

**Tennessee Motor Vehicle Commission**

**October 1997**

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October 16, 1997

The Honorable John S. Wilder  
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Speaker of the House of Representatives  
The Honorable Kenneth N. (Pete) Springer, Chair  
Senate Committee on Government Operations  
The Honorable Mike Kernell, Chair  
House Committee on Government Operations  
and  
Members of the General Assembly  
State Capitol  
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Motor Vehicle Commission. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the commission should be continued, abolished, or restructured.

Very truly yours,

W. R. Snodgrass  
Comptroller of the Treasury

WRS/th  
97/033

State of Tennessee

# Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit  
**Tennessee Motor Vehicle Commission**  
October 1997

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## AUDIT OBJECTIVES

The objectives of this audit were to review the commission's legislative mandate and the extent to which the commission has carried out that mandate efficiently and effectively, and to make recommendations that might result in more efficient and effective operation of the commission.

## FINDINGS

### **Commission's Enforcement Process Is Deficient**

Because of deficiencies in its enforcement process, the commission has not always taken action against repeat violators, ensured civil penalties were paid, and deterred continued advertising violations. One dealer had 14 complaints, six of which were for failure to deliver a title to a customer, but the commission did not issue any notices of noncompliance. Of 40 consent orders issued from February 1992 through April 1996, 17 were not paid within 30 days (page 5).

### **Commission Does Not Analyze Complaints**

Without a complaint analysis, the commission cannot determine which dealers are receiving the most complaints or what are the most common complaints (page 12).

### **Dealer Inspections Are Not Always Done and All Inspections Are Not Clearly Documented**

Field investigators do not always complete annual inspections of dealers and do not clearly document the results of their inspections. Thirty-two of 47 dealers, whose files were randomly selected for review, were not inspected or were inspected late in calendar years 1994 through 1996. Also, inspection reports do not clearly indicate the types of inspections or their results (page 13).

### **Commission Does Not Report Abuse of Dealer Registration Plates and Temporary Tags to the Department of Safety**

Dealers can avoid taxes associated with permanent tags by putting temporary tags and dealer plates on private vehicles. In calendar year 1996, the commission received ten complaints con-

cerning the misuse of dealer plates and temporary tags. The commission did not notify the Criminal Investigation Division of the Department of Safety about six valid complaints (page 16).

### **Commission Does Not Have Two Manufacturing Representatives**

No manufacturer representative has ever been appointed to the commission, although state law states the Governor is to select and appoint two manufacturer representatives chosen from a list of qualified persons who are licensed automotive manufacturers in the state (page 19).

### **Commission Had Not Distributed Consumer Education Material**

A consumer education brochure was not distributed until March 1997, although the commission voted in October 1994 to develop a brochure to help educate consumers about the protections the commission offers them (page 20).

## **OBSERVATIONS AND COMMENTS**

The audit discusses the following issues that affect the operations of the commission and the citizens of Tennessee: procedures for late annual sales reports and criminal background checks of license applicants (page 4).

## **ISSUES FOR LEGISLATIVE CONSIDERATION**

The General Assembly may wish to consider (1) amending Section 55-170-103(a), *Tennessee Code Annotated*, to clarify who should provide a list of qualified automotive manufacturer representatives to the Governor or (2) amending that section to change the two positions for manufacturing representatives to consumer representatives (page 23).

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“Audit Highlights” is a summary of the audit report. To obtain the complete audit report which contains all findings, recommendations, and management comments, please contact

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# Performance Audit Tennessee Motor Vehicle Commission

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# **Performance Audit Tennessee Motor Vehicle Commission**

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## **INTRODUCTION**

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### **PURPOSE AND AUTHORITY FOR THE AUDIT**

This performance audit of the Tennessee Motor Vehicle Commission was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-219 of that statute, the commission is scheduled to terminate June 30, 1998, unless continued by the General Assembly. The Comptroller of the Treasury is authorized, under *Tennessee Code Annotated*, Section 4-29-111, to conduct a limited program review audit of the commission and to report to the Joint Government Operations Committee. The performance audit is intended to aid the committee in determining whether the Tennessee Motor Vehicle Commission should be abolished, continued, or restructured.

### **OBJECTIVES OF THE AUDIT**

The audit of the Tennessee Motor Vehicle Commission had the following objectives:

1. To determine the authority and responsibility mandated to the commission by the General Assembly.
2. To determine the extent to which the commission has met its legislative mandate.
3. To evaluate the effectiveness of the commission's regulation of the motor vehicle industry.
4. To develop possible alternatives for legislative or administrative action which might result in more efficient and/or effective regulation of the motor vehicle industry.

### **SCOPE AND METHODOLOGY OF THE AUDIT**

The audit covered the Tennessee Motor Vehicle Commission's activities during calendar years 1994 through 1996. The audit was conducted in accordance with generally accepted government auditing standards and included the following methods:

1. Interviews with commission staff and members; officials from the Department of Safety's Criminal Investigation Division and the Department of Commerce and Insurance, and the Better Business Bureau, and motor vehicle industry representatives.

2. Review of statutes and rules.
3. Review of the commission’s meeting minutes, license files, inspection reports, license applications, training manual, and daily and monthly reports from field investigators.
4. Review of complaints, notices of noncompliance, and consent orders.

**ORGANIZATION AND STATUTORY DUTIES**

Purpose of the Commission

The Tennessee Motor Vehicle Commission was established by Chapter 79 of the Public Acts of 1955 (codified as *Tennessee Code Annotated*, Section 55-17-103). The commission is responsible for licensing and regulating the motor vehicle industry “to prevent frauds, impositions, and other abuses” upon the public. The commission issues two-year licenses to automobile dealers, sales staff, manufacturers, distributors and their representatives, automobile auction companies, and dismantlers and recyclers. As of July 1997, the commission licensed the following:

Motor Vehicle Dealers	5,412
Motor Vehicle Sales Staff	13,526
Dismantlers and Recyclers	505
Automobile Auction Companies	26
Manufacturers and Distributors	160
Manufacturer and Distributor Representatives	<u>808</u>
Total	20,437

The commission collects fees for these licenses and is required by Section 4-29-121, *Tennessee Code Annotated*, to be financially self-sufficient. The commission reported \$996,133 in revenues and had \$958,415 in expenditures for fiscal year 1996. At the end of fiscal year 1996, the commission had a reserve balance of \$223,316.

