Schedule 13
Change Request for FY 2009-10 Budget Request Cycle

Decision Item FY 2009-10 ☐	Base Reduction Item FY 2009-10 ☐	Supplemental FY 2008-09 ☑	Budget Amendment FY 2009-10 ☑

Request Title: Spending Authority for Background Check Fees
Department: Revenue
Priority Number: S-3, BA-1

Dept. Approval by: [signature] **Date:** December 19, 2008
OSPB Approval: [signature] **Date:** 12-19-08

	Fund	1 Prior-Year Actual FY 2007-08	2 Appropriation FY 2008-09	3 Supplemental Request FY 2008-09	4 Total Revised Request FY 2008-09	5 Base Request FY 2009-10	6 Decision/ Base Reduction FY 2009-10	7 November 1 Request FY 2009-10	8 Budget Amendment FY 2009-10	9 Total Revised Request FY 2009-10	10 Change from Base (Column 5) FY 2010-11
Total of All Line Items	Total	68,086	72,003	20,700	92,703	72,003	0	72,003	22,500	94,503	22,500
	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	GF	0	0	0	0	0	0	0	0	0	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	68,086	72,003	20,700	92,703	72,003	0	72,003	22,500	94,503	22,500
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0
(7) Enforcement Business Group, (G) Motor Vehicle Dealer Licensing Board - Operating Expenses	Total	68,086	72,003	20,700	92,703	72,003	0	72,003	22,500	94,503	22,500
	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	GF	0	0	0	0	0	0	0	0	0	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	68,086	72,003	20,700	92,703	72,003	0	72,003	22,500	94,503	22,500
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0

Non-Line Item Request: None
Letternote Revised Text: None
Cash or Federal Fund Name and COFRS Fund Number: Auto Dealer License Fund #192
Reappropriated Funds Source, by Department and Line Item Name: None
Approval by OIT? Yes: ☐ No: ☐ N/A: ☑
Schedule 13s from Affected Departments: Not Applicable

CHANGE REQUEST for FY 2009-10 BUDGET REQUEST CYCLE

Department:	Revenue
Priority Number:	S-3, BA-1
Change Request Title:	Spending Authority for Background Check Fees

SELECT ONE (click on box):

☐ Decision Item FY 2009-10
☐ Base Reduction Item FY 2009-10
☒ Supplemental Request FY 2008-09
☒ Budget Request Amendment FY 2009-10

SELECT ONE (click on box):

Supplemental or Budget Request Amendment Criterion:

☐ Not a Supplemental or Budget Request Amendment
☐ An emergency
☒ A technical error which has a substantial effect on the operation of the program
☐ New data resulting in substantial changes in funding needs
☐ Unforeseen contingency such as a significant workload change

Short Summary of Request: Due to an accounting procedural change, the Department of Revenue is requesting $20,700 Auto Dealers cash funds in FY 2008-09 and $22,500 Auto Dealers cash funds in FY 2009-10 for the Motor Vehicle Dealer Licensing Board, which is managed within the Enforcement Business Group. This additional spending authority will be used to pay criminal background check fees. The Motor Vehicle Dealer Licensing Board has had minimal reversions over the last several fiscal years in its Operating Expenses line item.

Background and Appropriation History: Section 12-6-118, C.R.S. (2008), states that the Motor Vehicle Dealer Licensing Board can deny, revoke, or suspend many such licenses based on the following: previous felony convictions or pleading *nolo contendere* to any felony; convictions against persons (Title 18, Article 3) or property (Title 18, Article 4); and convictions for fraud (Title 18, Article 5). Additionally, Sections 12-6-118 (6) and (7), C.R.S. (2008), states:

"(6) Any license issued pursuant to this part 1 may be denied, revoked, or suspended if unfitness of such licensee or licensee applicant is shown in the following:

(a) The licensing character or record of the licensee or licensee applicant;
(b) The criminal character or record of the licensee or licensee applicant;
(c) The financial character or record of the licensee or licensee applicant;

(d) Violation of any lawful order of the board.

