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COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**DEPARTMENT OF MOTOR
VEHICLES**

**ISSUANCE OF
COMMERCIAL DRIVER'S
LICENSES**

Report 2007-S-96

AUDIT OBJECTIVE

Our objective was to determine whether the Department of Motor Vehicles (Department) issues commercial driver's licenses only to duly qualified drivers.

AUDIT RESULTS - SUMMARY

Our testing showed that the Department does not always issue CDLs to only duly qualified drivers. We reach this conclusion because Department test scoring errors results in failed exams being scored as passing exams and unqualified drivers obtaining CDLs. We found 14 of 894 examinations were improperly graded. In addition, because the Department does not verify required medical information submitted with the CDL application, it is possible that drivers who obtained CDLs should not have. Department officials told us Federal regulations do not require states to verify medical certificates, and as such, they take no action.

In response to our preliminary findings reports, Department officials indicated they have taken corrective actions to improve controls over the administration of the written and practical tests. Regarding medical certificates, they plan to wait until the final Federal requirements for states are issued.

This report, dated January 14, 2009, 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 Government Accountability 110 State Street, 11th Floor Albany, NY 12236

BACKGROUND

According to Article 19 of the New York State Vehicle and Traffic Law (Law), the Department is responsible for ensuring that individuals meet certain requirements, as established in Federal Title 49, Part 383 (Commercial Driver's License Standards), before they are licensed to drive commercial motor vehicles, such as trucks and buses. The Department must determine whether individuals meet additional requirements before they receive special endorsements, such as to transport hazardous materials.

To obtain a Commercial Driver's License (CDL), applicants must first satisfy basic driver's license requirements, such as a vision test, evidence of identity, a written exam and a driving test. In addition, a CDL applicant must receive a medical certificate attesting to his/her fitness to operate a commercial motor vehicle and pass both a CDL written exam and a driving skills test. Also, the applicant must inform the Department of all states where the applicant previously held any type of driver's license, so the Department can perform the Federal Motor Carrier Safety Improvement Act (MCSIA) required driver history check. Applicants must pass additional written exams to receive special endorsements, and those seeking permission to transport hazardous materials must also be fingerprinted and pass a criminal history check (threat assessment). New York CDL and non-CDL licenses are valid for 5 years initially with 8-year renewal cycles thereafter.

The Federal Motor Carrier Safety Administration (FMCSA) periodically audits New York's CDL Program. In the most recent

audit report, issued in 2006, the Federal auditors identified several weaknesses, mostly involving communication with other states about traffic safety infractions. The Department prepared an action plan to address the findings in the 2006 report and periodically submitted updates to the FMCSA.

Of New York's 10 million licensed drivers, approximately 600,000 are CDL holders, and approximately 78,000 CDL holders have hazardous materials endorsements. The Department has 27 State offices and 101 county offices. About 120 offices administer CDL knowledge tests and 62 offices provide the driving skills test. Approximately 106 Department examiners perform CDL skills testing at the 62 sites. The Department does the fingerprinting necessary for a hazardous materials endorsement at five locations, all in New York City; the State Police perform this fingerprinting function for upstate locations.

AUDIT FINDINGS AND RECOMMENDATIONS

Test Results

To pass the general knowledge test and any necessary endorsement tests, the applicant must answer 80 percent of the exam questions correctly. To pass the skills test, the applicant must complete the road course with 50 or fewer points deducted. We reviewed 300 selected individuals' skills tests to determine if they were scored properly and found that the scores added up correctly. We also traced the skills test scores to the Department's computer system known as COMPASS and noted no discrepancies.

We selected these same 300 individuals to review the scoring of their general knowledge exams and endorsement exams. In total there were 1,077 exams (300 knowledge exams and

777 endorsement exams). Of the 1,077 exams, 60 were not available for our review because their age exceeded the Department's record retention requirements. We were not able to review another 123 exams because they had been misplaced (65) did not have answer keys (49) or were destroyed by a flood (9). Of the remaining 894 exams, we verified that 880 were graded correctly and 14 were graded incorrectly. This incorrect grading resulted in nine drivers improperly receiving a CDL and five drivers improperly receiving endorsements. As a result, the Department was not always issuing CDLs and endorsements to only qualified drivers. We concluded that human errors caused the incorrect scoring and that improved procedures (e.g. electronic exam administration) and effective monitoring may have prevented or detected the errors.

Department officials agreed with our findings and are exploring alternatives for improving test administration procedures.