Commission Membership and Staff

According to *Tennessee Code Annotated*, Section 55-17-103, the commission should consist of 16 members appointed by the Governor: one chair selected statewide, one industry member from each of the nine congressional districts, four consumer members, and two manufacturer representatives. (As of March 1997, the board had the required membership except for the two manufacturer representatives.) The commission has three members who are at least 60 years of age or older and one member who is a racial minority. The commission is required to meet at least four times per year—in January, April, July, and October.

At March 1997, the commission had 19 employees: the executive director, administrative director, five clerical staff, and 12 field investigators. Field investigators investigate complaints

against and abuses by the motor vehicle industry and enforce commission laws, rules, and regulations. Investigators inspect dealers' facilities to ensure they meet commission standards, monitor licensees in their territories, and notify the commission of any dealer who is going out of business.

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## OBSERVATIONS AND COMMENTS

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The issues discussed below did not warrant findings but are included in this report because of their effect or potential effect on the operations of the Motor Vehicle Commission and on the citizens of Tennessee.

### Procedures for Past-Due Annual Sales Reports

Calendar year 1996 was the second year motor vehicle dealers were required to submit annual sales reports (*Tennessee Code Annotated*, Section 55-17-125) to the Motor Vehicle Commission. These reports are due on or before February 15 each year and show how many motor vehicles were sold, the number of dealer plates issued, and the county or counties in which the plates were issued. This information is used to determine how many dealer plates each dealer will be allowed to purchase from the county clerk's office.

The statute states that any dealer who fails to file the annual sales report on time is not eligible to purchase dealer registration plates until the report is filed. The annual sales report form states that individuals who send in the report late can be fined \$100 to \$1,000. The commission's policy (developed after audit fieldwork was completed) states that the commission will issue a consent order, containing a \$100 fine, to any dealer who submits the annual sales report after February 22 (allowing a seven-day grace period). As of April 14, 1997, the commission had collected \$11,400 from consent orders issued because of late annual sales reports.

The development of a written policy and procedures should help ensure that the commission's actions will be consistent and fair to all dealers and provide guidelines for new commission staff to follow in the future.

### Criminal Background Checks

Field investigators conduct only informal background checks on applicants (i.e., obtaining information from community businesses, automobile dealers, sheriffs or local police, county clerks' offices, and churches). The Motor Vehicle Commission does not contact the Tennessee Bureau of Investigation (TBI) or the Department of Correction (DOC) to verify that applicants do not have a criminal background. Checks through TBI cost \$28 (according to the Department of Commerce and Insurance); there is no charge for checks through DOC. To conduct a more formal background check through DOC however, the commission needs the applicant's social security number and date of birth, information not currently requested on the application for the dealer license.

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## FINDINGS AND RECOMMENDATIONS

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### 1. The commission's enforcement process is deficient

#### Finding

Because of deficiencies in its enforcement process, the commission has not always taken action against repeat violators, ensured civil penalties were paid, and deterred continued advertising violations. The commission did not consistently issue written notices of non-compliance to dealers against whom numerous complaints had been filed. In the case of advertising violations, the commission took minor action against individuals who repeated a violation after receiving consent-order fines for a similar violation. The commission was slow, in some cases, in taking action for nonpayment of consent-order fines. These deficiencies hinder the commission's efforts to enforce state laws and rules.

#### Enforcement Process

The Motor Vehicle Commission receives complaints from two sources: consumers and the commission's field investigators. Field investigators usually find advertising violations and fill-out the complaint form themselves. With consumer complaints, the field investigator contacts the consumer and fills out a complaint form based on information gathered from the consumer. After investigating the complaint, the investigator may, if warranted, issue a warning. If the complaints continue, the field investigator may issue the dealer a notice of noncompliance. When the violation is severe, such as selling motor vehicles off-site, the field investigator may fill out a complaint form and issue a notice of noncompliance at the same time. According to commission staff, all complaints are required to be resolved within 30 days. This requirement is part of the commission's policies, effective January 1997.

The executive director, administrative director, and assigned legal staff may decide to issue the licensee a consent order if the commission continues to receive complaints or to issue notices of noncompliance. The consent order identifies the violation and indicates how long the violator has to respond by either paying the penalty or communicating to commission staff why the dealer believes the consent order is unjustified (e.g., a newspaper may have printed the advertisement incorrectly). Consent-order fines usually range from \$1,500 to \$4,000.

The commission may request a licensee to appear for an informal hearing if the licensee does not respond to the consent order in a timely manner or has placed the public in danger of fraud (e.g., selling consumers extended warranties on vehicles and not forwarding payment to the insurance company). During the informal hearing, the commission may suspend an individual's license. The licensee may request a formal hearing, or the commission may order a formal

hearing. At the formal hearing, the commission has the authority to suspend or revoke an individual's license or dismiss the charges against the licensee.

### Notices of Noncompliance Not Always Issued for Repeated Violations

According to the commission's *Field Investigator Training Manual*, the field investigator is to issue the notice of noncompliance to document a dealer's violation of statutes and commission rules. This notice is the first step in building a documented file on a dealer who is a repeat offender. If a dealer continues to violate the rules and regulations, the notices of noncompliance will provide a basis for a consent order. The training manual emphasizes the importance of the notice of noncompliance but does not give any guidelines as to when the notice of noncompliance should be issued.

