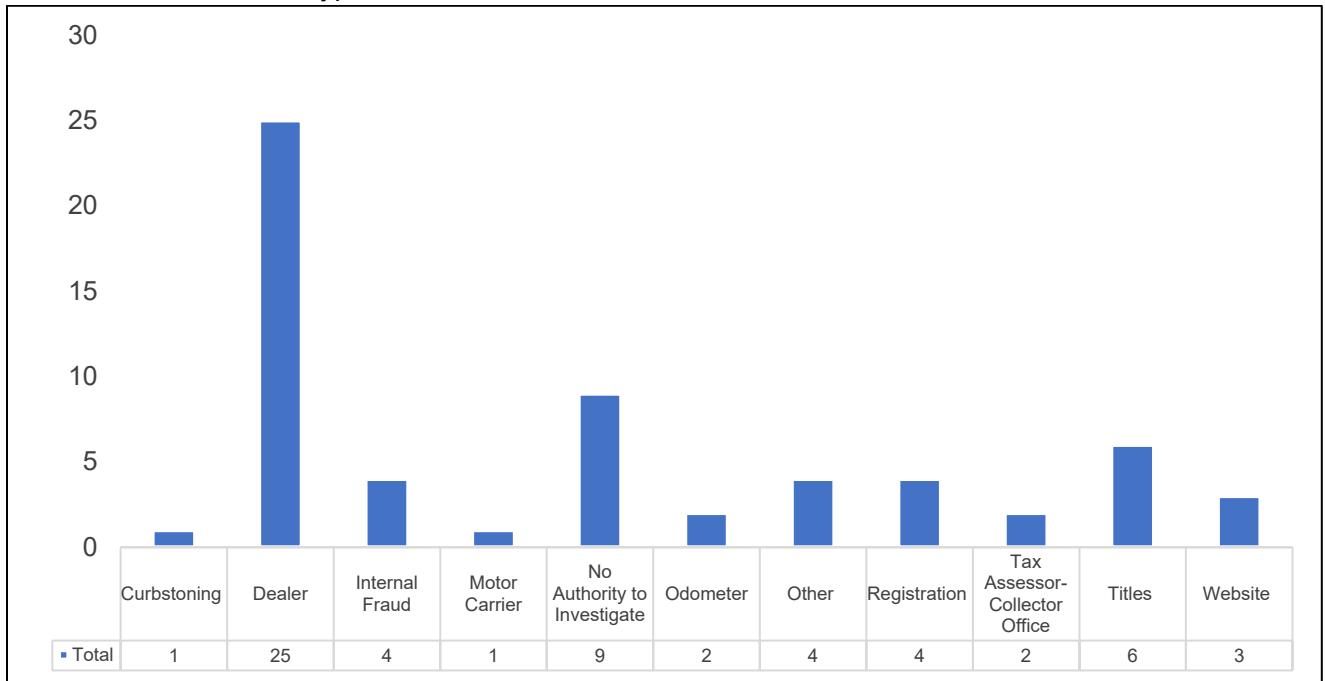
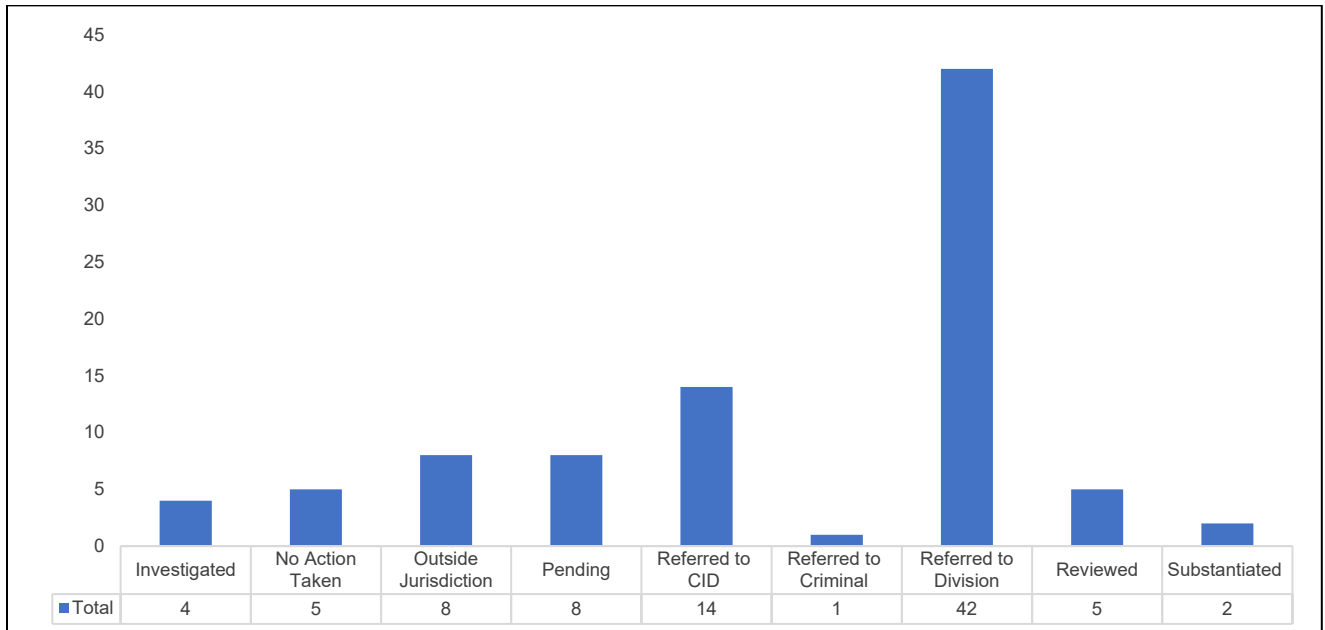