(7) (a) Any license issued or for which an application has been made pursuant to this part 1 shall be revoked or denied if the licensee or applicant has been convicted of or pleaded no contest to any of the following offenses in this state or any other jurisdiction during the previous ten years:

(I) A felony in violation of article 3, 4, or 5 of title 18, C.R.S., or any similar crime under federal law or the law of any other state; or

(II) A crime involving odometer fraud, salvage fraud, motor vehicle title fraud, or the defrauding of a retail consumer in a motor vehicle sale or lease transaction.

(b) A certified copy of a judgment of conviction by a court of competent jurisdiction of an offense under paragraph (a) of this subsection (7) is conclusive evidence of such conviction in any hearing held pursuant to this article."

The only effective way for the nine members of the Motor Vehicle Dealer Licensing Board to ensure that potential or current industry licensees have not violated Section 12-6-118, C.R.S. (2008), is to perform background checks.

Appropriation History for Program Operating Expenses

The following table summarizes the operating expense appropriations and actual expenditures for the Motor Vehicle Dealer Licensing Board since FY 2004-05. It also includes the total cost of background checks over the same time period.

TABLE 1.1 – OPERATING DATA FOR THE MOTOR VEHICLE DEALER LICENSING BOARD

Operating Budget Data	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09*
Motor Vehicle Dealer Licensing Board:					
Appropriation	$55,768	$55,768	$69,688	$69,688	$72,003
Reversion	$4,781	$452	$742	$1,602	n/a
Background Check Fees	$43,182	$42,164	$7,007	$11,472	$20,700
Percent of Actual/Projected Spending	84.7	76.2	10.2	16.8	28.7

* - Background check fees listed in this column are projections.

General Description of Request: Previously, the Department was permitted to pay fees pertaining to criminal background checks directly out of the Auto Dealers License Fund. In past fiscal years, the Department has received a fiscal waiver to facilitate payment of these fees. In June 2008, the Department applied for another fiscal waiver to allow the Motor Vehicle Dealer Licensing Board to pay for background checks directly out of revenue earned in the Auto Dealer License Fund. This request was denied. The Department is submitting this supplemental request to establish an appropriation to support background check expenses for the Motor Vehicle Dealer Licensing Board.

Consequences if Not Funded: The operating expense budget for the Motor Vehicle Dealer Licensing Board is quite small and will be unable to absorb the costs of background checks. These are critical to the statutory mission of the Board and its ability to maintain the integrity of the auto sales industry. If this request is not approved, the Department will have to reduce FY 2008-09 operating expenditures for the Motor Vehicle Dealer Licensing Board by 16.8 percent to accommodate the costs of criminal background check fees. As demonstrated in Table 1.1, this would impact the program's ability to pay for other critical functions.

Calculations for Request:

Summary of Request FY 2008-09	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
Total Request	**$20,700**	**$0**	**$20,700**	**$0**	**$0**
Background Checks – Motor Vehicle Dealer Licensing Board	$20,700	$0	$20,700	$0	$0

Summary of Request FY 2009-10	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
Total Request	**$22,500**	**$0**	**$22,500**	**$0**	**$0**
Background Checks – Motor Vehicle Dealer Licensing Board	$22,500	$0	$22,500	$0	$0

Cash Fund Balance Projections:

Fund Name	Fund Number	FY 2007-08 Expenditures	FY 2007-08 End of Year Balance	FY 2008-09 End of Year Estimate	FY 2009-10 End of Year Estimate	FY 2010-11 End of Year Estimate
Auto Dealer License Fund	192	$2,572,003	$409,329	$92,384	$156,349	$133,766

Assumptions for Calculations: The assumptions for calculating this request are based on previous fiscal year expenditures for background check fees paid directly out of the Auto Dealers License Fund by the Motor Vehicle Dealer Licensing Board. This request also includes projections for these expenses in FY 2008-09. Since this information is already discussed and summarized elsewhere in this document, it has not been duplicated here.