The review of dealer files identified several instances in which the field investigators did not issue written notices of noncompliance to dealers despite numerous complaints. One dealer had 14 complaints, six of which were for failure to deliver a title to the customer, but had not received any notices of noncompliance. Commission management stated that in most cases this dealer had not paid off the lien on a vehicle and would pay off the lien and furnish the title after the customer complained to the commission. Another dealer had received seven advertising violation complaints but was not issued a notice of noncompliance. Yet another dealer was issued four notices of noncompliance during calendar year 1996 but received no consent order. Two of these notices of noncompliance were for violations that the commission considers severe—selling motor vehicles off-site and abusing the use of temporary (drive-out) tags. The field investigator who issued the notice for selling vehicles off-site recommended that the commission fine the dealer.

Failing to issue notices of noncompliance slows the disciplinary process by delaying consent orders and deprives the commission of documentation that it has tried less stringent means to get the dealer to comply with laws or rules. During the course of the audit, commission staff developed written policy that requires field investigators to issue a notice of noncompliance after the issuance of three warnings for minor infractions. If the violation is serious, the field investigator is required to issue a notice of noncompliance even if no warnings have been issued.

### Consent-Order Fine Payments Not Always Monitored

The Motor Vehicle Commission issued 40 consent orders to 26 dealers from February 1992 through April 1996 but did not always monitor payment of the consent-order fines. As a result, 17 of the 40 fines (42%) were not paid on time (within 30 days). Eleven of these 17 were from 10 to 157 days late (see Exhibit 1).

Four of the 17 dealers who did not pay their fines on time received a second letter requesting them to appear before the commission for an informal hearing. Two of the three dealers paid the fine prior to the commission meeting. The other dealer paid the fine 11 days after

the meeting. The second letter concerning the unpaid consent-order fine is apparently an effective tool to encourage dealers to pay penalties. However, the commission used the second letter only four times, and in three of those instances, the letter was not sent promptly. In one instance, the commission waited 114 days before sending the second letter to the dealer. In the other two cases, the second letters were sent after 72 and 87 days. The commission's authority and effectiveness are reduced when follow-up is not timely.

During the audit, commission staff developed a written policy requiring the executive director to monitor consent orders for payment. If the licensee does not pay the consent-order fine within 30 days, the licensee will be given a ten-day grace period before a second letter, extending the grace period an additional 20 days, is sent. If the licensee does not respond to the second letter, the commission will ask the licensee to appear before the commission.

#### Exhibit 1

#### Consent-Order Fine Payment Days Late and Status of Second Letter Year Ended June 30, 1996

<u>Dealer</u>	<u>Days Late</u>	<u>Dealer Sent Second Letter</u>
Dealer 8	2	No
Dealer 7	4	No
Dealer 7	5	No
Dealer 18	8	No
Dealer 2	9	No
Dealer 19	9	No
Dealer 15	10	No
Dealer 11	11	No
Dealer 12	13	No
Dealer 17	19	No
Dealer 10	27	Yes, after 19 days
Dealer 4	30	No
Dealer 20	41	No
Dealer 21	47	No
Dealer 17	104	Yes, after 72 days
Dealer 13	127	Yes, after 87 days
Dealer 10	157	Yes, after 114 days

Source: Dealer files.

## Ineffective Disciplinary Actions for Advertising Violations

In calendar year 1996, 806 closed complaints were entered in the computer system. Of these 806 complaints, 406 (50%) involved advertising violations. The audit identified dealers who had been sanctioned by the commission and yet continued to violate the commission's advertising rules.

Thirty-eight of the 40 consent orders reviewed (95%) were for the following advertising violations:

- Advertisement did not contain stock numbers.
- Advertisement failed to state terms of lease clearly and conspicuously.
- Advertisement failed to include manufacturer's suggested retail price.
- Dealer added charges to the advertised price.
- Advertisement failed to designate used/pre-owned/pre-titled.

The majority of the advertising complaints came from the field investigators, who are required to review dealer advertising daily. The information in Exhibit 2 shows that some dealers continued to violate advertising rules even after receiving complaints, notices of noncompliance, and consent orders. For example, in 1996, eight dealers received consent orders—all had received complaints, notices of noncompliance, and/or consent orders for advertising violations in 1995.

The Motor Vehicle Commission's use of consent orders apparently does not deter dealers from continually violating the commission's advertising rules. Even after being disciplined by the commission, some dealers continue to violate rules and regulations designed to protect the consumer from fraud and misrepresentation. The commission acknowledged that even a minor violation could be hazardous to the consumer.

Exhibit 2  
 Advertising Violations  
 Complaints, Notice of Noncompliance, and Consent Orders  
 Calendar Years 1994 Through 1996

Dealer	1994			1995			1996		
	<u>C</u>	<u>NC</u>	<u>CO</u>	<u>C</u>	<u>NC</u>	<u>CO</u>	<u>C</u>	<u>NC</u>	<u>CO</u>
1			1	1	2	1	1		1
2		1			1	1	1		
3		1			1	1	4		1*
4	2			2	1	2	1		
5						1	1		
6	1	1		2	2	1	1		
7	1			3	1	2	2		
8	2			2		1			
9				2	1	1	3		
10	2	1	1	1	1	1			
11	1			2	1	1			
13	4			1	1	2			
14					1	1			
15				1	1	1	1	1	
16					2			1	1
17		1			2				1
18		1		2	2	1	5		
19			1*		3	1	5	1	
20				2	3	1		2	
21	1			4	1	1	2		
22			1		1				1
23		1		3	1		5		1
24				4	3		2		1
25	1				3		1		1

C = Complaint NC = Notice of Noncompliance CO = Consent Order

\* Reduced to warning by the commission.

Source: Dealer files.

### Recommendation

The Motor Vehicle Commission should place the new policy concerning notices of noncompliance in the training manual and monitor the field investigators' adherence to the policy.

The commission should also place the new policy concerning issuing and monitoring consent orders in the manual. The commission and legal staff should monitor issued consent orders and follow the appropriate procedures when a dealer fails to pay the fine or respond in a timely manner.