Chart 7. SAO Referral Type



For each complaint received, IAD, in consultation with the Office of General Counsel, triages the complaints and decides whether the complaint needs to be investigated by IAD, referred to a division, or referred externally. Chart 8 provides information on the final disposition of each allegation received.

Chart 8. Fraud, Waste, and Abuse Disposition



External Assessment Recommendation

The IAD obtained a Peer Review in early 2018 and released the Peer Review report in May 2018. The Peer Review team rated IAD as “pass”. The following is an excerpt from the peer review report’s overall opinion:

Based on the information received and evaluated during this external quality assurance review, it is our opinion that the Texas Department of Motor Vehicles Internal Audit Division receives a rating of “pass” and is in compliance with the Institute of Internal Auditors (IIA) International Professional Practices Framework and Code of Ethics, the United States Government Accountability Office (GAO) Government Auditing Standards and the Texas Internal Auditing Act (Texas Government Code, Chapter 2102). This opinion, which is the highest of the three possible ratings, means that policies, procedures, and practices are in place to implement the standards and requirements necessary for ensuring the independence, objectivity, and proficiency of the internal audit function.

The report noted one opportunity for improvement; the opportunity and the Internal Audit Director’s response is as follows:

Opportunity for Improvement:

The Internal Audit Division should consider performing a periodic project related to the agency’s ethics-related objectives, programs, and activities.

Director’s Response:

The Internal Audit Division (IAD) will consider performing a project related to the agency’s ethics-related objectives, programs, and activities. The Internal Audit Division is currently conducting a fraud, waste, and abuse risk assessment for the Department to determine if we have sufficient processes to mitigate current fraud, waste, and abuse risks. In addition, the Internal Audit Division plans on periodically performing informational campaigns on ethics for the Department.

The IAD is actively working on addressing this opportunity of improvement. In FY 2019, IAD began participating in an agency-wide work group to update the ethics policy. As an advisor on the work group, IAD provides input on the ethics policy and reporting structure and provides potential risk areas.

Appendix 1: Objective, Scope, and Methodology

Objective

The objective of the Quality Assurance and Improvement Program is to provide a summary of the Internal Audit Division activities and compliance with applicable audit standards.

Scope and Methodology

The scope of the audit included FY2019 Internal Audit Division Activities.

Information and documents reviewed in the audit included the following:

- Survey Results
- Audit Charter
- IAD Standard Operating Procedures
- IAD Engagement Control Programs
- Human Resource Records
- TxDMV IAD 2018 Peer Review Report
- TxDMV Operational Plan
- TeamCentral Reports
- IIA's Capability Model

Report Distribution

This report is distributed to the Board of the Texas Department of Motor Vehicles and the executive management team.

Board Policy Documents

Governance Process (10/13/11)

Strategic Planning (10/13/11)

Board Vision (4/7/16)

Agency Boundaries (9/13/12)

KPIs (9/12/14)

Texas Department of Motor Vehicles TxDMV Board Governance Policy

1. PURPOSE

The directives presented in this policy address board governance of the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. The TxDMV Board Governance Policy shall be one that is comprehensive and pioneering in its scope.

