



**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

DIVISION OF STATE SERVICES

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**DEPARTMENT OF MOTOR
VEHICLES**

**COMPLAINTS AGAINST
REGULATED ENTITIES**

Report 2006-S-18

AUDIT OBJECTIVE

Our objective was to determine whether the Department of Motor Vehicles (Department) investigates and resolves consumer complaints in a timely manner in accordance with applicable regulations.

AUDIT RESULTS - SUMMARY

The Department regulates several types of businesses involving motor vehicles including automobile dealers, motor vehicle repair shops, motor vehicle inspection stations, and salvage parts dealers. If consumers want to initiate an investigation into one of these businesses, complaints must be made in writing and sent to the Department. The Department has one year to investigate and, if necessary, schedule a hearing regarding a complaint. During the two-year period ending March 31, 2006, the Department received 12,829 complaints against regulated businesses.

We focused our audit testing on those complaints received during the year ended March 31, 2005 because any complaint received during this period would have had sufficient time to be scheduled for a hearing, if one was recommended. During this period, there were 6,407 consumer complaints received; 5,361 were resolved without hearings and, for the most part, within the Department's expectations. The remaining 1,046 were recommended for hearings and with some exceptions, the hearings were scheduled in a timely manner in accordance with applicable regulations.

Using the Department's automated records, we found 614 of the 1,046 cases had hearings scheduled within one year as required. For the remaining 432 cases, we were unable to determine from the Department's database whether hearings were scheduled within one year because necessary date information was not on the database. Therefore, we reviewed hard copy files for a random sample of 50 of the 432 complaints to determine whether hearings were scheduled as required.

We found that 25 did have a hearing scheduled within the one-year requirement. Of the remaining 25 cases, six went beyond the one-year time limit without a request for an extension of time, resulting in the Department jeopardizing its ability to sustain a case against these businesses and possibly enabling facilities that may be performing substandard work to continue to operate. During our review of the hard copy files, we found incorrect dates were recorded in the case files of 39 out of the 50 cases reviewed. Consequently, individuals scheduling the hearings were doing so with incorrect information. In these instances, we had to establish the correct dates to complete our review. [See pages 4-6]

In response to our report, Department officials concurred with our recommendations, and indicated steps they either already have taken or will take to address them.

This report dated February 5, 2007, is available on our website at:
<http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Services
State Audit Bureau
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

The Department of Motor Vehicles (Department) regulates several types of businesses involving motor vehicles including automobile dealers, motor vehicle repair shops, motor vehicle inspection stations, and salvage parts dealers. All of these are required to register with the Department, which helps protect consumers by ensuring these businesses are operating legitimately. However, if consumers want to initiate an investigation against these businesses, complaints must be received in writing by the Department, whether they allege questionable repair work, deficient services or poor business practices. The Department's Driver and Vehicle Safety and Clean Air Bureau (Vehicle Safety) is responsible for overseeing this process. The Department has a Central Office in Albany and six Vehicle Safety offices throughout the State (Buffalo, Farmingdale, Latham, Queens, Syracuse and Yonkers) to investigate complaints. Other units within the Department have varying regional divisions and locations.

All complaints received by the Department are processed by its Consumer Services Unit which inputs the information into a centralized computerized database, known as CAPTAIN, which is used to track complaints. The Department assigns a Customer Service Representative from the Consumer Services Unit to each complaint to gather any additional information needed and to contact both the respondent (shop or dealer) and complainant as part of an effort to facilitate a settlement.

If a settlement cannot be reached, the Consumer Services Unit sends the complaint to one of the Department's regional offices for investigation by an Automotive Facility Inspector (AFI). The AFI serves as investigator, negotiator, and, if the case goes

to a hearing, represents the Department and serves as its expert witness. Once the AFI's complete their investigation and make recommendations, supervisors must sign off on the AFI's report to indicate they reviewed the case and recommendations. This review helps ensure the integrity of the process, making sure the AFI's are in compliance with regulations.