The commission should develop new disciplinary actions for dealers who continually violate statutes and/or the commission's rules and regulations. One option would be to use the commission's authority and power to suspend the dealer's license.

### **Management's Comments**

#### Motor Vehicle Commission:

The commission concurs in part. The Tennessee Motor Vehicle Commission is charged with two primary responsibilities: first to protect the consumers of the state of Tennessee from unfair trade practices, and second to protect businesses from unfair competition. In furtherance of this mission, the commission in 1988, promulgated Tennessee's Dealer Advertising Regulations. The Tennessee Motor Vehicle Commission's regulatory approach subjects a licensee to the commission's broad enforcement powers, ranging from cease and desist orders to license suspension and/or revocation.

While cognizant of constitutionally protected, commercial free speech, the Tennessee Dealer Advertising Regulations are intended to both protect the consumers from false, misleading and deceptive advertising as well as establish a consistency in dealer advertising that will allow consumers to comparison shop prior to purchase. In addition, recognizing that Tennessee borders eight states, is the location of major trade areas, and is subject to the solicitation of Tennessee consumers by out-of-state entities, the commission recommended, and the General Assembly enacted, an amendment to the Tennessee Consumer Protection Act, TCA § 47-18-101, et, seq., which subjects advertisements placed in Tennessee to the same standard as are the licensees within our state border.

The Tennessee Motor Vehicle Commission's focus has been to achieve compliance. One must recognize that the commission does not and cannot regulate media outlets. Nor can the commission regulate advertising agencies. However, the Tennessee Dealer Advertising Regulations specifically hold a licensee culpable for any advertising copy bearing their name. When violations have been alleged and the licensee submits documentation satisfactory to the commission evidencing the infraction was the result of a third-party mistake, i.e., newspaper layout error—the commission has tempered its discipline. However, the commission has been, is and shall remain committed to the uniform and impartial application of the Dealer Advertising Regulations and we will not hesitate to invoke our enforcement powers.

We said during the exit interview relating to this performance audit that the commission welcomes the constructive advice produced through this process. As a result, the commission implemented a written policy concerning "non-compliance" on February 26, 1997. The policy contains the procedure to be followed by our staff on verbal and written warnings, and non-compliance letters. This policy was presented and explained to the Tennessee Motor Vehicle Commission's field investigators at their June 1997 training seminar and the policy has been placed in the Field Investigators Training Manual. The commission will monitor the investigators adherence to the written policy.

Also, a written policy concerning “consent orders” was developed February 28, 1997. It too, was placed in the Field Investigators Training Manual. This policy will better enable the commission and legal staff to monitor the issued consent orders and the timely payment of subsequent penalties as outlined in the written policy.

Department of Commerce and Insurance:

We concur in part. The written policy concerning “Non-Compliance” was developed February 26, 1997. This policy has been presented and explained to the MVC field investigators at their June 1997 training seminar. This written policy has been placed in the Field Investigators Training Manual. The commission will monitor the investigators’ adherence to the written policy.

The written policy concerning “Consent Orders” was developed February 28, 1997, and will be placed in the training manual. The commission and legal staff will monitor the issued consent orders and follow the procedures in the written policy.

The Tennessee Motor Commission has been, is and will remain committed to the uniform and impartial application of the dealer advertising regulations. The dealer advertising regulations are intended, first and foremost, to protect the consumers of Tennessee and to allow them to compare “apples to apples.” Through uniform, impartial and consistent enforcement, these regulations allow all dealers to compete for business on a level playing field. In order to accomplish both ends, the Tennessee Motor Vehicle Commission will not waiver. Some motor vehicle dealers are “high volume” dealers and do high volume advertising on the radio, TV and newspapers. Some dealers try to keep their overhead low and use a less aggressive approach by advertising less. Many dealers have contracts with advertising agencies who develop and run the ads for the dealership. From time to time it is necessary for a dealer to change advertising agencies. Most agencies are from out of state and are not as familiar with the Tennessee advertising regulations as others. They may run some ads that are in violation of the Tennessee laws. With advertising deadlines, it can be a slow process to stop or change an ad.

The larger dealerships have a general manager who is responsible for the daily operation of the entire dealership. Sometimes, it becomes necessary to make a change in the general manager. Tennessee borders eight other states and often a general manager is hired from another state and is not familiar with all the Tennessee laws and permits advertising violations to be run on radio, TV or the local newspapers. Both of the above examples could make it appear the dealership doesn’t want to adhere to the commission’s advertising laws, when this may not be the case. Most dealers support and desire rules and regulations to protect the consumers of Tennessee. All they want is to be able to compete on a level playing field. The commission has broad enforcement powers, ranging from cease and desist orders to civil penalties to license suspension and/or revocation. It has been the practice of this commission to invoke these powers without hesitation should the situation call for it. **During the past twelve months, the commission has revoked or suspended the license of four operating motor vehicle dealers.**

## **2. The commission does not analyze complaints**

### **Finding**

The Motor Vehicle Commission does not analyze complaint trends to determine the frequency of complaints or the dealers receiving the most complaints. The Department of Commerce and Insurance's data processing section can produce a closed-complaint listing the commission could use to determine the types of complaints received, the total number of complaints received, and the number of each type of complaint received. This listing can also be used to sort complaints by complainant (a field investigator or a consumer) and by respondent (a dealership, a motor vehicle auction company, a salesperson, or a dismantler/recycler). However, the commission has not requested this information. Without conducting complaint analysis, management cannot determine which complaints are the most common and which dealers receive the most complaints.

Commission staff prepare quarterly complaint reports for the Assistant Commissioner of the Division of Regulatory Boards; these reports contain the number of complaints resolved during the quarter. (This information comes from the field investigator monthly reports.) The complaint report revealed that 2,623 complaints were resolved during calendar year 1996, yet the information from the department's data processing section listed only 806 closed complaints during calendar year 1996. Commission staff indicated that the remaining 1,817 complaints were not entered into the computer system. A quarterly analysis of the complaint information from data processing might have indicated that not all resolved complaints were entered in the system.