3. POLICY

3.1. TxDMV Board Governing Style

The Board shall govern according to the following general principles: (a) a vision for the agency, (b) diversity in points of view, (c) strategic leadership, providing day-to-day detail as necessary to achieve the agency vision, (d) clear distinction of Board and Executive Director roles, (e) collective decision making, (f) react proactively rather than reactively and with a strategic approach. Accordingly:

3.1.1. The Board shall provide strategic leadership to TxDMV. In order to do this, the Board shall:

3.1.1.1. Be proactive and visionary in its thinking.

3.1.1.2. Encourage thoughtful deliberation, incorporating a diversity of viewpoints.

3.1.1.3. Work together as colleagues, encouraging mutual support and good humor.

3.1.1.4. Have the courage to lead and make difficult decisions.

3.1.1.5. Listen to the customers and stakeholders needs and objectives.

3.1.1.6. Anticipate the future, keeping informed of issues and trends that may affect the mission and organizational health of the TxDMV.

3.1.1.7. Make decisions based on an understanding that is developed by appropriate and complete stakeholder participation in the process of identifying the needs of the motoring public, motor vehicle industries,

and best practices in accordance with the mission and vision of the agency.

- 3.1.1.8. Commit to excellence in governance, including periodic monitoring, assessing and improving its own performance.
- 3.1.2. The Board shall create the linkage between the Board and the operations of the agency, via the Executive Director when policy or a directive is in order.
- 3.1.3. The Board shall cultivate a sense of group responsibility, accepting responsibility for excellence in governance. The Board shall be the initiator of policy, not merely respond to staff initiatives. The Board shall not use the expertise of individual members to substitute for the judgment of the board, although the expertise of individual members may be used to enhance the understanding of the Board as a body.
- 3.1.4. The Board shall govern the agency through the careful establishment of policies reflecting the board's values and perspectives, always focusing on the goals to be achieved and not the day-to-day administrative functions.
- 3.1.5. Continual Board development shall include orientation of new Board members in the board's governance process and periodic board discussion of how to improve its governance process.
- 3.1.6. The Board members shall fulfill group obligations, encouraging member involvement.
- 3.1.7. The Board shall evaluate its processes and performances periodically and make improvements as necessary to achieve premier governance standards.
- 3.1.8. Members shall respect confidentiality as is appropriate to issues of a sensitive nature.

3.2. TxDMV Board Primary Functions/Characteristics

TxDMV Board Governance can be seen as evolving over time. The system must be flexible and evolutionary. The functions and characteristics of the TxDMV governance system are:

- 3.2.1. Outreach
 - 3.2.1.1. Monitoring emerging trends, needs, expectations, and problems from the motoring public and the motor vehicle industries.
 - 3.2.1.2. Soliciting input from a broad base of stakeholders.

3.2.2. Stewardship

3.2.2.1. Challenging the framework and vision of the agency.

3.2.2.2. Maintaining a forward looking perspective.

3.2.2.3. Ensuring the evolution, capacity and robustness of the agency so it remains flexible and nimble.

3.2.3. Oversight of Operational Structure and Operations

3.2.3.1. Accountability functions.

3.2.3.2. Fiduciary responsibility.

3.2.3.3. Checks and balances on operations from a policy perspective.

3.2.3.4. Protecting the integrity of the agency.

3.2.4. Ambassadorial and Legitimizing

3.2.4.1. Promotion of the organization to the external stakeholders, including the Texas Legislature, based on the vision of the agency.

3.2.4.2. Ensuring the interests of a broad network of stakeholders are represented.

3.2.4.3. Board members lend their positional, professional and personal credibility to the organization through their position on the board.

3.2.5. Self-reflection and Assessment

3.2.5.1. Regular reviews of the functions and effectiveness of the Board itself.

3.2.5.2. Assessing the level of trust within the Board and the effectiveness of the group processes.

3.3. Board Governance Investment

Because poor governance costs more than learning to govern well, the Board shall invest in its governance capacity. Accordingly:

3.3.1. Board skills, methods, and supports shall be sufficient to ensure governing with excellence.

- 3.3.1.1. Training and retraining shall be used liberally to orient new members, as well as maintain and increase existing member skills and understanding.
- 3.3.1.2. Outside monitoring assistance shall be arranged so that the board can exercise confident control over agency performance. This includes, but is not limited to, financial audits.
- 3.3.1.3. Outreach mechanisms shall be used as needed to ensure the Board's ability to listen to stakeholder viewpoints and values.
- 3.3.1.4. Other activities as needed to ensure the Board's ability to fulfill its ethical and legal obligations and to represent and link to the motoring public and the various motor vehicle industries.
- 3.3.2. The Board shall establish its cost of governance and it will be integrated into strategic planning and the agency's annual budgeting process.

