

OVERSIGHT OF THE COMMERCIAL DRIVER'S LICENSE PROGRAM

Federal Motor Carrier Safety Administration

Report Number: MH-2006-037

Date Issued: February 7, 2006



Memorandum

U.S. Department of Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** Report on Federal Motor Carrier Safety Administration Oversight of Commercial Driver's License Program
Report Number: MH-2006-037

Date: February 7, 2006

From: Kurt Hyde
Assistant Inspector General
for Surface and Maritime Programs

Reply to
Attn. of: JA-40

To: Federal Motor Carrier Safety Administrator

This report discusses actions taken by the Federal Motor Carrier Safety Administration (FMCSA) to counter commercial driver's license (CDL) fraud. It specifically focuses on any actions taken against individuals suspected of obtaining their commercial driver's license fraudulently. These CDL holders are considered suspect because they obtained their CDLs by fraud or from state employees or state-approved third-party examiners¹ who were suspected of fraudulently providing licenses.

It is important to establish strong programs to prevent fraud, but it is just as important to remove unqualified drivers from the road after CDL fraud has been detected. Failure to revoke the licenses of unqualified drivers may lead to tragic and costly crashes, as illustrated by a crash in 2003 that resulted when an individual with a CDL killed a family of five in Pennsylvania. An investigation by our office revealed that the driver's license was obtained in Utah from a third-party examiner who was convicted of fraudulently certifying CDL test results.

Our objective was to ascertain what actions FMCSA had taken to determine the status of suspect drivers identified by the states and to inform FMCSA of our observations regarding the issuance of fraudulent CDLs. In conducting this review, we relied on

¹ Third-party examiners are individuals or organizations authorized by a state to provide testing for individuals seeking to obtain CDLs.

information we obtained on suspect CDL holders from Office of Inspector General (OIG) investigators in cooperation with officials from FMCSA Division offices. The information was on individuals who may have received their CDLs fraudulently over a 5-year period (1998 through 2003) and was solicited through a survey from the 50 states and the District of Columbia. All 51 jurisdictions responded to the survey and 32 of the 51 reported some CDL fraud over the 5-year period, with 27 providing specific information on suspect CDL holders. We conducted this performance audit in accordance with Government Auditing Standards prescribed by the Comptroller General of the United States. Exhibit A contains more details regarding our objective, scope, and methodology. Additional information on our prior reports on the CDL program is in Exhibit B.

BACKGROUND

Before Congress established the CDL program through the Commercial Motor Vehicle Safety Act of 1986, drivers in more than a third of the states could operate a large truck or bus without obtaining a special license. Moreover, commercial drivers often held licenses from several states, making it easy to hide bad driving records.

A CDL is now required for the operation of commercial vehicles weighing at least 26,001 pounds; hauling hazardous materials; or transporting at least 16 passengers, including the driver. The states have issued more than 11 million CDLs since 1989. On average, 40,000 CDLs are issued each month and approximately 123,000 are transferred between states every year.

RESULTS IN BRIEF

Curbing CDL fraud is important to highway safety because it helps ensure that only drivers with the requisite skills obtain CDLs. The OIG's November 2005 report on DOT Top Management Challenges² noted that over the past 5 years we have investigated and prosecuted CDL fraud schemes in 23 states. These investigations, carried out with other law enforcement agencies and with the strong support of FMCSA, revealed that thousands of CDLs were issued to drivers who obtained them through corrupt state or state-approved testing processes, that is "third-party examiners." What we have learned from our casework is that people are motivated to pay bribes to circumvent CDL licensing requirements for a variety of reasons. These reasons include (a) the inability of foreign nationals to pass the written examination due to language barriers, (b) unwillingness to wait the time necessary for completion of the CDL knowledge and skills test and issuance, (c) lack of required legal residency

² OIG Report Number PT-2006-007, "Top Management Challenges," November 15, 2005. OIG reports can be found on our website: www.oig.dot.gov.

or citizenship, and (d) insufficient training to pass the skills test. Our November 2005 report called for greater attention on suspect CDL holders.

FMCSA has implemented actions to mitigate CDL fraud. However, FMCSA was not tracking the status and disposition of suspect drivers or requiring the states to establish procedures to take action against suspect CDL holders. From 1998 to 2003, 27 states identified 15,032 suspect CDL holders and took appropriate actions, including removal of CDL privileges, against 8,293 (55 percent) of those. We could not determine the status of the remaining 6,739 (45 percent) suspect drivers based on information that the states provided, and FMCSA was not tracking their status. As a result, unskilled drivers could be operating commercial vehicles on the nation's highways, creating significant risks for death, injury, and property damage.

