



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Selected Aspects of the Motor Carrier Safety Assistance Program

Department of Transportation



Executive Summary

Purpose

To determine whether the Department of Transportation (Department) is taking appropriate actions to ensure that commercial carriers whose vehicles or drivers have been found to have violations serious enough to warrant their removal from service are making appropriate, timely repairs or corrections. This audit covers the period October 1, 2008 through June 17, 2013.

Background

The Department is responsible for administering State participation in the Federal Motor Carrier Safety Assistance Program (Program). The Program's goal is to reduce the number and severity of crashes, fatalities, and injuries involving commercial motor vehicles. Roadside inspections of commercial vehicles are a primary part of the Department's activities. The inspections are performed by Department inspectors and specially trained State Police and local police officers. When inspections identify violations, carriers typically receive a traffic citation. However, inspections sometimes uncover violations serious enough to warrant immediately removing the vehicle from service until they are fixed. Carriers with poor safety records may also be subject to more stringent Department enforcement, including on-site compliance reviews or formal Notices of Violation, which may result in additional penalties.

Key Findings

- The Department does not monitor whether carriers submit required certifications that violations have been repaired, or when submitted, if they are on time. As a result, 39 percent of the certifications for out-of-service violations during our audit period were not submitted, while 26 percent were submitted late.
- The Department did not always impose penalties when it found that carriers knowingly placed the public at risk by continuing to operate out-of-service vehicles prior to repairs. In about 60 percent of the cases we reviewed, the Department did not use progressive enforcement actions. Instead, violators in these instances typically received a traffic citation.

Key Recommendations

- Actively monitor carrier compliance with the requirements for certification that vehicles have been repaired. Develop strategies to improve carrier compliance, particularly for those with poor safety histories and out-of-service violations.
- Impose progressive enforcement actions, such as compliance reviews and formal Notices of Violation, when carriers are found to have continued to operate out-of-service vehicles.

Other Related Audits/Reports of Interest

[Department of Transportation: Selected Truck Inspection Practices \(2003-S-24\)](#)

[Department of Transportation: School Bus Safety Inspection Program \(2000-S-10\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

January 22, 2014

Ms. Joan McDonald
Commissioner
Department of Transportation
50 Wolf Road
Albany, NY 12232

Dear Commissioner McDonald:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Selected Aspects of the Motor Carrier Safety Assistance Program*. This 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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This report is also available on our website at: www.osc.state.ny.us

Background

The Motor Carrier Safety Assistance Program (Program) provides Federal financial assistance to states to reduce the number and severity of accidents and hazardous materials incidents involving commercial vehicles. The Federal Motor Carrier Safety Administration (FMCSA), the Federal oversight agency, sets forth the conditions for participation by states and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations and Federal Hazardous Material Regulations for both interstate and intrastate motor carriers and drivers.

Under Federal law, each state participating in the Program is required to develop an annual Commercial Vehicle Safety Plan (Plan) outlining the state's commercial motor vehicle safety objectives, strategies, activities and performance measures.

The New York State Department of Transportation's (Department) Motor Carrier Compliance Bureau (Bureau) is responsible for the administration of the statewide Program, including preparation of the Plan. The Bureau's Plan describes various field operations including: roadside truck inspections; new entrant safety audits; compliance reviews; complaint investigations; security visits; hazardous material carrier reviews; oversize/overweight compliance outreach; and various educational programs. The Bureau also investigates consumer complaints on household goods moving companies and is responsible for customer information support.

Roadside inspections of commercial trucks and buses are a primary function of the Department's participation in the Program. Inspection teams, which include Department motor vehicle inspectors and specially trained New York State Police troopers and local law enforcement officers, perform the inspections. The Department generally does not perform motor vehicle inspections unless State or local law enforcement officers are present at the inspection site. The inspection teams work out of six regional locations.

Motor vehicle inspections can have one of several outcomes: no violations, minor violations, out-of-service violations, or a combination of minor and out-of-service violations. Out-of-service violations must be fixed before the driver may operate the vehicle again. The vehicle may be repaired on site or towed for repairs. The driver receives a copy of the inspection report. According to Federal and State regulations, motor carriers have 15 days to return the inspection report to the Department, certifying that the necessary repairs or corrections have been made. In addition, the driver may be issued a traffic citation by law enforcement officers.

In a typical year about 110,000 roadside inspections are conducted by the Department's inspectors, New York State Police, and local police. For the four Federal fiscal years ended September 30, 2012, of 448,842 inspections conducted, 90,368 (20 percent) resulted in a citation for one or more out-of-service violations. An inspection can have violations on vehicles, drivers or both. The 90,368 inspections included 76,229 out-of-service violations on vehicles and 21,417 out-of-service violations on drivers.