3.4. Practice Discipline and Assess Performance

The Board shall ensure the integrity of the board's process by practicing discipline in Board behavior and continuously working to improve its performance. Accordingly:

- 3.4.1. The assigned result is that the Board operates consistently with its own rules and those legitimately imposed on it from outside the organization.
 - 3.4.1.1. Meeting discussion content shall consist solely of issues that clearly belong to the Board to decide or to monitor according to policy, rule and law. Meeting discussion shall be focused on performance targets, performance boundaries, action on items of Board authority such as conduct of administrative hearings, proposal, discussion and approval of administrative rule-making and discussion and approval of all strategic planning and fiscal matters of the agency.
 - 3.4.1.2. Board discussion during meetings shall be limited to topics posted on the agenda.
 - 3.4.1.3. Adequate time shall be given for deliberation which shall be respectful, brief, and to the point.
- 3.4.2. The Board shall strengthen its governing capacity by periodically assessing its own performance with respect to its governance model. Possible areas of assessment include, but are not limited to, the following:
 - 3.4.2.1. Are we clear and in agreement about mission and purpose?

- 3.4.2.2. Are values shared?
- 3.4.2.3. Do we have a strong orientation for our new members?
- 3.4.2.4. What goals have we set and how well are we accomplishing them?
- 3.4.2.5. What can we do as a board to improve our performance in these areas?
- 3.4.2.6. Are we providing clear and relevant direction to the Executive Director, stakeholders and partners of the TxDMV?
- 3.4.3. The Board Chair shall periodically promote regular evaluation and feedback to the whole Board on the level of its effectiveness.

Texas Department of Motor Vehicles Strategic Planning Policy

1. PURPOSE

The directives presented in this policy address the annual Strategic Planning process at the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. TxDMV Strategic Planning Policy attempts to develop, document and expand its policy that is comprehensive in its scope in regards to the strategic planning process of the Board and the Department beyond that of the state strategic planning process.

3. POLICY

3.1. TxDMV Board Strategic Planning

This policy describes the context for strategic planning at TxDMV and the way in which the strategic plan shall be developed and communicated.

- 3.1.1. The Board is responsible for the strategic direction of the organization, which includes the vision, mission, values, strategic goals, and strategic objectives.
- 3.1.2. TxDMV shall use a 5-year strategic planning cycle, which shall be reviewed and updated annually, or as needed.
- 3.1.3. The 5-year strategic plan shall be informed by but not confined by requirements and directions of state and other funding bodies.
- 3.1.4. In developing strategic directions, the Board shall seek input from stakeholders, the industries served, and the public.
- 3.1.5. The Board shall:
 - 3.1.5.1. Ensure that it reviews the identification of and communication with its stakeholders at least annually.
 - 3.1.5.2. Discuss with agency staff, representatives of the industries served, and the public before determining or substantially changing strategic directions.

- 3.1.5.3. Ensure it receives continuous input about strategic directions and agency performance through periodic reporting processes.
- 3.1.6. The Board is responsible for a 5-year strategic plan that shall identify the key priorities and objectives of the organization, including but not limited to:
 - 3.1.6.1. The creation of meaningful vision, mission, and values statements.
 - 3.1.6.2. The establishment of a Customer Value Proposition that clearly articulates essential customer expectations.
 - 3.1.6.3. A Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis, to be updated annually.
 - 3.1.6.4. An assessment of external factors or trends (i.e., customer needs, political factors, economic factors, industry trends, technology factors, uncertainties, etc.)
 - 3.1.6.5. Development of the specific goals and objectives the Department must achieve and a timeline for action.
 - 3.1.6.6. Identification of the key performance indicators to measure success and the initiatives that shall drive results.
 - 3.1.6.7. Engage staff at all levels of the organization, through the executive director, in the development of the strategic plan through surveys, interviews, focus groups, and regular communication.
 - 3.1.6.8. Ensure the strategic planning process produces the data necessary for LBB/GOBPP state required compliance while expanding and enhancing the strategic plan to support the needs of the TxDMV. The overall strategic plan shall be used as a tool for strategic management.
- 3.1.7. The Board delegates to the Executive Director the responsibility for **implementing** the agency's strategic direction through the development of agency wide and divisional operational plans.

Texas Department of Motor Vehicles TxDMV Goals and Objectives

1. PURPOSE

The information presented in this policy addresses the goals and key objectives of the Board of the Texas Department of Motor Vehicles (TxDMV) as they relate to the mission, vision, and values of the TxDMV.

2. SCOPE

The scope of this policy is to define the desired state the TxDMV Board is working to achieve. This policy is designed to be inspirational in outlining the desired state of the agency that supports the TxDMV Board vision and meeting agency goals.