### **Recommendation**

The commission should use the information available from the Department of Commerce and Insurance's data processing section to conduct complaint trend analyses. The commission should also reconcile the number of complaints the field investigators report as resolved on their monthly reports with the number of resolved complaints entered into the computer system to ensure all complaints are entered.

### **Management's Comments**

#### **Motor Vehicle Commission:**

We concur. For years, the commission operated manually without benefit of automated technology. It was only in 1994 that the commission received computing capability. Today, the Department of Commerce and Insurance's data processing section can produce closed-complaint listings which can be utilized to show and study trends as to the total number and each type of complaint. This has been the commission's intent since the technology became available. The commission will utilize the information available from the data processing section to better

perform our job. Any recidivism, other trends or problem areas will be identified and dealt with responsibly.

During 1996, there was a total of 2,623 complaints resolved by the twelve Motor Vehicle Commission field investigators; of which 806 were documented and entered into the computer system. There were 1,817 undocumented complaints that were resolved but which were not entered into the computer system. In hindsight, they should have been. The undocumented complaints, without exception, were resolved in a short amount of time usually with just a phone call. Each field investigator is assigned an average of seven counties in his territory. Without trying to justify the procedure that has evolved over the years, it simply is a case of trying to save time and cut down on the paperwork of the investigators. The commission understands two sets of numbers can be easily confused.

The commission has sent a memorandum to the field investigators to correct the problem. Every complaint will be documented. Every complaint will be entered into the computer system. All documented complaints will be listed on the field investigators' daily and monthly reports. Trend information will be developed and utilized.

#### Department of Commerce and Insurance:

We concur. The Department of Commerce and Insurance's data processing section can produce closed-complaint listings which can be utilized to show and study trends in the total number of complaints received and the type of complaints and the number of each type complaint. In the future, the commission will utilize the information available from the data processing section to better analyze the type of complaints. Any recidivism, other trends or problem areas will be properly dealt with.

During 1996, there was a total of 2,623 complaints resolved by the twelve Motor Vehicle Commission field investigators; of which 806 were documented and entered into the computer system. There were 1,817 undocumented complaints resolved for the consumer with just a phone call or in a manner that required very little time, this policy was utilized in order to save time and cut down on paperwork of the Investigators. The commission can see how two different numbers can be confusing and has sent a memorandum to the field investigators to correct this problem. Only documented complaints that are entered into the computer system will be shown on field investigators daily or monthly reports.

### **3. Dealer annual inspections are not always done and all inspections are not clearly documented**

#### **Finding**

We found that the field investigators do not always complete annual inspections of dealers and do not clearly document any of their dealer inspections. The commission cannot ensure that

dealers are following laws and rules if it does not make annual inspections and does not document the type of or results of inspections.

### Annual Inspections

The commission requires an annual inspection of all licensed dealers. These inspections cover the 13 requirements dealers must meet to obtain a dealer's license and include a review of automobile titles at the dealership to determine if there are any "open titles" (titles not registered to a particular individual), books and records (including temporary tag log), facilities, display lot, sales staff licenses, surety bond, felony conviction (within the last five years), appropriate tax license numbers, and insurance.

We randomly selected and reviewed 50 dealer files to determine whether the field investigators were conducting annual inspections. Three of the dealers whose files were chosen were licensed during 1996 and were not due for an inspection. Thirty-two of the remaining 47 dealers whose files were tested were not inspected or were inspected late during calendar years 1994 through 1996. The commission did not inspect 15 of the 47 dealers in 1994, 14 dealers in 1995, and 14 in 1996. The commission did not inspect three dealers in any of these three years and inspected seven dealers once during these three years. Two dealers were inspected late—one was inspected 19 months late and the other four months late.

To determine if field investigators were monitoring problem dealers, auditors reviewed files of 25 dealers who paid consent-order fines during fiscal year 1996. The additional file review indicated that 19 of these dealers did not have an annual inspection during calendar year 1996.

The commission does not monitor inspections and thus does not know which dealers have or have not been inspected, nor does it require a dealership to be inspected before renewing its license. Inspections help ensure dealers and sales staff are following state rules and laws, thus helping to protect the consumer.

### Documenting Inspections

Field investigators are required to inspect a facility before issuing a dealer's license. They are also required to perform annual inspections and follow-up inspections when a dealer has an inspection deficiency. However, daily reports do not document the types of inspections or the results.

The field investigators' daily reports, and examples in the training manual, use terms such as "dealer inspection," "checked facility," "checked dealer," and "asked for info." These terms do not indicate the type of inspection, what was checked at the facility, or what information was obtained. The auditors were unable to determine whether inspections were for dealer applications, annual inspections, or follow-ups.

When vague terms are used to document dealer inspections, the commission cannot determine the efficiency and effectiveness of the field investigators, pinpoint problems found, and be sure which dealers are complying with laws and rules. The daily report examples in the training manual do not provide clear and concise terms or instructions for field investigators to use to completely document activities.

### **Recommendation**

The commission should monitor inspections to determine how well the field investigators are performing their responsibilities and also to determine which dealers have or have not been inspected. Inspections should be required before a dealership can renew its license. The commission should develop a database of licensees updated as inspections occur so that management can monitor annual inspections. If the commission determines that field investigators cannot inspect all the dealers in a year, it should place those dealers not inspected in the prior year and new dealers at the top of the list.

The Motor Vehicle Commission should design a daily report form that will help the field investigators clearly document their daily activities. The inspections could be categorized as original, annual, and follow-up. The daily report could also provide sections such as consumer complaints, field investigator complaints, notices of noncompliance, and comments. A daily report form with sections would make the reports more uniform and facilitate supervisors' review of field investigators' activities.