When AFI's investigate a complaint, they must determine whether it has merit and if some type of action, or no action should be taken. If they find that the claim has no merit and no action is needed, the AFI's sends his or her recommendation to the Central Office which, in turn, responds to the complainant and to the business that was the subject of the investigation. If AFI's determine claims have merit, there are several things they can do, based on the significance and seriousness of the complaint (e.g., they can try to facilitate a resolution between the parties, such as buyback and/or repair, send a warning letter to the business or recommend the case go to a hearing). If a hearing is recommended, the case goes back to the Consumer Services Unit, which, for most cases, will offer a waiver of the hearing (similar to a plea bargain). If the business does not accept the waiver offer, then the case is sent to the Department's Safety Hearing Bureau. These complaints typically involve more serious charges or could result in restitution to the complainants.

The Safety Hearing Bureau inputs the case information into CaseTrak, which is their computerized system for tracking cases. Once Bureau employees put information into CaseTrak, a hearing is scheduled in the region where the violation or complaint occurred. At the hearing, which is conducted by an Administrative Law Judge, the AFI presents the case on behalf of the Department (not the complainant). The AFI may propose a civil

penalty and/or restitution amount.

The Vehicle and Traffic Law gives the Commissioner of the Department the authority to set time limits for when cases must be scheduled for hearings. According to Department regulations, hearings must be held within 12 months from the date the complaint was received or, where no complaint is received, from the initiation of the Department's investigation.

The time limitations applicable to hearings are designed to bring disputes, claims and other matters to a speedy resolution, keep witness' recollections fresh and enhance the overall efficiency of the administrative hearing process. However, the Department can postpone a hearing past the 12-month limit if the respondent is given prior notice regarding the grounds for the postponement. This is done by the Safety Hearing Bureau when it sends out a "Letter 12" informing the respondent that the hearing may not take place within the one year time limit. The Letter 12 was created as a way to protect consumers when hearings could not be scheduled on time. It enables the Department to manage its caseload of complaints while protecting its rights to take action against regulated businesses.

There are a variety of reasons why the Department may not be able to hold the hearing within the 12-month requirement such as an excessive number of previously scheduled hearings and insufficient personnel. However, if a hearing is not held within 12 months and a Letter 12 is not sent within this timeframe, the respondent can ask for the case to be dismissed due to lack of timeliness.

During the two-year period ending March 31, 2006, the Department received 12,829 complaints against regulated businesses.

AUDIT FINDINGS AND RECOMMENDATIONS

Department Oversight of Complaints and Investigations

We found that most complaints were investigated in a timely manner and those requiring hearings were scheduled within the one-year deadline. However, some had hearings after the one-year deadline and in other cases, respondents were not notified of the delay before the one-year period expired, as required by law.

We focused our audit testing on those complaints received during the first year of our audit period because any complaint received during this period would have had sufficient time to be scheduled for a hearing, if one was recommended. Between April 1, 2004 and March 31, 2005, the Department received 6,407 consumer complaints, of which 1,046 were recommended for a hearing (5,361 were resolved without hearings and, for the most part, within the Department's expectations). Out of the 1,046 cases, we were able to verify that 614 complaints (58 percent) had hearings scheduled within one year as required or were resolved with a waiver. For the remaining 432 cases, based on information in the CAPTAIN database, we were able to determine when the complaint was received by the Central Office and when it was returned from the Safety Hearing Bureau. (This information was also available in CaseTrak, but it did not interface with CAPTAIN.) If the case was sent back to the Central Office from the Safety Hearing Bureau more than one year after the complaint was received, we determined these cases had the possibility of going beyond the one-year time limit. In addition, there were cases that had not been sent back from the Safety Hearing Bureau by March 31, 2006, even though the one-year time limit would

have expired. These cases also had the possibility of going beyond one year.

To determine if in fact these cases went beyond one year, we reviewed a random sample of 50 of the 432 complaints that possibly went beyond the time limit. For each of the 50 cases, we reviewed the hard copy case file, information inputted into the CAPTAIN database and the coding sheet completed by the Safety Hearing Bureau.