3. TxDMV MISSION

To serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.

4. TxDMV VISION

The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

5. TxDMV VALUES

To earn the trust and faith of all citizens of Texas with transparency, efficiency, excellence, accountability, and putting stakeholders first.

- 5.1. **Transparency** – Being open and inclusive in all we do.
- 5.2. **Efficiency** – Being good stewards of state resources by providing products and services in the most cost-effective manner possible.
- 5.3. **Excellence** – Working diligently to achieve the highest standards.
- 5.4. **Accountability** – Accepting responsibility for all we do, collectively and as individuals.
- 5.5. **Stakeholders** – Putting customers and stakeholders first, always.

6. TxDMV GOALS

6.1. GOAL 1 – Performance Driven

The TxDMV shall be a performance driven agency in its operations whether it is in customer service, licensing, permitting, enforcement or rule-making. At all times the TxDMV shall mirror in its performance the expectations of its customers and stakeholder by effective, efficient, customer-focused, on-time, fair, predictable and thorough service or decisions.

6.1.1. Key Objective 1

The TxDMV shall be an agency that is retail-oriented in its approach. To accomplish this orientation TxDMV shall concentrate the focus of the agency on:

- 6.1.1.1. Delivering its products and services to all of its customers and stakeholders in a manner that recognizes that their needs come first. These needs must be positively and proactively met. TxDMV works for and with its customers and stakeholders, not the other way around.
- 6.1.1.2. Operating the agency's licensing and registration functions in a manner akin to how a private, for-profit business. As a private, for-profit business, TxDMV would have to listen to its customers and stakeholders and implement best practices to meet their needs or its services would no longer be profitable or necessary. Act and react in a manner that understands how to perform without a government safety net and going out of business.
- 6.1.1.3. Simplify the production and distribution processes and ease of doing business with the TxDMV. Adapting and maintaining a business value of continuous improvement is central to TxDMV operations and processes.
- 6.1.1.4. All operations of the TxDMV shall stand on their own merits operationally and financially. If a current process does not make sense then TxDMV shall work within legislative and legal constraints to redesign or discard it. If a current process does not make or save money for the state and/or its customers or stakeholders then TxDMV shall work within legislative and legal constraints to redesign or discard it. TxDMV shall operate as efficiently and effective as possible in terms of financial and personnel needs. Divisions should focus on cost savings without sacrificing performance. Division directors are accountable for meeting these needs and applicable measures. All division directors are collectively responsible for the performance of TxDMV as a whole.
- 6.1.1.5. Focus on revenue generation for transportation needs as well as the needs of its customers.
- 6.1.1.6. Decisions regarding the TxDMV divisions should be based on the overriding business need of each division to meet or provide a specific service demand, with the understanding and coordination of overarching agency-wide needs.

- 6.1.1.7. Developing and regularly updating a long-range Statewide Plan describing total system needs, establishing overarching statewide goals, and ensuring progress toward those goals.
- 6.1.1.8. The TxDMV shall establish a transparent, well-defined, and understandable system of project management within the TxDMV that integrates project milestones, forecasts, and priorities.
- 6.1.1.9. The TxDMV shall develop detailed work programs driven by milestones for major projects and other statewide goals for all TxDMV divisions.
- 6.1.1.10. The TxDMV, with input from stakeholders and policymakers, shall measure and report on progress in meeting goals and milestones for major projects and other statewide goals.

6.2. GOAL 2 – Optimized Services and Innovation

The TxDMV shall be an innovative, forward thinking agency that looks for ways to promote the economic well-being and development of the industries it serves as well as the State of Texas within the legislative boundaries that have been established for the agency.

6.2.1. Key Objective 1

The TxDMV shall achieve operational, cultural, structural and financial independence from other state agencies.

- 6.2.1.1. Build the TxDMV identity. This means that TxDMV shall make customers aware of what services we offer and how they can take advantage of those services.
- 6.2.1.2. Build the TxDMV brand. This means that TxDMV shall reach out to the stakeholders, industries we serve and the public, being proactive in addressing and anticipating their needs.
- 6.2.1.3. Determine immediate, future, and long term facility and capital needs. TxDMV needs its own stand-alone facility and IT system as soon as possible. In connection with these needs, TxDMV shall identify efficient and effective ways to pay for them without unduly burdening either the state, its customers or stakeholders.
- 6.2.1.4. All regulations, enforcement actions and decision at TxDMV shall be made in a timely, fair and predictable manner.