In a draft of this report, we recommended that FMCSA direct the states to report on the final disposition of the remaining 6,739 suspect drivers. These disposition actions could include retesting drivers and revoking licenses as appropriate. To facilitate this we provided FMCSA with the names of suspect drivers identified to us. We also recommended that FMCSA ensure states establish adequate internal controls to track suspect drivers and counter fraud in the CDL program.³

In responding to our draft report, FMCSA generally agreed with the recommendations but stated that it could not direct the states to report the disposition of all remaining suspect drivers unless direct evidence of fraud was present. We do not find that the factors cited by FMCSA would preclude requiring states to report the disposition of all suspect CDL holders. We view reporting on the disposition of suspect CDL holders to be a prudent internal control policy. In order to clarify any potential confusion on the issue, we revised our final report to point out that directing the states to report the disposition of suspect CDL holders does not necessarily require the states or FMCSA to take action against a driver, such as retesting, when the facts of the case do not require it. We also revised the final report to reflect regulatory factors, cited by FMCSA, that must be met before states could be sanctioned for having insufficient controls against fraud. We have asked FMCSA to respond to our revised report recommendations.

FINDINGS

FMCSA Has Implemented Procedures To Counter CDL Fraud But More Action Is Needed To Track Suspect Drivers.

FMCSA has implemented a series of specific actions to counter CDL fraud. For example, FMCSA has:

³ 49 Code of Federal Regulations, Part 384, et seq.

- Developed a program in conjunction with the American Association of Motor Vehicle Administrators (AAMVA) and the states. The purpose of the program is to: (1) identify areas of the CDL program most vulnerable to illegal CDL activities, (2) research existing and proposed law enforcement practices to combat illegal CDL activities, (3) evaluate the effectiveness of those practices, and (4) develop a model law enforcement program for reducing CDL fraud;⁴
- Implemented a CDL fraud component within FMCSA's CDL Compliance Review Program⁵ that incorporated questions to determine the nature and effectiveness of CDL anti-fraud procedures and systems;
- Contracted with Oak Ridge National Laboratory to conduct an evaluation of the CDL Compliance Review Process;
- Developed training in fraudulent document recognition for law enforcement and CDL coordinators;
- Held an international symposium centered on fraud related issues in driver licensing; and
- Entered into an agreement with AAMVA to develop software for detecting, preventing and deterring fraud by third parties involved in skills testing.

Although the actions FMCSA has taken to counter fraud are positive, the results of our analysis show that more must be done to ensure that those who may have obtained their licenses fraudulently are identified and action is taken to remove CDLs when necessary. The OIG, in coordination with FMCSA, requested that the states and the District of Columbia provide a list of names of all suspect CDL holders. In response to the request, 50 states and the District of Columbia reported that they identified 15,032 suspect CDL holders between 1998 and 2003 and took appropriate action against 8,293 (55 percent) of the suspect CDL holders, including removing CDL privileges. However, based on information that the respondents provided, we could not determine the status of the remaining 6,739 (45 percent) suspect drivers.

⁴ A contract (total cost \$168,000) has been awarded to develop this model law enforcement program.

⁵ FMCSA conducts on-site compliance reviews (about 15 a year) of state CDL programs to determine whether the states meet the general requirements for substantial compliance.

The Table below provides details on the disposition of the 15,032 suspects.

Table: Disposition of 15,032 Suspect CDL Holders	
Number of Actions Against Suspect CDL Holders	Disposition of Actions Taken (See Exhibit D)
	State reports on 8,293 (55 percent) suspect drivers showed action taken to remove CDLs when necessary.
3,334	<ul style="list-style-type: none"> CDLs were cancelled, disqualified, revoked, or suspended or drivers were required to retest and failed.
2,891	<ul style="list-style-type: none"> Drivers passed a retest or provided adequate evidence to keep their CDLs.
2,068	<ul style="list-style-type: none"> Drivers' CDLs were downgraded or drivers voluntarily surrendered their CDLs.
8,293	Total Actions
	State reports on 6,739 (45 percent) suspect drivers did not provide information on status of the drivers.
5,314	<ul style="list-style-type: none"> Drivers' CDLs were reported as suspect, but the final disposition was unknown. Approximately 94 percent of the 5,314 suspect drivers were from Florida and Pennsylvania.
1,147	<ul style="list-style-type: none"> Drivers had transferred their state of residence, which made tracking difficult.
278	<ul style="list-style-type: none"> Drivers had not been retested (103) or were unresolved for other reasons (175).
6,739	Total Status Unknown

Source: OIG analysis of data provided by states.

