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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 9, 2010

Mr. David J. Swarts
Commissioner
NYS Department of Motor Vehicles
6 Empire State Plaza
Albany, NY 12228

Re: Report 2008-F-51

Dear Mr. Swarts:

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 have followed up on the actions taken by officials of the Department of Motor Vehicles (Department) to implement the recommendations contained in our audit report, *Bus Driver Licensing and Oversight* (Report 2005-S-53).

Background, Scope and Objective

According to Article 19-A of the New York State Vehicle and Traffic Law (Law), bus drivers must be licensed by the State to drive buses. To obtain such a license, they must complete a special application process that is administered by the Department. To retain the license, they must pass a medical examination every two years, pass a behind-the-wheel driving test every two years, pass a written or oral driving examination every two years, be observed driving by a certified examiner once a year, and maintain a safe driving record both on and off the job. Also, the Department must notify bus drivers' employers of any accidents and any driving infractions, occurring in New York State, either on or off the job. There are additional requirements for school bus drivers, as they must be fingerprinted for a criminal history check during the license application process.

Bus drivers may be employed by school districts, municipalities, public authorities or private companies. These carriers are expected to arrange for their drivers' medical examinations and driving tests/observations, and ensure they comply with all requirements contained in the Law before they are allowed to drive. To ensure that their drivers are maintaining a safe driving record both on and off the job, the carriers are required to perform an annual review of each driver's abstract of driving citations (this abstract is maintained by the Department). The carriers also must maintain records documenting their drivers' compliance with the requirements contained in the Law, and must file an annual affidavit of compliance with the Department. The Law requires the

Department to review the driver records of each carrier at least once every three years to determine whether the carriers are adequately ensuring that their drivers meet the requirements contained in the Law.

According to Department records, as of December 11, 2008, a total of 2,296 active carriers were registered with the Department. In addition, at that time, 62,995 active school bus drivers and 22,384 active non-school bus drivers were licensed by the Department.

Our initial audit report, which was issued on September 4, 2007, examined whether the Department monitors bus drivers to ensure that they meet certain licensing requirements specified in the Law. We found that the Department was meeting the timetable for three-year reviews of carrier records. However, we found that over half the carriers we visited had records that were in substantial noncompliance with licensing requirements under the Law.

The objective of our follow up was to assess the extent of implementation as of August 16, 2010, of the five recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Department officials have made progress in correcting the problems we identified. Of the five prior audit recommendations, four were implemented and one recommendation was partially implemented.

Follow-up Observations

Recommendation 1

Follow up on the seven carriers to ensure the deficiencies we identified are corrected.

Status - Implemented

Agency Action - The Department has performed reviews of the seven carriers. The seven reviews found that the records for three of the carriers were acceptable, warnings were issued to three other carriers, and one carrier was charged with violations, waived a hearing and paid a civil penalty.

Recommendation 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.*
- *Ensure the Department's driver file sampling guidelines are followed by all the regions.*
- *Ensure follow-up reviews of driver files are performed as required.*

- *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.*

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

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

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

Status - Implemented

Agency Action - The Department has made improvements in the periodic reviews of carriers' driver records including:

- revising their sampling methodology to include all drivers who were employed by the carrier during the review period.

- training supervising Motor Vehicle License Examiners to reinforce the driver file sampling guidelines and to follow the guidelines and requirements for performing follow-up reviews.

- establishing procedures to identify a "problem" carrier as one that was either issued a warning or where a hearing was recommended based on violations resulting from the Department's record review. The new scheduling system was started during the first quarter of 2009.

- revising procedures for scheduling record reviews based on the result of the last review which provides for interim reviews of carriers with a history of noncompliance. The Department has procedures for performing unannounced reviews, but generally does not perform them because they can be inefficient when the person responsible for the carrier's records is not present when staff arrive.

- performing a limited number of three-year reviews at the carrier's office. In general, the Department tries to reduce the travel and personnel costs associated with doing the reviews at the carrier's office. However, they have performed some reviews at the carrier's office for carriers with a history of noncompliance. We selected three carriers (one in the Rochester area and two in Brooklyn) that were reviewed by the Department in 2008. To determine whether the carriers were in compliance with Article 19-A requirements, we selected 64 drivers. Our review showed four exceptions for these drivers.

- performing reviews of problem carriers more frequently, which provides information to the Administrative Law Judge to impose higher penalties for repeat violators.

Recommendation 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.*
- *Routinely perform curbside verifications in the circumstances specified in the Department's Regulations. Document the reason for each verification as well as its result.*
- *Periodically compare the carriers listed in DOT's records with the carriers listed in the Department's records to determine whether any unregistered carriers are operating, and maintain documentation of the comparisons.*
- *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.*

Status - Partially Implemented

Agency Action - The Department developed and implemented proactive methods for identifying unregistered carriers and drivers as follows:

- The Department performed curbside verifications of 35 drivers between June 8, 2007 and February 27, 2008. Violations were found in 26 of the verifications, often resulting in the carrier paying a civil penalty. The other nine verifications found no problems.
- The Department compared a download of the carriers listed in the Department of Transportation's (DOT) records to the carriers listed in the Department's 19A carrier's database. This comparison identified 37 carriers that were sent letters that they must notify the Department that they are a motor carrier. The Department also provided the carriers with an information packet for the Article 19-A requirements. The carriers were also required to submit a completed Article 19-A Bus Driver Application for each driver employed within 20 days of the letter. In addition, the Department receives Weekly Bulletins from DOT of motor carrier applications. Once DOT grants operating authority in response to an application, the Department sends a letter as described above.
- The Department trained supervising Motor Vehicle License Examiners to reinforce the requirement to obtain a driver roster from the carrier and compare it to the Department's roster. The examiners are instructed to review the driver record for any driver that is listed on the carrier's roster but not on the Department's roster. Department officials stated that they do not routinely compare the rosters to the daily driver logs. However, if they suspect a problem, they will perform a joint record review with the Department of Transportation.

According to Department officials, no joint record reviews of daily driver logs have been conducted.

Recommendation 4

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

Status - Implemented

Agency Action - The Department submitted a proposal in December 2007 to modify the Vehicle and Traffic Law to require that all non-school bus drivers hired or rehired on or after September 1, 2008, be subject to a criminal history record check. The Senate and Assembly both introduced legislative bills to modify the Vehicle and Traffic Law. The bills were not approved but were referred to the respective Transportation Committees. At the closing conference, Department officials advised they have not decided whether they will resubmit the proposal.

Recommendation 5

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

Status - Implemented

Agency Action - The Department is one of several state agencies that participate in a Division of Criminal Justice Services (DCJS) contract with a vendor for using digitized fingerprinting. As of March 1, 2010, the Department does not accept "ink and roll" fingerprints for 19A. According to Department officials the response time is from 2 to 5 days, but most of them take 2 days.

Major contributors to this report were Robert Mehrhoff, Roger Mazula, Wayne Bolton, and Bruce Brimmer.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Department for the courtesies and cooperation extended to our auditor during this process.

Very truly yours,

Carmen Maldonado
Audit Director

cc: E. Wade, Director of Internal Audit
T. Lukacs, Division of the Budget