6.2.2. Key Objective 2

Provide continuous education training on business trends in the industry with a particular emphasis on activities in Texas.

6.2.3. Key Objective 3

Provide continuous outreach services to all customers and stakeholders to access their respective needs and wants. This includes helping frame legislative or regulatory issues for consideration by other bodies including the legislature.

6.2.4. Key Objective 4

Examine all fees to determine their individual worth and reasonableness of amount. No fee shall be charged that cannot be defended financially and operationally.

6.3. GOAL 3 – Customer-centric

The TxDMV shall be a customer-centric agency that delivers today's services and decisions in a positive, solution-seeking manner while ensuring continuous, consistent and meaningful public and stakeholder involvement in shaping the TxDMV of tomorrow.

6.3.1. Key Objective 1

The TxDMV shall seek to serve its customer base through a creative and retail oriented approach to support the needs of its industries and customers.

6.3.2. Key Objective 2

The TxDMV shall develop and implement a public involvement policy that guides and encourages meaningful public involvement efforts agency-wide.

6.3.3. Key Objective 3

The TxDMV shall develop standard procedures for documenting, tracking, and analyzing customer complaint data. Successful problem resolution metrics should be monitored to support continuous improvement activities that shall permanently improve customer facing processes.

6.3.4. Key Objective 4

The TxDMV shall provide a formal process for staff with similar responsibilities to share best practices information.

6.3.5. Key Objective 5

The TxDMV shall provide central coordination of the Department's outreach campaigns.

6.3.6. Key Objective 6

The TxDMV shall develop and expand user friendly, convenient, and efficient website applications.

6.3.7. Key Objective 7

TxDMV shall timely meet all legislative requests and mandates.

Agency Operational Boundaries as Defined by Department Policies of the TxDMV Board (Board)

The Board is responsible for the policy direction of the agency. The Board's official connection to the day-to-day operation of the Texas Department of Motor Vehicles (TxDMV) and the conduct of its business is through the Executive Director of the TxDMV (ED) who is appointed by the Board and serves at its pleasure. The authority and accountability for the day-to-day operations of the agency and all members of the staff, except those members who report directly to the Board, is the sole responsibility of the ED.

In accordance with its policy-making authority the Board has established the following policy boundaries for the agency. The intent of the boundaries is not to limit the ability of the ED and agency staff to manage the day-to-day operations of the agency. To the contrary, the intent of the boundaries is to more clearly define the roles and responsibilities of the Board and the ED so as to liberate the staff from any uncertainty as to limitations on their authority to act in the best interest of the agency. The ED and staff should have certainty that they can operate on a daily basis as they see fit without having to worry about prior Board consultation or subsequent Board reversal of their acts.

The ED and all agency employees shall act at all times in an exemplary manner consistent with the responsibilities and expectations vested in their positions. The ED and all agency employees shall act in a manner consistent with Board policies as well as with those practices, activities, decisions, and organizational circumstances that are legal, prudent, and ethical. It is the responsibility of the ED to ensure that all agency employees adhere to these boundaries.

Accordingly, the TxDMV boundaries are as follows:

1. The day-to-day operations of the agency should be conducted in a manner consistent with the vision, mission, values, strategic framework, and performance metrics as established by the Board. These elements must not be disregarded or jeopardized in any way.
2. A team-oriented approach must be followed on all enterprise-wide decisions to ensure openness and transparency both internally and externally.
3. The agency must guard against allowing any financial conditions and decision which risk adverse fiscal consequences, compromise Board financial priorities, or fail to

show an acceptable level of foresight as related to the needs and benefits of agency initiatives.

4. The agency must provide timely, accurate, and honest information that will afford the Board, public, stakeholders, executive branch and the legislature the best ability to evaluate all sides of an issue or opportunity before forming an opinion or taking action on it. Any information provided that is intentionally untimely, inaccurate, misleading or one-sided will not be tolerated.
5. The agency must take all reasonable care to avoid or identify in a timely manner all conflicts of interest or even the appearance of impropriety in awarding purchases, negotiating contracts or in hiring employees.
6. The agency must maintain adequate administrative policies and procedures that are understandable and aid in staff recruitment, development and retention.
7. The agency must maintain an organizational structure that develops and promotes the program areas from an enterprise-wide perspective. No organizational silos or sub-agencies will be allowed. We are the TxDMV.
8. The agency must empower its entire staff to deliver a positive customer experience to every TxDMV customer, stakeholder or vendor to reduce their effort and make it easier for them to do business with the TxDMV.
9. The agency must at all times look to flattening its organizational structure to reduce cost as technology advances allow.
10. Agency staff shall anticipate and resolve all issues timely.
11. The agency must maximize the deployment and utilization of all of its assets – people, processes and capital equipment – in order to fully succeed.
12. The agency must not waste the goodwill and respect of our customers, stakeholders, executive branch and legislature. All communication shall be proper, honest, and transparent with timely follow-up when appropriate.
13. The agency should focus its work efforts to create value, make sure that processes, programs, or projects are properly designed, budgeted and vetted as appropriate with outside stakeholders to ensure our assumptions are correct so positive value continues to be created by the actions of the TxDMV.
14. The ED through his or her staff is responsible for the ongoing monitoring of all program and fiscal authorities and providing information to the Board to keep it apprised of all program progress and fiscal activities. This self-assessment must result in a product that adequately describes the accomplishment of all program