Impact on Other Government Agencies: Not Applicable.

Cost Benefit Analysis: This is a programmatic necessity for the Motor Vehicle Dealer Licensing Board. The costs have been previously described and the benefit is the ability for the program to fulfill its statutory mission and maintain the integrity of the auto sales industry.

Implementation Schedule:

Task	Month/Year
Internal Research/Planning Period	June-July 2008
Written Agreement w/ Other State Agencies	Not Applicable
FTE Hired	Not Applicable
Start-Up Date	March 2009

Statutory and Federal Authority: ***12-6-118, C.R.S. (2008) Licenses – grounds for denial, suspension, or revocation.***
(1) A manufacturer's or distributor's license may be denied, suspended, or revoked on the following grounds:
(a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
(b) Material misstatement in an application for a license;

(c) Willful failure to comply with any provisions of this part 1 or any rule or regulation promulgated by the executive director;
(d) Engaging, in the past or present, in any illegal business practice.
(2) A manufacturer representative's license may be denied, suspended, or revoked on the following grounds:
(a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
(b) Material misstatement in an application for a license;
(c) Willful failure to comply with any provision of this part 1 or any rule or regulation promulgated by the executive director under this part 1;
(d) Having indulged in any unconscionable business practice pursuant to title 4, C.R.S.;
(e) Having coerced or attempted to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any other commodities or services which have not been ordered by said dealer;
(f) Having coerced or attempted to coerce any motor vehicle dealer to enter into any agreement to do any act unfair to said dealer by threatening to cause the cancellation of the franchise of said dealer;
(g) Having withheld, threatened to withhold, reduced, or delayed without just cause an order for motor vehicles, parts or accessories therefor, or any other commodities or services which have been ordered by a motor vehicle dealer;
(h) Engaging, in the past or present, in any illegal business practice.
(3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds:
(a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
(b) Material misstatement in an application for a license;
(c) Violation of any of the terms and provisions of this part 1 or any rule or regulation promulgated by the board under this part 1;
(d) Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of such conviction in any hearing held pursuant to this article.

(e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage;
(f) Intentional or negligent failure to perform any written agreement with any buyer or seller;
(g) Failure or refusal to furnish and keep in force any bond required under this part 1;
(h) Having made a fraudulent or illegal sale, transaction, or repossession;
(i) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;
(j) Repealed.
(k) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer;
(l) To knowingly purchase, sell, or otherwise acquire or dispose of a stolen motor vehicle;
(m) For any licensed motor vehicle dealer or used motor vehicle dealer to engage in the business for which such dealer is licensed without at all times maintaining a principal place of business as required by this part 1 during reasonable business hours;
(n) Engaging in such business through employment of an unlicensed motor vehicle salesperson;
(o) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles;
(p) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
(q) Repealed.
(r) Representing or selling as a new and unused motor vehicle any motor vehicle which the dealer or salesperson knows has been used and operated for demonstration purposes or which the dealer or salesperson knows is otherwise a used motor vehicle;
(s) Violating any state or federal statute or regulation issued thereunder dealing with odometers;

