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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 8, 2021

Mr. Mark Schroeder
Commissioner
Department of Motor Vehicles
6 Empire Plaza
Albany, NY 12228

Re: Enforcement of Article 19-A of the
Vehicle and Traffic Law
Report 2020-F-6

Dear Commissioner Schroeder:

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 to implement the recommendations contained in our audit report, *Enforcement of Article 19-A of the Vehicle and Traffic Law* (Report [2018-S-7](#)), issued February 7, 2019.

Background, Scope, and Objective

In 1972, a tragic school bus and freight train collision near Congers, New York, that involved bus driver negligence prompted legislation to amend the New York State Vehicle and Traffic Law. The amendment, Article 19-A: Special Requirements for Bus Drivers (Law), created qualification standards for bus drivers. The Department of Motor Vehicles (Department) is responsible for overseeing the Article 19-A Program (Program) and establishing and enforcing policies to support the Law's requirements.

Every motor carrier, as defined in the Law, must enroll in the Program, comply with its requirements, and ensure that their bus drivers meet the Law's qualification standards. For example, every two years, bus drivers must pass a medical examination, a practical driving test, behind-the-wheel tests, and written or oral exams testing their knowledge of the rules of the road, and must continuously maintain a safe driving record both on and off the job. Additionally, school bus drivers must undergo criminal background checks. Motor carriers are required to maintain records showing that each of their drivers has met these standards. As of September 2020, Department records showed 2,852 active motor carriers enrolled in the Program.

Our initial audit sought to determine if the Department was taking adequate steps to both identify motor carriers that must comply with the Law and enforce the Law's requirements. The audit covered the period January 1, 2016 through October 3, 2018. As a result of our audit, we identified deficiencies in the Department's policies and procedures that could result in motor carriers operating out of compliance with the Program's requirements, with the associated risk that under- or unqualified drivers who don't meet State standards are operating vehicles and potentially jeopardizing highway and passenger safety. For example, the Department did not

clarify certain regulatory terms, which caused confusion among staff in determining whether certain entities are subject to the Law or could receive an exemption. Accordingly, we identified some entities that may have been improperly exempted from complying with Article 19-A. We also found that the Department didn't consistently document the basis for entities' exemptions or review past exemptions to determine if they were still appropriate.

In addition, the Department did not use all readily available information to identify entities that may have been subject to, but were not enrolled in, the Program. We identified 311 entities that were not enrolled in the Program but appeared to be subject to its requirements.

Finally, we found that the Department's revised process for reviewing motor carrier compliance – which uses desk reviews with advance notice of the sample of driver files, in contrast to the prior on-site review process, which did not involve providing advance notice of the sample – introduced a risk that carriers could alter the records.

The objective of our follow-up review was to assess the extent of implementation, as of December 11, 2020, of the five recommendations from our initial audit report.

Summary Conclusions and Status of Audit Recommendations

We found that the Department has implemented four of the five recommendations from our initial audit report, and has partially implemented one recommendation.

Follow-Up Observations

Recommendation 1

Develop and consistently apply policies and procedures and issue detailed guidance that clearly explains which entities are required to comply with the Law.

Status – Partially Implemented

Agency Action – Since our initial audit, Department officials have revised the definitions of Article 19-A key terms, including academic instruction and school activity, to assist Department staff with determining which motor carriers are required to comply with the Law. Academic instruction has been defined as any instruction, formal course of study, or program provided for the purpose of educational development. School activity is now defined as any school-sponsored and supervised activity, including, but not limited to, field trips and extra-curricular activities (e.g., sports, dramatics, musical events, school dances). Department officials told us that the definitions have been distributed to all relevant staff who refer to them when assisting motor carriers with Program enrollment. They also said that, to help ensure consistency in applying the Law, staff are in constant communication with each other and that the Department continually refines procedures and training when changes in the Law occur.

The Department has revised its 19-A Information Packet to reflect amendments to the Law, but has not yet issued guidance that clarifies enrollment requirements to external entities. According to Department officials, they worked with the Department of Transportation to create an informational flyer, which we reviewed, to assist entities that transport passengers for hire in determining whether they're required to enroll. Their stated intent was to distribute flyers to Department offices, where they would be given to registrants of passenger transportation-type vehicles. However, the flyer distribution had

not happened at the time of our review. Officials cited the pandemic-related shutdown of their offices as the source of the delay. They also said they will be posting the flyer information to their website and incorporating it into the 19-A Information Packet.

