

Thomas P. DiNapoli
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 17, 2009

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

Re: Report 2008-F-52

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, *Complaints Against Regulated Entities* (Report 2006-S-18).

Background, Scope and Objective

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 one-year period ending March 31, 2008, the Department received 7,053 complaints against regulated businesses.

Our initial audit report, which was issued on February 5, 2007, examined the timeliness of handling consumer complaints. 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. The objective of our follow-up was to assess the extent of implementation as of December 31, 2008 of the two recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

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

Follow-up Observations

Recommendation 1

Make sure the notification of an extension is effectively used for any case that is likely to exceed the one year time requirement.

Status - Partially Implemented

Agency Action - Although the Department said that it would investigate updating or replacing its CaseTrak computer system, it has not been able to revise the system because of other Department priorities. However, Safety Hearing Bureau (Bureau) staff was instructed to routinely review all case folders to determine which cases may be nearing the "Hearing by" date, and to prepare notifications of an extension for those cases. In addition, schedulers review case folders identified as "Rush" cases and schedule hearings as needed. Administrative law judges are deployed to areas of the State not considered their usual territory to accommodate any backlogs. Also, if practical, cases are scheduled at least two full months or more before the "hearing by" date.

We selected a judgmental sample of 37 of the 1,222 vehicle safety cases that had been referred to the Bureau to hold a hearing. We did not review the files for five cases that were with the administrative law judge holding the hearing. For the remaining 32 cases, we found that nine were not held within the one year time requirement. While Bureau staff effectively used the notification of an extension in seven of these cases, they did not send a notification for two of them. Department officials note that based on decisions made by the Administrative Appeals Board and the New York Supreme Court - Queens County, the one year time requirement set forth in Part 127.2(1) of the Commissioner's Rules and Regulations are directory, not mandatory; therefore, even if the Department does not send out the extension letter or hold the hearing within one year, it does not forfeit its ability to have the hearing and impose penalties.

Recommendation 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.

Status - Implemented

Agency Action - The Vehicle Safety Bureau has modified its "Investigation Report" form to clearly identify the date when the complaint was filed. In addition, hearing case file folders have been modified to clearly identify the "hearing by" date and staff have been instructed on how to calculate this date based on the modified "Investigation Report." In addition, supervisors routinely review to ensure that the correct "hearing by" date is used. In our review of 32 hearing case files, we found that the "hearing by" date was recorded correctly.

Major contributors to this report were Robert Mehrhoff, Joel Biederman, 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 auditors during this process.

Very truly yours,

Carmen Maldonado
Audit Director

cc: Mr. Edward Wade, Director of Internal Audit
Mr. Thomas Lukacs, Division of the Budget