goals, objectives and outcomes as well as proposals to correct any identified problems.

15. In advance of all policy decisions that the Board is expected to make, the ED will provide pertinent information and ensure board members understand issues/matters related to the pending policy decision. Additionally, the ED or designee will develop a process for planning activities to be performed leading up to that particular policy decision and the timeframe for conducting these planning activities. It is imperative that the planning process describes not only when Board consideration will be expected but also when prior Board consultation and involvement in each planning activity will occur.
16. In seeking clarification on informational items Board members may directly approach the ED or his or her designee to obtain information to supplement, upgrade or enhance their knowledge and improve the Board's decision-making. Any Board member requests that require substantive work should come to the Board or Committee Chairs for direction.
17. The agency must seek stakeholder input as appropriate on matters that might affect them prior to public presentation of same to the Board.
18. The agency must measure results, track progress, and report out timely and consistently.
19. The ED and staff shall have the courage to admit a mistake or failure.
20. The ED and staff shall celebrate successes!

The Board expects the ED to work with agency staff to develop their written interpretation of each of the boundaries. The ED will then present this written interpretation to the Board prior to discussion between the Board and ED on the interpretation. The Board reserves the right to accept, reject or modify any interpretation. The intent is that the Board and the ED will come to a mutually agreeable interpretation of agency boundaries that will then form the basis of additional written thought on the part of the ED and staff as to how these boundaries will influence the actions of the agency.

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Performance Driven	Effective and efficient services	1	Average processing time for new franchise license applications	45 days	35 days		MVD
		2	Average processing time for franchise renewals	11 days	5 days		MVD
		3	Average processing time of franchise license amendments	20 days	8 days		MVD
		4	Average processing time for new Dealer's General Distinguishing Number (GDN) license applications	35 days	17 days		MVD
		5	Average processing time for GDN renewals	14 days	7 days		MVD
		6	Average processing time for GDN license amendments	19 days	7 days		MVD
		7	Average turnaround time for single-trip routed permits	33.88 mins	32 mins		MCD
		8	Average turnaround time for intrastate authority application processing	1.47 days	1.4 days		MCD
		9	Average turnaround time for apportioned registration renewal applications processing	2 days	2 days		MCD
		10	Average turnaround time to issue salvage or non-repairable vehicle titles	5 days	4 days		VTR
		11	Average time to complete motor vehicle complaints with no contested case proceeding	131 days	120 days		ENF
		12	Average time to complete motor vehicle complaints with contested case proceeding	434 days	400 days		ENF
		13	Average time to complete salvage complaints with no contested case proceeding	131 days	120 days		ENF
		14	Average time to complete salvage complaints with contested case proceeding	434 days	400 days		ENF
		15	Average time to complete motor carrier complaints with no contested case proceeding	297 days	145 days		ENF
		16	Average time to complete motor carrier complaints with contested case proceeding	133 days	120 days		ENF
		17	Average time to complete household goods complaints with no contested case proceeding	432 days	145 days		ENF
		18	Average time to complete household goods complaints with contested case proceeding	371 days	180 days		ENF
		19	Average time to complete Oversize/Overweight (OS/OW) complaints with no contested case proceeding	40 days	35 days		ENF
		20	Average time to complete OS/OW complaints with contested case proceeding	265 days	250 days		ENF
		21	Percent of lemon law cases resolved prior to referral for hearing	76%	60%		ENF
		22	Average time to complete lemon law cases where no hearing is held	147 days	65 days		ENF
		23	Average time to complete lemon law cases where hearing is held	222 days	150 days		ENF
		24	Percent of total renewals and net cost of registration renewal: A. Online B. Mail C. In Person	A. 15% B. 5% C. 80%	A. 16% B. 5% C. 79%		VTR
		25	Total dealer title applications: A. Through Webdealer B. Tax Office	Baseline in development	A. 5% B. 95%		VTR