### **Management's Comments**

#### Motor Vehicle Commission:

We concur in part. While an annual dealer inspection is not mandated by statute, the commission voted to implement such a policy at its March 4, 1994, meeting. However, as management began to implement this policy, the size of the territory and the workload of the field investigators caused management to re-evaluate its allocation of resources. Management concluded that because dealers are issued a two-year license, a biennial inspection seemed appropriate unless, of course, the commission had reason to believe problems were developing with a particular licensee. In that case, as many inspections as the commission deems necessary could occur. The inspection form has been revised to state "Original," "Biennial" or "Follow-Up" in the upper left-hand section of the form to better document the inspection type. The commission has furnished each field investigator a computer printout of every licensee in his territory. As the investigator conducts an inspection, the date is entered. Updated inspection records must be returned to the commission office no later than January 10 of each year. This information permits management to determine which licensees were not inspected during the previous year so that all inspections are made prior to license renewal. It is without question that inspection of licensees provides a useful enforcement tool for the commission thus helping the commission protect the consumers of Tennessee. The revised form, now implemented, will assist

management in properly allocating resources as well as enable auditors to better determine the nature of an inspection as well as its findings. This new inspection procedure has been included in the Field Investigators Training Manual. The commission will monitor adherence to insure procedural compliance.

Department of Commerce and Insurance:

We concur in part. The dealer inspection is not mandated by statute but is a March 4, 1994, policy of the commission. Since the commission had no documentation of inspections in dealer files, it was management's intention to inspect dealers on an annual basis. However, because of the size of the territory and the workload of the field investigators, management realized it is impossible to inspect every dealer annually. Since dealers are issued a two-year license, we will also inspect dealers biennially, unless the commission is having problems with a particular dealer, who will then be inspected as many times as the commission deems necessary. The inspection form has been amended to show, "Original," "Biennial," and "Follow-up" in the upper left-hand section of the form enabling the documentation of the type inspection. The commission has furnished each field investigator a computer printout of every dealer in their territory. When the investigator inspects a dealer, they are to enter the date on the computer printout. This computer printout which will show the dates of inspection is to be returned to the commission office no later than January 10 of each year. This will permit the staff to see which dealers were not inspected during the previous year. We have requested that the department's data processing section establish a new field for the inclusion of the inspection date which will be loaded into each motor vehicle dealer file. Inspection of dealers does help the commission ensure that motor vehicle dealers are complying with the rules and laws thus helping the commission protect the consumers of Tennessee. The current daily reports are limited for space and do not include a lot of information as to the type of inspection; however, the dealer file which will have the inspection form in it will designate the type of inspection on that date. With the new revised form, auditors will be able to determine if the inspection is an original, biannual or follow-up.

**4. The commission does not report abuse of dealer registration plates and temporary tags to the Department of Safety**

**Finding**

In calendar year 1996, the Motor Vehicle Commission received ten complaints concerning the misuse of dealer plates and temporary tags. The commission's complaint records indicated that the field investigators did not notify the Criminal Investigation Division in the Department of Safety of six valid complaints concerning possible abuse of dealer plates or temporary tags.

Commission staff indicated use of dealer plates and temporary tags is prone to abuse. Dealers can avoid taxes associated with permanent vehicle tags by putting temporary tags and dealer plates on private vehicles. Dealers who go out of business can use the temporary tags they have not turned in to sell cars out of backyards or off parking lots.

The commission is responsible for monitoring compliance with rules for using temporary tags (e.g., maintaining a temporary tag log) and dealer plates. The Criminal Investigation Division is required by Section 55-4-221, *Tennessee Code Annotated*, to monitor any criminal activity related to the use of temporary tags or dealer plates (e.g., issuing more than two 14-day temporary tags to a customer). According to Criminal Investigation Division staff, referrals from the Motor Vehicle Commission are usually informal and are passed along verbally.

Criminal Investigation Division staff are concerned about the abuse of temporary tags and dealer plates and expect enforcement agencies such as the police and the Motor Vehicle Commission to report such abuse. In calendar year 1996, however, field investigators received a complaint from an individual who had been issued eight temporary tags. A review of the complaint and the field investigator's daily report indicated that the field investigator resolved the issue by telling the dealer to give the customer her money back. The investigator did not relate this information to the Criminal Investigation Division.

### **Recommendation**

The Motor Vehicle Commission should establish specific policy guidelines for reporting cases involving the abuse of temporary tags and dealer plates to the Criminal Investigation Division of the Department of Safety. The policy should address when referral is the appropriate action to take.

The Motor Vehicle Commission has developed a form which field investigators can use to document when they make referrals to the Criminal Investigation Division or other law enforcement agencies. The commission should review the form with field investigators and place the form in the training manual. The commission should periodically review complaint dispositions to determine whether field investigators are referring the appropriate complaints to the Criminal Investigation Division.

### **Management's Comments**

#### **Motor Vehicle Commission:**

We concur in part with the finding. The commission observes in the vast majority of cases where a field investigator determines an impermissible use of dealer registration plates or temporary tags has occurred, notification of that fact to the licensee has resulted in immediate compliance and procedures being implemented by the licensee to prevent further discrepancies. Where voluntary compliance is not forthcoming, the commission forwards information to the Criminal Investigations Division, Tennessee Department of Safety (CID). Field investigators of the commission routinely coordinate their enforcement efforts with CID.

Admittedly, in the past, referrals to CID were many times made on an informal basis, such as in person or by telephone. To better document the referral, on March 6, 1997, the commission

developed form TMVS 97-0306 and has placed a copy in the Field Investigators Training Manual. The form, its use and the rationale behind the requirement have been thoroughly explained to the field investigators. The commission will periodically review complaint dispositions to evaluate our performance. The Personnel and Training Sub-Committee of the commission will be instructed to conduct these reviews and report to the full commission. Consumer member, Connie Easterly chairs the Personnel and Training Sub-Committee.