When carriers have a poor safety record, additional actions can be taken to improve compliance. For example, FMCSA may visit the carrier to conduct a Federal compliance review, the Department may conduct a State compliance review, or the Department may issue a formal Notice of Violation. When a Notice of Violation is issued, the carrier is required to appear before an Administrative Law Judge and may be subject to additional penalties.

Audit Findings and Recommendations

Carrier Return of Inspection Reports

Federal and State regulations require motor carriers to return inspection reports and repair certifications to the Department within 15 days. The certifications have greater significance for out-of-service violations because the vehicle problems found are more serious and could place the public at greater risk. However, most carriers do not return these reports and certifications on time, if at all. Department data shows that, of 90,368 inspection reports with out-of-service violations issued during our audit period, only about 35 percent (31,254) were returned on time. Another 26 percent (23,558) were returned late. More significantly, 35,556 reports and repair certifications (39 percent) were never returned at all.

When carriers do not return the inspection reports and repair certifications, the Department has no assurance that the out-of-service violations have been corrected. Even so, the Department has not put a tracking system in place to monitor compliance with the 15-day requirement, or even whether these reports are received at all. Department officials stated they rely instead on the results of subsequent roadside inspections rather than pursuing carriers that have not returned the inspection reports. However, the roadside inspection process provides little assurance that any one offending vehicle is likely to be subjected to a subsequent inspection, especially over the shorter term when it may still be operating with a known deficiency in need of repair.

We also found the Department does not use the response data to gain insights that could help assess the risks associated with individual carriers operating within the State. Analysis of information on response timeliness or non-compliance could be a useful tool to target carriers for additional enforcement efforts.

Actions Taken on Repeat Out-of-Service Violations

We found that the Department often did not use progressive enforcement actions when dealing with a carrier that continued to operate an out-of-service vehicle without first repairing it. Furthermore, in some cases we found carriers knowingly certified that repairs were made even though they were not, as proven by subsequent inspections.

During our audit period, the Department completed 196 inspection reports that cited 207 violations for operating a vehicle that had already been placed out-of-service as a result of an earlier inspection. In many cases, we could not trace the specifics of all violations associated with these repeat inspections because the prior inspections either occurred in a different state or took place before the start of our scope period. However, for 49 of 59 inspection reports where complete data was available, we were able to determine that the carrier certified to the Department that the initial violations had been repaired.

In 19 of these 49 cases, we found the carrier had already returned its certification of repairs to the Department before the second inspection, which then identified that the same out-of-

service violation persisted. However, because the Department does not actively monitor the return of the certifications, it is unlikely it would make this connection to identify that a false certification had been submitted. For the remaining 30 cases, it was unclear whether the carriers' certifications were false since Department records indicate they were not received until after the second inspection had already been performed.

For almost one-third (63) of these 196 repeat out-of-service inspections, further enforcement was not deemed necessary because the carrier had either gone out of business, had its Federal authority revoked or formally removed the vehicle from the road (e.g., vehicle sold, registration cancelled). For 51 of the remaining 133 inspections (38 percent), records show the Department did impose progressively more serious penalties on the carrier, such as performing an on-site compliance review or issuing a formal Notice of Violation. In contrast, for the remaining 82 cases (62 percent), enforcement actions taken against these repeat offenders were limited to, at most, a traffic citation issued by State or local police.

Carriers are less likely to make necessary repairs and avoid repeated out-of-service violations if they know the penalties for such behavior will be the same as for less serious infractions. While the 196 inspection reports citing carriers for repeat out-of-service violations may seem few in comparison to the over 90,000 out-of-service violations issued, it is important to consider that these represent more serious cases. These carriers knowingly placed the public at potential risk by operating vehicles that had already been identified as having serious defects, and in some cases misrepresented that these defects had been repaired. In our opinion, more progressive enforcement action is warranted in most, if not all, of the cases in which carriers continue to operate unsafe vehicles.

Recommendations

1. Actively monitor carrier compliance with the requirements for certification that vehicles have been repaired. Develop strategies to improve carrier compliance, particularly for those with poor safety histories and out-of-service violations.
2. Impose progressive enforcement actions, such as compliance reviews and Notices of Violation, when carriers are found to have continued to operate out-of-service vehicles.

Audit Scope and Methodology

The objective of our audit was to determine whether the Department is taking appropriate actions to ensure that commercial carriers whose vehicles or drivers have been found to have defects or violations serious enough to warrant their removal from service are making appropriate, timely repairs or corrections. This audit covers the period October 1, 2008 through June 17, 2013.