Recommendation

1. Improve procedures for grading exams and retaining exam records, including monitoring results. If feasible, have exams administered electronically.

(Department officials replied to our draft report that they issued a notice to all DMV offices reminding them of the proper procedure for grading and auditing the examinations. In addition, they added a new procedure to double check the test results and, if an error is detected, to call back the applicant and place stop on his CDL.)

Medical Certificates

Federal Motor Carrier Safety Regulations (Part 391) require most commercial motor

vehicle (CMV) drivers to have medical examinations every two years to detect physical or mental conditions that may affect their ability to operate a motor vehicle safely. The medical examination should be performed by either a doctor of medicine, doctor of osteopathy, physician's assistant, advanced practical nurse, or doctor of chiropractic, and it should cover 13 areas that directly relate to the ability to drive safely. (Some CDL applicants do not need to receive a medical exam or a medical examiner's certificate. For example, an applicant is exempt from needing a certificate if he/she is a government employee driving government owned or leased CMV's in the course of official duties or is an employee of a private business who drives CMV's only for school operations.)

To document the examination, the CMV driver should receive a medical examiner's certificate (certificate). The certificate can be valid for no more than two years, and it includes the license number of the medical examiner who completed the exam, the state that issued the medical license of the examiner, and an expiration date for the medical license.

Although Federal regulations currently do not require states to verify medical certificates, New York's CDL application includes spaces for medical certificate information. We reviewed 150 CDL applications and noted that medical information did not apply to 50 of them because they were for limited use (29) or were prior to February 2006 when the application form did not require the medical certificate information (21). Of the remaining 100 applications, we found that 79 were completed properly and 21 were either missing required medical information such as the examiner's state or license expiration date, or the medical examiner's license number was not a proper 6-digit number issued by the

State Education Department's Office of Professions.

The Department has no written procedures to ensure that Motor Vehicle Representatives verify that CDL applicants properly and accurately complete the required medical information on the application. Motor Vehicle Representatives are not required to observe an applicant's certificate or otherwise check that the medical examiner's number is valid and belongs to an authorized medical professional. Therefore, the certificate information is not entered into the Department's computer system and validated.

The purpose of the physical examination is to detect the presence of physical, mental, or organic conditions of such a character that they can affect the driver's ability to operate a CMV safely. Because the Department is not checking the certificates, CDL holders that might not be medically qualified to hold such licenses may, in fact, be driving CMVs.

Recommendations

2. Develop and implement written procedures requiring Motor Vehicle Representatives to verify that certificate information is completed properly.

(In responding to our draft audit report, Department officials stated that they are in the process of revising the application process, including forms and instructions to include a requirement that CDL applicants submit their medical certificates to Motor Vehicle Representatives. They expect the new process will be implemented by January 1, 2009.)

3. Take steps to validate CDL applicant's medical certificate such as requiring

applicants to present the certificate and amending the application to require the type of practitioner, and check the license number with the issuing State.

(Department officials replied to our draft audit report that they do not have the resources to verify medical examiners in 51 different jurisdictions. They recommend that the FMCSA should develop a system to secure the medical certificates and that FMCSA has a proposal to address this matter. Thus, Department officials are reluctant to take any further action until they have a final rule.)

AUDIT SCOPE AND METHODOLOGY

We audited the Department's oversight of commercial driver licensing activities for the period April 1, 2005 through the end of fieldwork (March 31, 2008). To accomplish our objectives, we met with Department officials and reviewed applicable laws, rules and regulations. We judgmentally sampled 200 passing and 100 failing skills tests from April 1, 2006 through July 31, 2007. To select our sample, we visited 10 district offices that provide road tests and selected 20 passing tests and 10 failed tests at each office throughout the audit period. We also visited local offices to review the same 300 individuals' written exam scores to verify whether the scores matched the answer keys.

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 objectives.

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 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.

REPORTING REQUIREMENTS

A draft copy of this report was provided the report to Department officials for their review and comment. We considered their comments in preparing this final report, and they are included as Appendix A.

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 what steps were taken to implement the recommendations contained

herein, and where recommendations were not implemented, the reasons why.

CONTRIBUTORS TO THE REPORT

Major contributors to this report were Carmen Maldonado, Robert Mehrhoff, Joel

Biederman, Stephen Goss, Wayne Bolton, Lauren Bizzarro, Rachelle Luchkiw, and Emily Wood.