The commission has notified all dealer licensees by memorandum regarding the permissible uses of dealer registration plates. The commission has also provided this information to state and local law enforcement.

In 1994, the commission recommended, and the General Assembly enacted, an annual sales report of the previous year's sales to be filed with the commission by all dealer licensees by February 15 of each year. The commission then notifies the county clerk in the dealer's county of operation how many dealer registration plates to which the licensee is so entitled. The dealer plate issuance period starts on March 1. The commission recognized that the improper use of dealer registration plates can serve to deny the state of Tennessee its lawful revenue. The subsequent reduction in the number of dealer plates issued since enactment of this law is proof-positive that its intended effect has occurred.

Insofar as temporary tags are concerned, the commission would note for the record that circumstances beyond the control of the issuing dealer do occur; i.e., marked delays receiving a title from a satisfied lienor post payoff and delays in the timely issuance of certificates of title due to capacity limitations on the current titling and registration system. Legislation has been enacted at the request of the commission to require a satisfied lienor to return the certificate of title within seven business days. A special legislative committee has been working with the Titling and Registration Division seeking to find solutions to the issuance problem. In cases where issuance abuse is reported and found, the commission will make immediate referral to the CID. The commission will monitor this procedure as well.

TCA § 55-4-221(c)(4) specifically empowers the Commissioner of the Department of Safety to design, issue and regulate the use of temporary plates for use in cases where dealer plates cannot be used.

#### Department of Commerce and Insurance:

We concur in part. Typically, when abuse of dealer registration plates or temporary tags by a motor vehicle dealer is pointed out by the field investigator, the dealer corrects the problem immediately and makes the necessary adjustments to prevent further abuses. The commission has always striven for compliance and not conviction. However, if the dealer is unwilling to correct the problem, then the commission will refer the abuse to CID. Many times the Motor Vehicle Commission's investigators work with the CID and in the past referrals were made on an informal basis such as in person or over the telephone. However, in order to better document the referrals, the commission has developed form TMVC 97-0306 which the commission's field investigator

will use to make referrals to the Criminal Investigation Division of the Department of Safety. The commission has reviewed this form with their Investigators and has placed a copy of same in the training manual.

Many times, when there is an abuse of temporary (drive-out) tags, such as furnishing more than two tags to a customer, this could be an indication the title is not present and the vehicle that was sold to the customer has not been paid for by the dealer. The trade-in may not have been paid off; thus a consumer credit may be harmed by a delinquent dealer. This could also be an indication that the dealer is in financial trouble and needs to be monitored closely to protect consumers.

TCA 55-4-221(c)(4) empowers the Commissioner of the Department of Safety to design, issue and regulate the use of temporary plates in cases where dealer plates cannot be used.

## **5. The commission does not have two manufacturing representatives**

### **Finding**

No manufacturer representative has ever been appointed to the commission, although *Tennessee Code Annotated*, Section 55-17-103(a), states that the Governor is to select and appoint two manufacturer representatives from across the state. These two representatives are to be chosen from a list of qualified persons who are licensed automotive manufacturers in Tennessee. However, the statute is not clear on who should provide this list to the Governor.

Commission staff said that they have cooperated with the Governor's Office in its efforts to appoint these representatives to the Motor Vehicle Commission. The commission has submitted two lists of licensed manufacturers to the Governor's Office—one in February 1995 and one in January 1997.

Staff from the Governor's Office stated that they contacted the Tennessee Automotive Manufacturer's Association in early 1995 in an effort to find candidates for the Motor Vehicle Commission, but that the association was not interested in providing any candidates. The Governor's Office did not pursue the appointment process any further. The commission's executive director stated that if manufacturers were not interested, he would like to see the positions filled by consumer members since the commission's mission is to protect the consumer.

### **Recommendation**

The General Assembly may wish to consider amending *Tennessee Code Annotated*, Section 55-17-103(a), to clarify who is responsible for providing a list of qualified automotive manufacturer representatives to the Governor. The commission should continue to work with the Governor's Office and industry representatives to ensure that two automotive manufacturer representatives are appointed to the commission.

The General Assembly may also wish to consider amending *Tennessee Code Annotated*, Section 55-17-103(a), to change the two positions reserved for manufacturing representatives to consumer representatives. The addition of two consumer members could help the commission meet its responsibility to protect consumers.

### **Management's Comments**

#### **Motor Vehicle Commission:**

We concur. The commission has actively sought manufacturing representatives. The commission has supplied the appointing authority of the last two administrations with a listing of all licensed motor vehicle manufacturers, distributors, representatives and agents. The most recent submission occurred in January 1997. Public Chapter 190, Acts of 1997 addresses this finding on point. Effective May 8, 1997, Tennessee manufacturers are given 180 days to submit recommendations to the Governor for his consideration for appointment. If they fail to do so, the Governor is empowered to appoint up to two additional consumer members in their stead. This legislative solution, by the way, was a commission initiative.

#### **Department of Commerce and Insurance:**

We concur. The commission furnished the Governor's Office a list of licensed motor vehicle manufacturers in February 1995 and again in January 1997.

However, Public Chapter 190, Acts of 1997 provides that if such manufacturers fail to submit a list of qualified persons within 180 days of any vacancy, the Governor may appoint a consumer member to fill each such vacancy to serve the full term of such manufacturer members.

### **6. The commission had not distributed consumer education material**

#### **Finding**

The commission had developed but had not distributed consumer education brochures as of January 1997. In response to a 1993 performance audit citing the commission's failure to develop consumer education material, the commission, in its October 10, 1994, meeting voted to spend up to \$10,000 to develop bulletins or pamphlets to help educate consumers about the protections the commission offers them. The commission intended for field investigators to distribute the brochures to the county clerks' offices, motor vehicle dealer locations, and civic groups. Although the commission developed a consumer education brochure, it was not distributed until March 25, 1997.

