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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 17, 2016

Mr. Matthew J. Driscoll
Commissioner
Department of Transportation
50 Wolf Road
Albany, NY 12232

Re: Performance Based Bus Safety Program
Report 2015-S-71

Dear Commissioner Driscoll:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we audited the *Performance Based Bus Safety Program* (Program) at the Department of Transportation for the period October 1, 2013 through December 30, 2015. The objective of our audit was to determine whether the Department has effectively implemented the Program by focusing sufficiently increased inspection activity and enforcement actions on poor performing carriers and operators.¹

Background

The Department of Transportation (Department) is responsible for ensuring that the State has a safe, efficient, balanced, and environmentally sound bus transportation system. Under the State's Transportation Law (Law), most private bus carriers that transport passengers for hire must be granted operating authority by the Department. In addition to these carriers with authority, the Department also has oversight responsibility for carriers that do not require Department authority to operate, such as schools and municipal bus companies. Since the 1970s, Section 140 of the Law has required the Department to conduct a safety inspection of each bus every six months, whether operated by a carrier with authority or a carrier without authority.

In October 2013 the Department began to implement the Program by revising its bus inspection program to focus less on high-performing carriers and more on low-performing carriers. This strategy is intended to improve safety and compliance by focusing the most attention where the greatest risks are and by establishing a strong incentive for low-performing carriers to improve their operations.

¹Carrier refers to a parent bus company with a network of locations and operator refers to the locations. In some cases operators can also be carriers. We use carrier to refer to both. The Department records data separately for carriers and operators. For fiscal year 2014-15, the Department reported 918 carriers and 2,642 operators.

A key element of the Program is the Department's effort to identify low-performing carriers in terms of the percentage of buses taken out-of-service (OOS) as a result of deficiencies found during prior year inspections. To be classified in this way, a carrier must have had at least 10 individual bus inspections during the previous year. Under the Program, a carrier whose OOS rate is less than 10 percent is rated as Preferred, and each of its buses are then supposed to receive one full comprehensive inspection and one critical item inspection each year. Critical item inspections are less intensive and time consuming, and focus only on vehicle components of greatest safety concern. A carrier whose OOS rate is between 10 and 25 percent is rated as Acceptable, and its buses continue to receive the normal schedule of two comprehensive inspections annually. However, a carrier whose OOS rate is 25 percent or more is rated as Unacceptable – and not only do its individual buses receive the two comprehensive inspections each year, but the Department then also schedules additional reviews of other aspects of the carrier's operation.

Results of Audit

We found that the Department has effectively implemented the Program. The Department has focused increased inspection activity on poorer performing carriers while still complying with the requirement to inspect each bus every six months. Poor performing carriers have received the full in-depth inspections on every bus twice each year as well as additional scrutiny of other areas such as driver compliance and bus maintenance. Further, the Department has taken appropriate actions against poor performing carriers, such as implementing corrective action plans that the carrier must complete, imposing fines, and, when necessary, suspending a carrier's operating authority.

Inspections

Over the past few years, the total number of inspections conducted by the Department has remained relatively constant, as has the number of inspectors. At the same time, the Department has decreased the number of full comprehensive inspections it performs, while increasing the number of critical item inspections. The following table shows the number of inspectors and inspections by type for the last three fiscal years.

Fiscal Year	Number of Inspectors and Supervisors*	Inspections				
		Total Number**	Full Comprehensive		Critical Item	
			Number	Percent of Total	Number***	Percent of Total
2012-13	119	144,606	130,457	90%	62	0%
2013-14	122	147,966	107,836	73%	24,129	16%
2014-15	120	143,239	83,700	58%	46,612	33%

* Includes 11 Supervisors who also conduct inspections.

** The full comprehensive inspections plus critical item inspections do not add up to total inspections because the Department also conducts other types of inspections. For purposes of this report we focused only on these two inspection types.

*** The number of critical item inspections were lower during the first two years because the Program did not start until October 2013, midway through the 2013-14 State fiscal year.

Our review showed that critical item inspections were generally done in place of regular inspections only for the Preferred carriers, consistent with Program guidance. The critical item inspections take less time and therefore reduce bus downtime for the high performing carriers. In addition, these inspections free up inspector time to spend on other oversight activities at the poorer performing carriers. We also found poor performing carriers continued to receive at least two full comprehensive inspections per year, along with other non-vehicle reviews such as examinations of records on drivers' qualifications and hours of service, results of alcohol and drug testing, and vehicle maintenance histories.

Enforcement

For carriers with authority rated as unacceptable, the Department recommends a corrective action plan, which is reviewed by the carrier and the Department's legal unit before an administrative law judge finalizes a consent order. The carrier may request a formal hearing to discuss changes to the plan during the process. After the consent order is finalized, the carrier has a period of time (generally 12 to 18 months) to complete all corrective actions or have its license to operate suspended or revoked.

For carriers without authority rated as unacceptable, the Department issues a warning letter, giving the carrier six months to reduce its OOS rate or pay a fine. The fines imposed on unacceptable carriers without authority range from \$1,250 to \$5,000. The Department collects a total of \$15,000 to \$20,000 per year in such fines.

During Fiscal Year 2014-15, Department inspection results identified the performance of 57 carriers as unacceptable, including 31 carriers with authority (out of 918) and 26 carriers without authority (out of 2,642). As of September 2015, we found that the Department had taken appropriate action against all 57 carriers. Of the 31 unacceptable carriers with authority, the Department had suspended the license of two carriers, finalized consent orders with 18, and was working on proposed corrective action plans for 10. The remaining carrier opted to relocate

out of the State. For the 26 unacceptable carriers without authority, 17 subsequently reduced their OOS rate. The Department imposed fines on the other nine, and is working to collect the amounts owed.

Audit Scope, Objective, and Methodology

We audited the Department's Performance Based Bus Safety Program inspection and enforcement practices for the period October 1, 2013 through December 30, 2015. The objective of our audit was to determine whether the Department has effectively implemented the Program by focusing sufficiently increased inspection activity and enforcement actions on poor performing carriers.

To accomplish our audit objective, and to determine whether internal controls related to our objective were adequate and functioning as intended, we interviewed Department officials and staff, and reviewed relevant laws and regulations as well as Department policies and procedures. We analyzed the Department's inspection data and recalculated the out-of-service (OOS) rates. We then verified that poor performing carriers (those with at least 10 inspections and an OOS rate over 25 percent) had been correctly identified and determined how many inspections were being done. We also analyzed the inspection data to identify trends in inspections conducted, pass/fail rates, and OOS rates by region and by inspector, and found no issues. We observed both critical and full comprehensive bus inspections conducted by Department inspectors. We obtained information about enforcement actions taken by the Department, including the current status of consent orders imposed on carriers with authority and fines collected from carriers without authority.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

A draft copy of this report was provided to Department officials for their review and formal comment. Department officials declined their opportunity to provide a written response because

the report does not recommend any further action by the Department.

Major contributors to this report include Steve Goss, Jennifer Paperman, Michele Krill, Melissa Davie, Christi Martin, and Marzie McCoy.

We wish to thank the Department's management and staff for the courtesies and cooperation extended to our examiners during this audit.

Very truly yours,

John F. Buyce, CPA, CIA, CFE, CGFM
Audit Director

cc: Theresa Vottis, Director – Internal Audit
Division of the Budget