APPENDIX A - AUDITEE RESPONSE



**NEW YORK STATE
DEPARTMENT OF MOTOR VEHICLES
AUDIT SERVICES**

DAVID J. SWARTS
Commissioner

EDWARD J. WADE
Director of Audit Services

September 12, 2008

Ms. Carmen Maldonado, Audit Director
Office of the State Comptroller
123 William Street - 21st Floor
New York, NY 10038

Re: 2007-S-96 Draft Audit Report

Dear Ms. Maldonado:

This letter is in reference to the New York State Comptroller's draft audit findings which address the Department of Motor Vehicle's Issuance of Commercial Driver's Licenses.

Please note the following concerning the text of the audit report:

1. In the section entitled 'BACKGROUND', the audit report states that the Federal Motor Carrier Administration periodically audits New York's CDL Program. It further states that the 2006 audit report identified several weaknesses, most involving communications with other states about traffic safety infractions. It closes the paragraph by stating, "As of March 31, 2008, the Department had not prepared an action plan to address all of the findings in the 2006 report".

Comment:

This statement is incorrect. The FMCSA findings were reported to DMV in a document entitled, 2006 CDL Summary Findings, Program Improvements and Noteworthy Practices for the State of New York. After each finding there is a separate subsection for: Action Plan; Estimated Completion Date; and Actual Completion Date. The Department made entries to these sections and as required, sent the updated Action Plan to the FMCSA NY Division office in July 2006. On August 29, 2006, the Division Administrator forwarded the Action Plan to FMCSA Headquarters in Washington, DC. The Action Plan was updated in November 2007 and again in June 2008. We provided a copy of the Action Plan to the OSC auditors on at least two occasions. Those items still outstanding either require legislation (which DMV has requested), or upgrades to the National Highway Traffic Safety Administration's National Driver Register, before we can implement the changes.

*
See
Comment

- * We have revised the final audit report to reflect the Department's comment.

2. In the section entitled 'Identity Verification, Renewals and Disciplinary Actions', the audit report states that the Department did not provide requested data within a reasonable timeframe.

Comment:

We would like to reiterate that substantive discussions on the data request did not occur until October of 2007. On 2/27/2008, we advised OSC that our information technology office was able to begin work on the requested data download. On 3/5/08, OSC stated that they were not able to use the data at that time.

*
See
Comment

Please note the following concerning the recommendations in the audit report:

Audit recommendation # 1:

Improve procedures for grading exams and retaining exam records, including monitoring results. If feasible, have exams administered electronically.

Response:

We issued a notice to all DMV offices on 6/12/2008 reminding them of the proper procedure for:

- *scoring CDL exams*
- *retention of the test answer sheet, scoring template & scoring key*
- *next day auditing of test entries*

We added a new procedure to the CDL test audit process requiring the supervisor (or audit clerk) who does the daily audit to compare the test answer sheet and scoring template to ensure that any tests entered as passed did have the minimum number of correct answers.

We instructed offices to contact the applicant if an error was detected, and have them return to the office to retake the test. We also reminded them to place a stop on the photo license document until the applicant passed the test.

Issuing Office Procedure 4165, "Commercial Driver License Written Test General Information", was updated to reflect the information contained in the advisory.

Audit recommendation # 2:

Develop and implement written procedures requiring Motor Vehicle Representatives to verify that certificate information is completed properly.

Audit recommendation # 3:

Take steps to validate CDL applicant's medical certificate such as requiring applicants to present the certificate and amending the application to require the type of practitioner, and check the license number with the issuing State.

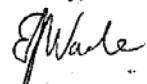
* We have deleted this matter from the Final report.

Response:

We are in the process of revising our license applications (forms MV-44 and MV-2), CDL instruction sheet (form MV-44.5) and the CDL information on our public website to include the requirement that CDL applicants submit their medical certificate. When all the forms have been revised, we will issue a notice requiring staff to attach a copy of the certificate to the MV-44 or MV-2. We expect to have all the necessary changes in place to implement by January 1, 2009. However, we do not have the resources to verify medical examiners in 51 different jurisdictions that vary in their ability to validate the information. The Federal Motor Carrier Administration should develop a system capable of either providing a secure document or electronic verification of medical qualifications. In fact, as you mention in this report, FMCSA has issued a Notice of Proposed Rulemaking to address this issue. A Final Rule has been submitted to the federal Office of Management and Budget, which is the last step prior to issuance. We are reluctant to take any actions other than what is described above until we see what will be required by the final rule.

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 me.

Sincerely,



Edward J. Wade
Director of Audit Services