Recommendation 2

Develop a process to periodically review entities that previously received exemptions and determine if their exemption status remains applicable.

Status – Implemented

Agency Action – In March 2020, the Department notified previously exempted motor carriers that it would no longer grant exemptions from Program compliance. Instead, motor carriers not enrolled in the Program are now required to certify every two years, under penalty of perjury, that they don't provide transportation services that require their enrollment in the Program (or to notify the Department if this status has changed). The new process helps the Department identify entities that previously received exemptions but whose status may have changed. A letter that explains where to find information online about Article 19-A, and how to comply if required, accompanies the certification form. Carriers that do not respond are identified on a Daily Not-Enrolled Expiring Carriers Report. The Department's procedures state that staff review the report and notify non-respondents that all motor vehicle registrations under their name are suspended until they respond. We reviewed sample documentation that demonstrated the Department followed the above process.

Recommendation 3

Determine if the 311 entities we identified in this report are subject to the requirements of the Law, and require their enrollment in the Program, as warranted.

Status – Implemented

Agency Action – During our initial audit, we identified 311 entities that, based on their names and seating capacity of registered vehicles, had the potential to fit the Law's definition of motor carriers operating school buses but were not enrolled in the Program and had not received an exemption. The Department has since reviewed the 311 entities and, as of September 2020, determined their Program status as follows:

- 109 entities met the Law's requirements and are now enrolled in the Program;
- 92 entities did not meet the Law's requirements and, therefore, did not need to enroll;
- 59 entities had all New York State vehicle registrations, license plates, and operation privileges suspended because they failed to comply with one or more Article 19-A requirements;
- 40 entities met the Law's requirements in the past, but no longer provide transportation requiring enrollment;
- 10 entities did not meet the Law's requirements because they contract with another entity to provide transportation services and, therefore, were not required to enroll; and

- 2 of the initial 311 entities in the data represented just one entity, which is now enrolled. The entity appeared twice due to differences in how its name was presented in the data.

To test the Department's Program status determinations, we selected a sample of 20 entities the Department said were subject to the Law's requirements in the past, but no longer were, or that were never subject to the requirements. We reviewed support for each determination and agreed with all 20 status determinations made by the Department.

Recommendation 4

Develop a process to identify motor carriers using all relevant information available to the Department.

Status – Implemented

Agency Action – As a result of our initial audit, the Department has developed an internal report that extracts data from the Department's registration system about any first-time or renewing carrier registration for a school vehicle or vehicle with a seating capacity of 11 or more. According to Department officials, on a biweekly basis, staff compare the carriers on the report to those in the Program system and contact any carrier not in the system to determine whether it is required to comply with the Law. If a carrier does not respond, Department personnel suspend all motor vehicle registrations in its name. After a carrier responds, staff restore the vehicle registrations.

The Department has also provided additional guidance to staff regarding adding and editing new carrier information in the Program system. This guidance includes the various sources from which the Department can receive carrier information, as well as the steps to take if a carrier doesn't respond or has incorrectly filled out an application.

Recommendation 5

Formally assess the new record review program to determine its effectiveness, and include a risk assessment of motor carriers to determine if it is necessary to incorporate random, unannounced on-site evaluations into future motor carrier reviews.

Status – Implemented

Agency Action – Department officials have assessed the record review program implemented in 2018 and have determined that it is effective and that it's not necessary to incorporate random, unannounced on-site evaluations into their review process. Their determination is based on comparative statistics indicating that in 2017, under the old program, the Department conducted bus driver file reviews of 861 carriers, while under the new program, it conducted 1,133 reviews in 2018 and 940 reviews in 2019. (Department officials noted that the number of carriers fluctuates each year because the reviews are triennial.) The Department collected fines and civil penalties totaling \$355,473 in 2017, \$474,788 in 2018, and about \$1 million in 2019. Department officials stated that they believe these increases illustrate improved efficacy based on the new program review and that the potential risks associated with reliance on remote reviews under the new program are reduced.

Major contributors to this report were Karen Bogucki, CGFM; Theresa M. Nellis-Matson, CPA; and Jessica Strizzi.

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

Very truly yours,

Sharon L. Salembier, CPA, CFE
Audit Manager

cc: Kelly Gardineer, Department of Motor Vehicles