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Optimized Services and Innovation		26	Percent of total lien titles issued: A. Electronic Lien Title B. Standard Lien Title	A. 16% B. 84%	A. 20% B. 80%		VTR
		27	Percent of total OS/OW permits: A. Online (self-issued) B. Online (MCD-issued) C. Phone D. Mail E. Fax	A. 57.47% B. 23.03% C. 11.33% D. 1.76% E. 6.4%	A. 58% or greater B. 25% or greater C. 10% or less D. 1.7% or less E. 5.3% or less		MCD
		28	Average time to complete lemon law and warranty performance cases after referral	Baseline in development	25 days		OAH
		29	Average time to issue a decision after closing the record of hearing	Baseline in development	30 days		OAH
	Implement appropriate best practices	30	Percent of audit recommendations implemented	Baseline in development	90% annual goal for these recommendations which Internal Audit included in a follow-up audit		IAD
	Continuous business process improvement and realignment	31	Percent of projects approved by the agency's governance team that finish within originally estimated time (annual)	57%	100%		EPMO
		32	Percent of projects approved by the agency's governance team that finish within originally estimated budget (annual)	71%	100%		EPMO/ FAS
		33	Percent of monitoring reports submitted to Texas Quality Assurance Team (TXQAT) by or before the due date	79%	100%		EPMO
		34	Percent of project manager compliance with EPMD project management standards based upon internal quality assurance reviews	Baseline in development	100%		EPMD
	Executive ownership and accountability for results	35	Percent of employees due a performance evaluation during the month that were completed on time by division.	Baseline in development	100%		HR
		36	Percent of goals accomplished as stated in the directors performance evaluation	Baseline in development	Measure annually at the end of the fiscal year		EXEC
	Organizational culture of continuous improvement and creativity	37	Employees who rate job satisfaction as above average as scored by the Survey of Employee Engagement (SEE)	3.47 (SEE 2012)	3.65	3.60 (SEE 2013)	HR
		38	Increase in the overall SEE score	337 (SEE 2012)	360	351 (SEE 2013)	HR
Focus on the internal customer	Focus on the internal customer	39	Percent of favorable responses from customer satisfaction surveys	Baseline in development	90%		EPMD
		40	Annual agency voluntary turnover rate	6.5% (FY 2013)	5.0%		HR
	Increase transparency with external customers	41	Number of education programs conducted and number of stakeholders/customers attending education programs	4.48/80.61	4/80		MCD
		42	Number of education programs conducted and number of stakeholders/customers attending education programs	36/335	42/390		VTR
		43	Number of eLearning training modules available online through the Learning Management System and number of modules completed by stakeholders/customers	eLearning Modules Available - 28 Completed - 735	Available - 31 Completed - 814		VTR

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Customer Center	Excellent Service Delivery	44	Number of Shows and Exhibits attended to educate stakeholders/customers about TxDMV services and programs	6	7		MVD
		45	Number of education programs conducted and number of stakeholders/customers attending education programs	3/250	3/250		ENF
		46	Number of education programs conducted and number of stakeholders/customers attending education programs	3/150	4/300		ABTPA
		47	Percent of customers and stakeholders who express above average satisfaction with communications to and from TxDMV	Baseline in development	80%		All Divisions
		48	Average hold time	9 min	9 min		CRD
		49	Abandoned call rate	22%	20%		CRD
		50	Average hold time	Baseline in development	1 min		ITS
		51	Abandoned call rate	Baseline in development	5%		ITS
		52	Average hold time	Credentialing - 1.6 minutes Permits - 2.08 minutes CFS - 54.38 seconds	Credentialing - 1.5 minutes Permits - 2 minutes CFS - 50 seconds		MCD
		53	Abandoned call rate	Credentialing - 7% Permits - 6.42% CFS - 5.63%	Credentialing - 6% Permits - 5% CFS - 5%		MCD
Key:		Critical	Off Target		On target		Not yet started
Vision: The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.							
Mission: To serve, protect, and advance the citizens and industries in the state with quality motor vehicle related services.							
Philosophy: The Texas Department of Motor Vehicles is customer-focused and performance driven. We are dedicated to providing services in an efficient, effective and progressive manner as good stewards of state resources. With feedback from our customers, stakeholders and employees, we work to continuously improve our operations, increase customer satisfaction and provide a consumer friendly atmosphere.							
Values: We at the Texas Department of Motor Vehicles are committed to: TEXAS-Transparency, Efficiency, EXcellence, Accountability, and Stakeholders.							