Hard Copy Case Files

By looking at these files, we were able to determine when the hearing was scheduled, if an extension of time for the hearing was issued by the Department (Letter 12), if there was supervisory approval on the complaint investigation report filed by the AFI, if the information in the CAPTAIN database reconciled with that found in the case file, and if the "Hearing By Date" on the coding sheet was correct.

Of the 50 cases reviewed, 25 had hearings within one year of the complaint being received and 25 did not. As of June 16, 2006, of the 25 cases that went beyond the one-year limitation:

- The Department issued a Letter 12 for 19 of these cases.
 - Four of these have yet to be scheduled for hearings.
 - For the other 15 cases, the amount of time that the hearing date exceeded the one-year limitation ranged from 11 to 356 days.
- The Department did not issue a Letter 12 for six cases.
 - Two of these have yet to be scheduled for hearings.

- The remaining four did have hearings scheduled.
- The amount of time these six cases exceeded the one-year limit ranged from a low of 5 days to a high of 293 days, as of June 16, 2006.

Based on our analysis, we conclude that the hearings were scheduled in a timely manner in accordance with applicable regulations with some exceptions. Because six cases exceeded the one-year time limitation and the Department did not issue notification of an extension via a Letter 12, the Department jeopardized its ability to sustain a case against these entities.

All of the 50 cases we reviewed contained a supervisor's signature on the complaint investigation report, indicating that supervisors are reviewing the work of the AFIs and their corresponding recommendations.

CAPTAIN Database

We compared certain key information and dates for the 50 cases in the CAPTAIN database, such as Complaint Received Date, Complaint Investigation Date, Sent to Hearing Date and other pertinent information, with the dates and information contained in the hard copy files. We did not find any conflicts in the information for 42 of the 50 cases reviewed. For the eight cases where we did identify conflicts, we found the Complaint Received Dates in the CAPTAIN data did not correspond to the hard copy file, different AFI names in the CAPTAIN data and hard copy file, and different dates on forms and letters. Although the rate of error was relatively low, incorrect dates could mean the difference between having a hearing held on time and going beyond the one-year time limit.

Coding Sheets

In addition to scheduling hearings, the Safety Hearing Bureau manually completes a coding sheet for each case. This is a form kept in the case's hard copy file that includes all of the pertinent information for scheduling a hearing on one page.

One field on the Coding Sheet is for "Hearing by Date," which should be one year from the date the complaint is received. We found that 39 out of the 50 cases had an incorrect date in this field. Consequently, staff scheduling hearings were doing so with incorrect information. This is a contributing factor to hearings not being scheduled in a timely manner.

When we spoke to officials in the Safety Hearing Bureau, they indicated that they copy the "Hearing by Date" from the case file folder. Officials indicated this date is completed by the Consumer Services Unit in the Central Office. We followed up with personnel in the Consumer Services Unit and they acknowledged that they were in fact writing down the incorrect date in this particular field (e.g., the date the investigation started, ended, etc.), and were in the process of addressing this problem.

Recommendations

1. Make sure the notification of an extension is effectively used for any case that is likely to exceed the one year time requirement.
2. Continue to monitor and ensure that the correct "hearing by" date (based on the date of receipt of the complaint) is recorded in the case file folder. Make certain personnel in all bureaus are aware of, and use, the correct date when scheduling cases for hearings.

AUDIT SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. We audited the effectiveness of the Department's controls relating to the handling of consumer complaints filed against regulated businesses for the period of April 1, 2004 through June 20, 2006. We examined applicable sections of Motor Vehicle laws, regulations and Department policies and procedures; interviewed officials at the Department and three regional offices (Albany, Queens and Syracuse) and analyzed relevant program information maintained by the Department.

