



NEW YORK STATE  
DEPARTMENT OF MOTOR VEHICLES  
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WAYNE L. BENJAMIN  
Executive Deputy Commissioner

December 5, 2007

Ms. Carmen Maldonado  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
123 Williams Street, 21st Floor  
New York, New York 10038

Re: 2005-S-53 Final Audit Report

Dear Ms. Maldonado:

This letter is in reference to the New York State Comptroller's final audit report number 2005-S-53, which addresses the Department of Motor Vehicle's bus driver licensing program and oversight (article 19-A of the Vehicle and Traffic Law). Pursuant to Section 170 of the Executive Law, we are advising you of the steps that were taken to implement recommendations contained in the above mentioned audit report.

Carrier Compliance

1. Follow-up on the seven carriers to insure the deficiencies OSC identified are corrected.

The Department has followed-up with the seven carriers. As a result, one carrier was issued a warning, and one was charged with violations, waived a hearing and paid a civil penalty. The other five carriers' records were found to be in substantial compliance and no further action was deemed necessary.

2. Make the following improvements in the periodic reviews of carriers' driver records:
  - Revise the driver file sampling methodology to include all drivers who were employed by the carrier during the review period.

The new 19-A database system is currently planned to be put into production in December of 2007. At that time, Testing & Investigation Units will have access to lists of carrier's drivers currently active and dropped within the three-year review period.

- Ensure the Department's driver file sampling guidelines are followed by all the regions.

This has been reinforced with all Testing & Investigation Units and they report they will comply.

- Ensure follow-up reviews of driver files are performed as required.

This has been reinforced with all Testing & Investigation Units and they report they will comply.

- Develop formal criteria for identifying "problem" carriers that require more frequent reviews and establish a formal tracking system to ensure that such carriers receive more frequent reviews.

The new 19-A database system will produce a report that will identify "problem carriers" based on their record review history or newness. The report will facilitate the scheduling of more frequent record reviews. The database will also provide for a formal tracking system. The tracking system will allow us to better identify and schedule new carriers earlier in the three year cycle, and also target those carriers that received a warning or violation in the past for more frequent review and/or other remedial action, such as curb-site verifications. Once the new 19-A database system is in production, Testing and Investigation staff will have access to this new record review report.

- Establish procedures for conducting unannounced, interim reviews, especially at carriers with a history of noncompliance.

While the Department has always had the authority to conduct unannounced reviews, it has not been the standard practice, and has been and will continue to be done only in certain cases involving problematic or non-compliant carriers. The new record review report described above will give the Department a tool to use in planning for such unannounced reviews.

- Conduct three-year reviews at the carrier's office to the extent feasible.

The Department agrees and will conduct reviews at the carrier's place of business to the extent practical and necessary, while maintaining compliance with the Department's malfeasance prevention standards.

- Impose progressively stronger penalties when carriers are repeatedly found to be in noncompliance with licensing requirements.

The Department agrees that there should be progressive penalties for carriers that repeatedly violate the law. After a record review, a carrier found to have minor violations that have been corrected or updated is given a warning. If, on the next review,

the carrier continues to have violations, a hearing waiver may be given whereby a civil penalty is assessed by Driver Program Regulation, or an actual administrative hearing held. When a hearing is held, a civil penalty ranging from \$500 to \$2500 for each sustained violation and/or a suspension of the carrier's vehicle registrations may be imposed by an Administrative Law Judge. Article 19-A allows for penalties after a hearing ranging from \$500 to \$5000 for repeat violations by a carrier within an 18-month period. The Department can and does request the Administrative Law Judge (ALJ) to consider the carrier's prior record of violations for purposes of assessing more than the minimum penalty. The amount of any civil penalty assessed, however, rests with the particular ALJ, not with the Department.

### Unregistered Carriers and Drivers

3. Develop and implement proactive methods for identifying unregistered carriers and drivers, including but not limited to the following:

- Develop procedures for performing curbside verifications.

Procedures for curbside verifications have been developed, tested and implemented.

- Routinely perform curbside verifications in the circumstances specified in the Department's Regulations. Document the reasons for all verifications as well as the results.

We continue the Department's effort to identify unreported drivers and carriers through curbside verifications across the state. It is becoming a regular practice. To date, curbside verifications have been conducted in Queens, Brooklyn, Albany, Bronx, and Binghamton regions. Additional verifications are scheduled to be conducted in the Staten Island, Buffalo, Syracuse, Nassau, Yonkers and Utica regions. Documentation of verification results will be maintained. The number of unregistered drivers discovered will be recorded and, if warranted, action taken against the carrier. We will collect other information to determine the value of curbside verifications.

- Periodically compare the carriers listed in Department of Transportation's (DOT) records with the carriers listed in the Department's records to determine whether any unregistered carriers are operating and maintain documentation of the comparisons.

We have in the past and will continue to compare DOT's carrier information with our information. Better documentation of the comparisons will be maintained. However, it should be noted that the DOT carrier list will never exactly match the 19-A carrier list, because DOT's list includes carriers that may require DOT's inspection, but not 19-A driver certification. We routinely review DOT's Weekly Bulletin of new carrier applicants and communicate and follow-up with them concerning the need for 19-A certification. Carriers that fail to comply will be suspended. An electronic spreadsheet of new carrier notifications is being maintained and updated.

- Require examiners on three-year reviews to compare the Department's driver roster with the carrier's driver roster and daily driver log to determine whether any unregistered drivers have been employed by the carrier.

Testing & Investigation Examiners have been instructed to request a roster of drivers from the carriers they are reviewing for purposes of comparing it with the Department's driver roster for that carrier. We have in the past and will continue to work jointly with DOT in certain carrier reviews where it can assist us in using the DOT required driver daily log records. It should be noted, however, that these logs records are only required to be maintained for six months, may not be consistent from carrier to carrier, can be cryptic and are filed in a vehicle file in chronological order, and not by driver. Accordingly, they are of limited value in routine 19-A record reviews.

#### Criminal History Checks

4. Seek statutory changes to allow for criminal history checks of non-school bus drivers.

The Department has drafted legislation that would require non-school bus drivers who are hired or rehired on or after September 1, 2008 to be fingerprinted for the purposes of a criminal background check through the NYS Department of Criminal Justice Services and the FBI.

5. Use fingerprint scanning technology or other methods to make the criminal history checks of bus drivers more efficient.

The Department is involved with an interagency workgroup that is exploring a statewide vendor-managed electronic fingerprinting solution. This would be a long-term solution, due to the procurement process and logistics involved. Therefore, the Department is also examining short-term solutions, such as using fingerprint scanning workstations, which are currently used for drivers applying for a hazardous materials license endorsement.

We will continue to look for improvement opportunities and always welcome a chance to better serve the citizens of the State. If you have any questions concerning this audit response, please contact Edward J. Wade at (518) 474-0881.

Sincerely,

*/s/ Wayne L. Benjamin*

Wayne L. Benjamin  
Executive Deputy Commissioner