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 reviewed relevant laws, regulations, policies and procedures. We also used computer assisted

audit techniques to analyze the Department's roadside inspection data.

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 objectives. 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.

Authority

The audit was performed according 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.

Reporting Requirements

A draft copy of this report was provided to Department officials for their review and comment. We considered their comments in preparing this final report and have attached them in their entirety to the end of this report. The Department agreed with our recommendations and indicated steps it is taking to implement them. In addition, we have included State Comptroller's Comments to address statements in the Department's response.

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

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232

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JOAN McDONALD
COMMISSIONER

ANDREW M. CUOMO
GOVERNOR

November 26, 2013

Mr. John Buyce, CPA, CIA, CGFM
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY, 12236-0001

Dear Mr. Buyce:

The New York State Department of Transportation (NYSDOT) appreciates the opportunity to respond to the New York State Office of the State Comptroller's draft audit report entitled *Selected Aspects of the Motor Carrier Safety Assistance Program*.

Recommendation 1: Actively monitor carrier compliance with the requirements for certification that vehicles have been repaired. Develop strategies to improve carrier compliance, particularly for those with poor safety histories and out-of-service violations.

Response: NYSDOT relies on a variety of tools to identify carriers with poor safety performance as a means to direct its enforcement actions. During both State and Federal compliance reviews, vehicle maintenance and repair records for vehicles with roadside violations, as well as other vehicles, are reviewed. NYSDOT also has a repair verification program, whereby NYSDOT inspectors visit carriers with the sole purpose of verifying the correction of violations observed on the roadside.

As a means to augment these actions, NYSDOT will begin examining the information in our existing tracking system for the unreturned inspection reports, including number of out-of-service violations, severity of specific out-of-service violations and the carrier's overall roadside safety performance, to identify poorly performing carriers domiciled in New York. NYSDOT will focus additional enforcement actions on these poorly performing New York carriers such as warning letters and Notices of Violations and will prioritize the carrier for repair verification visits or compliance reviews. NYSDOT will develop parameters for when additional actions will be taken, the frequency of these actions and the appropriate fine levels to be assessed. NYSDOT will then perform a pilot study to make necessary modifications and improvements. Full implementation is expected by April 1, 2014.

Mr. John Buyce
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Recommendation 2: Impose progressive enforcement actions, such as compliance reviews and Notices of Violation, when carriers are found to have continued to operate out-of-service vehicles.

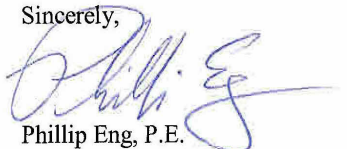
Response: NYSDOT is committed to ensuring the safety of the traveling public. Of the 207 repeat violations resulting from the 196 inspections noted in the audit, at least 189 (91 percent) had either additional enforcement actions taken or the violation no longer presented a danger to public safety, i.e., the carrier was out of business, the vehicle was no longer in service, or correction of the violation had been verified.

As an enhancement to our program, NYSDOT will perform compliance reviews or issue Notices of Violation(s) to New York domiciled carriers identified as continuing to operate commercial vehicles without making appropriate repairs to previously discovered out-of-service violations.

As a clarification regarding the inspection report data presented in the audit, the findings of the audit focus on NYSDOT's action related to vehicle out-of-service violations; however, the 90,368 inspection reports with out-of-service violations referenced consist of 76,229 reports with one or more out-of-service vehicle violations, with the balance of the inspection reports related to out-of-service violations for the driver. Of these 76,229 inspection reports with vehicle out-of-service violations issued, about 36 percent (27,567) were returned on time, 26 percent (19,653) were returned late and 38 percent (29,009) were never returned.

Should you need additional information, please contact William B. Leonard, Director of the Motor Carrier Compliance Bureau, at (518) 457-1046.

Sincerely,



Phillip Eng, P.E.
Executive Deputy Commissioner

*
Comment
1

*
Comment
2

* See State Comptroller's Comments, page 12.

State Comptroller's Comments

1. While additional enforcement action was taken in many instances, in the case of out-of-service violations we found it oftentimes was not progressive enough based on the seriousness of repeat out-of-service violations. Specifically, 82 cases had additional actions of at most a traffic ticket which is typical even for less serious violations.
2. The 90,368 inspections include 76,229 out-of-service violations on vehicles and 21,417 out-of-service violations on drivers. Some inspections had both types so the violations exceed the number of inspections. We amended the report to clarify this point.