We also selected a random sample of 50 consumer complaints. We selected these from the 432 complaints our analysis indicated possibly exceeded the one-year time limit for scheduling of a hearing. For each of the 50 complaints, we determined whether a hearing was scheduled, a Letter 12 was issued, the necessary supervisory review and approval were completed, and the correct information was recorded. In addition, to determine the accuracy and completeness of the data we received, we compared key dates and information from the data we received with the 50 hard copy files that we reviewed.

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, several of which are performed by the Division of State Services. 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 management functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed according to the State Comptroller's authority under Article V, Section 1, of the State Constitution; and Article II, Section 8, of the State Finance Law.

REPORTING REQUIREMENTS

We provided a draft copy of this report to Department officials for their review and comment. Their comments were considered in preparing this report, and are included as Appendix A. In response to our report, Department officials concurred with our

recommendations, and indicated steps they either already have taken or will take to address them.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Motor Vehicles shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising of the steps that were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include William Challice, Frank Patone, Ed Durocher, Lynn Freeman, Nicholas Angel, Anthony Calabrese, and Sue Gold.

APPENDIX A - AUDITEE RESPONSE



NANCY A. NAPLES
COMMISSIONER

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DEPARTMENT OF MOTOR VEHICLES
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(518) 474-0841

December 20, 2006

Mr. William P. Challice
Audit Director
Office of the State Comptroller
Division of State Services
State Audit Bureau
123 William Street – 21st Floor
New York, NY 10038

Dear Mr. Challice:

This letter is in response to draft audit report number 2006-S-18, which addresses whether the Department of Motor Vehicles investigates and resolves consumer complaints in a timely manner in accordance with applicable regulations. We are extremely pleased that the audit of our consumer complaint process seems to indicate we are handling cases properly 97% of the time; however, we welcome any opportunity to improve our process and view this audit as just such an opportunity.

I would like to address a few minor technical issues before proceeding to comment on your recommendations.

- o The first paragraph under “Background” has our Vehicle Safety Regional Offices listed incorrectly. They should be listed as follows: Buffalo, Farmingdale, Latham, Queens, Syracuse, and Yonkers. Rochester is actually a satellite office for Buffalo.
- o The fourth paragraph in the same section states, “If they find that the claim has no merit and no action is needed, the AFI’s must send a letter to the complainant with this information”. In actuality, the AFI (Automotive Facility Inspector) forwards his or her recommendation to the Central Office in Albany, through his supervisors. The Albany Vehicle Safety office, in turn, sends the appropriate correspondence to both the complainant and the business subject to investigation.
- o The second paragraph under “Audit Findings and Recommendations” states, “the CAPTAIN database did not indicate when the case was scheduled for a hearing nor the date the hearing was held”. The CAPTAIN database was not designed to include these

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*See State Comptroller’s Comment, page 9

activities or dates. These activities and the corresponding dates are found on the Safety Hearing Case Tracking database (CaseTrak).

Please note the following concerning the audit recommendations:

Recommendation #1:

We will be exploring an update or successor to the CaseTrak case tracking system so that our schedulers would be alerted to aging cases electronically. An updated system might also be able to communicate with the CAPTAIN system used by Vehicle Safety.

Recommendation #2:

As indicated in your findings, the Consumer Services Unit did realize there was a problem with the "Hearing by" date in May of this year. The unit has already taken corrective action, and supervisors have closely monitored the situation since. We are confident that all staff fully understands the correct procedure, and, in fact, supervisory review has proven this to be the case. Higher-level supervisors will continue to monitor random hearing cases on a regular basis to ensure that we are meeting our regulatory requirements.

In closing I would like to thank you for allowing us this very unique insight into our own processes and procedures. You can be assured we will continue to look for improvement opportunities such as these and always welcome a chance to better serve the citizens of this State. If you have any questions concerning this matter, please contact Edward Wade, Director of Audit Services at (518) 474-0881 or ewade@dmv.state.ny.us.

Sincerely,



NANCY A. NAPLES
Commissioner

* State Comptroller's Comment. We revised our report to reflect information provided in the response.