The Tennessee Motor Vehicle Commission was created by the legislature to prevent fraud against consumers by the automobile industry (*Tennessee Code Annotated*, Section 55-17-101).

The development and distribution of consumer education materials, such as informative brochures and public service announcements, are one means of protecting the public from fraud and other forms of consumer abuse.

### **Recommendation**

The Motor Vehicle Commission should continue to distribute its consumer education brochure at various locations throughout the state where it can benefit consumers, e.g., county clerks' offices, licensed dealers, and civic clubs. The commission should also continue to develop and distribute consumer education material such as brochures and public service announcements that will educate consumers about potential frauds and make the public aware of the consumer protection services available from the Motor Vehicle Commission.

### **Management's Comments**

#### Motor Vehicle Commission:

The commission concurs in part with this finding. The commission, with input from its field investigators, developed an educational pamphlet entitled *Tips for Buying a Used Car* in early 1995. Due to budgetary constraints imposed upon all state government departments, the commission was denied permission to publish this material until late 1996.

On March 25, 1997, the commission actually received 15,000 pamphlets of *Tips for Buying a Used Car* and started distributing the pamphlets to consumers through county clerks, dealer groups, civic clubs, senior groups and on the information or reception counters of the other 24 regulatory boards in the Department of Commerce and Insurance. The supply of 15,000 pamphlets has been depleted and another 25,000 were ordered and received. Approximately 15,000 of the second order have been distributed to Tennessee consumers.

The commission is currently developing a number of additional consumer brochures. The commission remains committed to its mission to make the public aware of the consumer protection services available from the Tennessee Motor Vehicle Commission. To this end, we shall not waiver.

#### Department of Commerce and Insurance:

We concur in part. The commission during its regularly scheduled quarterly meeting, October 10, 1994, voted to spend up to \$10,000 for the development of consumer educational bulletins or pamphlets. Public Chapter 79, Acts of 1995 created the Tennessee Motor Vehicle Commission to regulate and license the motor vehicle manufacturers, distributors, dealers, salesmen and their representatives doing business in Tennessee in order to prevent frauds, impositions

and other abuses upon its citizens. In 1995, the commission attempted to develop a bulletin but because of budgetary constraints was unable to publish it until late 1996.

March 25, 1997, the commission received the 15,000 pamphlets, "Tips for Buying a Used Car" and started distributing the pamphlets to the consumers through the local county clerks, dealer groups, civic clubs, senior groups, and on the information or reception counters of the other 24 regulatory boards in the Department of Commerce and Insurance. The 15,000 pamphlets have been exhausted and another 25,000 were ordered and received and some 15,000 of the second order has been distributed to Tennessee consumers. The commission will continue to make the public aware of the consumer protection services available from the Motor Vehicle Commission.

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## RECOMMENDATIONS

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### LEGISLATIVE

This performance audit identified areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Motor Vehicle Commission.

1. The General Assembly may wish to consider amending Section 55-17-103(a), *Tennessee Code Annotated*, to clarify who is responsible for providing a list of qualified automotive manufacturer representatives to the Governor. The commission should continue to work with the Governor's Office and industry representatives to ensure that two automotive manufacturer representatives are appointed to the commission.
2. The General Assembly may wish to consider amending *Tennessee Code Annotated*, Section 55-17-103(a), to change the two positions reserved for manufacturing representatives to consumer representatives. The addition of two consumer members could help the commission meet its responsibility to protect consumers.

### ADMINISTRATIVE

The Motor Vehicle Commission should address the following areas to improve the efficiency and effectiveness of its operations.

1. The Motor Vehicle Commission should place the new policy concerning notices of noncompliance in the training manual and monitor the field investigators' adherence to the policy.
2. The commission should place the new policy concerning issuing and monitoring consent orders in the manual. The commission and legal staff should monitor issued consent orders and follow the appropriate procedures when a dealer fails to pay the fine or respond in a timely manner.
3. The commission should develop new disciplinary actions for dealers who continually violate statutes and/or the commission's rules and regulations. One option would be to use the commission's authority and power to suspend the dealer's license.
4. The commission should use the information available from the Department of Commerce and Insurance's data processing section to conduct complaint trend analyses. The commission should also reconcile the number of complaints the field investigators

- report as resolved on their monthly reports with the number of resolved complaints entered into the computer system to ensure that all complaints are entered.
5. The commission should monitor inspections to determine how well the field investigators are performing their responsibilities and also to determine which dealers have or have not been inspected. Inspections should be required before a dealership can renew its license. The commission should develop a database of licensees updated as inspections occur so that management can monitor annual inspections. If the commission determines that field investigators cannot inspect all the dealers in a year, it should place those dealers not inspected in the prior year and new dealers at the top of the list.
  6. The commission should design a daily report form that will help the field investigators clearly document their daily activities. The inspections could be categorized as original, annual, and follow-up. The daily report could also provide sections such as consumer complaints, field investigator complaints, notices of noncompliance, and comments. A daily report form with sections would make the reports more uniform and facilitate supervisors' review of field investigators' activities.
  7. The Motor Vehicle Commission should establish specific policy guidelines for reporting cases involving the abuse of temporary tags and dealer plates to the Criminal Investigation Division of the Department of Safety. The policy should address when referral is the appropriate action to take.
  8. The Motor Vehicle Commission has developed a form which field investigators can use to document when they make referrals to the Criminal Investigation Division or other law enforcement agencies. The commission should review the form with field investigators and place the form in the training manual. The commission should periodically review complaint dispositions to determine whether field investigators are referring the appropriate complaints to the Criminal Investigation Division.
  9. The Motor Vehicle Commission should continue to distribute its consumer education brochure at various locations throughout the state where it can benefit consumers, e.g., county clerks' offices, licensed dealers, and civic clubs. The commission should also continue to develop and distribute consumer education material such as brochures and public service announcements that will educate consumers about potential frauds and make the public aware of the consumer protection services available from the Motor Vehicle Commission.