(t) (I) Selling to a retail customer a motor vehicle which is not equipped or in proper condition and adjustment as required by part 2 of article 4 of title 42, C.R.S., unless such vehicle is sold as a tow away, not to be driven;
(II) Repealed.
(t.1) Repealed.
(u) Committing a fraudulent insurance act pursuant to section 10-1-128, C.R.S.;
(v) Failure to give notice to a prospective buyer of the acceptance or rejection of a motor vehicle purchase order agreement within a reasonable time period, as determined by the board, when the licensee is working with the prospective buyer on a finance sale or a consignment sale.
(4) A wholesaler's or wholesale motor vehicle auction dealer's license may be denied, suspended, or revoked for the selling, leasing, or offering or attempting to negotiate the sale, lease, or exchange of an interest in motor vehicles by such wholesaler or wholesale motor vehicle auction dealer to persons other than motor vehicle dealers, used motor vehicle dealers, or other wholesalers or wholesale motor vehicle auction dealers.
(5) The license of a motor vehicle salesperson may be denied, revoked, or suspended on the following grounds:
(a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
(b) Material misstatement in an application for a license;
(c) Failure to comply with any provision of this part 1 or any rule or regulation promulgated by the board or executive director under this part 1;
(d) To engage in the business for which such licensee is licensed without having in force and effect a good and sufficient bond with corporate surety as provided in this part 1;
(e) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any motor vehicle products sold or attempted to be sold by such salesperson;
(f) Having indulged in any fraudulent business practice;
(g) Selling, offering, or attempting to negotiate the sale, exchange, or lease of motor vehicles for any motor vehicle dealer or used motor vehicle dealer for which such salesperson is not licensed; except that negotiation with a motor vehicle dealer for the sale, exchange, or lease of new and used motor vehicles, except those vehicles defined in section 42-1-102 (55), C.R.S., as motorcycles and section 33-14.5-101 (3), C.R.S., as off-

highway vehicles, by a salesperson compensated for said negotiation by the used motor vehicle dealer for which such salesperson is licensed shall not be grounds for denial, revocation, or suspension;

(h) Representing oneself as a salesperson for any motor vehicle dealer or used motor vehicle dealer when such salesperson is not so employed and licensed;

(i) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)

(j) Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of such conviction in any hearing held pursuant to this article.

(k) Having knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle;

(l) Employing an unlicensed motor vehicle salesperson;

(m) Violating any state or federal statute or regulation issued thereunder dealing with odometers;

(n) Defrauding any retail buyer to such person's damage;

(o) Representing or selling as a new and unused motor vehicle any motor vehicle which the salesperson knows has been used and operated for demonstration purposes or which the salesperson knows is otherwise a used motor vehicle;

(p) (I) Selling to a retail customer a motor vehicle which is not equipped or in proper condition and adjustment as required by part 2 of article 4 of title 42, C.R.S., unless such vehicle is sold as a tow away, not to be driven;

(II) Repealed.

(p.1) Repealed.

(q) Willfully violating any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles;

(r) Improperly withholding, misappropriating, or converting to such salesperson's own use any money belonging to customers or other persons, received in the course of employment as a motor vehicle salesperson.
(6) Any license issued pursuant to this part 1 may be denied, revoked, or suspended if unfitness of such licensee or licensee applicant is shown in the following:
(a) The licensing character or record of the licensee or licensee applicant;
(b) The criminal character or record of the licensee or licensee applicant;
(c) The financial character or record of the licensee or licensee applicant;
(d) Violation of any lawful order of the board.
(7) (a) Any license issued or for which an application has been made pursuant to this part 1 shall be revoked or denied if the licensee or applicant has been convicted of or pleaded no contest to any of the following offenses in this state or any other jurisdiction during the previous ten years:
(I) A felony in violation of article 3, 4, or 5 of title 18, C.R.S., or any similar crime under federal law or the law of any other state; or
(II) A crime involving odometer fraud, salvage fraud, motor vehicle title fraud, or the defrauding of a retail consumer in a motor vehicle sale or lease transaction.
(b) A certified copy of a judgment of conviction by a court of competent jurisdiction of an offense under paragraph (a) of this subsection (7) is conclusive evidence of such conviction in any hearing held pursuant to this article.

Performance Measures:

Regulation, Enforcement, and Education: The Department of Revenue protects Colorado's citizens through the fair enforcement of laws and regulations related to industries that include limited stakes gaming, auto dealers, liquor and tobacco retailers, and motor carriers. The Department seeks to deliver this oversight effectively by completing duties within statutory timeframes and adherence to departmental or federal requirements. It actively identifies methods to achieve its goals by enhancing productivity and educating both providers and consumers in affected industries.