FMCSA officials stated they had not taken steps to determine the status of the 6,739 suspect CDL holders because they were not sure that they had authority to compel states to take action to track suspect CDLs. FMCSA carried out this tracking procedure in October 2000 when fraud was uncovered in Illinois and Florida, following the Secretary of Transportation's establishment of a task force to investigate CDL fraud in those states.⁶ FMCSA officials also told us of another instance when FMCSA tracked 600 suspect drivers in one state and action was taken against the individuals, although the effort took approximately 4 years. However, FMCSA cautioned that these past actions did not mean FMCSA could direct states to track suspect drivers. Rather, FMCSA's position is that it only has authority to direct states

⁶ "Evaluating Commercial Driver License Program Vulnerabilities - a Study of the States of Illinois and Florida," issued by FMCSA, October 2000.

“to report the disposition of suspect CDL holders for those drivers for which specific or direct evidence exists that the driver was involved in fraudulent activity and not merely the victim of being tested by an examiner who engaged in fraudulent activity with another driver on a different date.”

The regulations provide FMCSA with authority to find a state out of compliance if it fails to impose adequate internal control mechanisms to prevent fraud or to take necessary corrective action.⁷ We believe that having states report the disposition of suspect drivers is a reasonable step to ensure that the states have a system in place (i.e., adequate internal controls) for ensuring that those suspected of obtaining CDLs by fraud are identified and removed from the road when appropriate.

Our recommendation that FMCSA direct the states to report on the disposition of suspect CDL holders also does not call for the states or FMCSA to take action against a driver when the facts of the case do not require it. In some cases the state’s disposition report may show that no action was taken regarding one or more suspect drivers because it appears that those drivers were only coincidentally associated with a corrupt CDL examiner. Alternatively, in other cases, the investigation could show that the examiner was incompetent or that fraud was so wide-spread that it would be reasonable to retest any individual associated with that examiner. Finally, although reporting the disposition of drivers who obtained licenses in another state may pose difficulties, individuals should not be able to successfully obtain CDLs through fraudulent means by transferring licenses to another state.

Moreover, based on our analysis of the responses from the states, it is our opinion that the number of suspect CDL drivers identified does not represent the entire universe of suspect CDL holders. For example:

- Five states that reported the existence of CDL fraud during the period from 1998 through 2003 did not provide information on any specific suspect drivers.
- One state noted that there were too many suspect CDL holders to list.
- One state indicated that there was no CDL fraud; however, the OIG has an ongoing investigation of CDL fraud in that state.

FMCSA Should Use Its Authority to Implement Counter Fraud Initiatives

Given the scope of suspect CDL holders and the continued prosecution of CDL fraud in numerous states, FMCSA should use its authority under Federal regulations to

⁷ 49 Code of Federal Regulations, Part 384.301.

promote strong state programs for countering CDL fraud. FMCSA exercises its authority over the CDL program by conducting reviews to determine whether the states are in substantial compliance⁸ with CDL regulations. Further, it has the authority to withhold funds or prevent the issuance of CDLs in those states that are in noncompliance with the rules. During our review, we held discussions with FMCSA legal counsel to clarify the degree to which FMCSA may exercise this authority over the states with regards to counter-fraud measures. Based on our discussions, we determined that the standards and criteria in the regulations,⁹ taken together, give FMCSA the authority to establish fraud control measures for the CDL program administered by the state. Consequently, based on Federal regulations, FMCSA can determine that state CDL programs are out of compliance if the state fails to impose adequate internal controls to prevent fraud or fails to take or propose necessary corrective action. Federal regulations also authorize FMCSA to impose sanctions against those states that fail to establish adequate fraud control measures for their CDL programs. We are recommending that FMCSA exercise that authority to help ensure the establishment of strong state programs to prevent fraud and to remove unqualified drivers from the road after CDL fraud has been identified.

Additional Information on CDL Fraud Controls

To support the efforts of FMCSA to counter CDL fraud, we have provided in Exhibit C an updated list of CDL fraud controls that states can use to diminish the occurrence of fraud in state CDL programs. We provided the original list to FMCSA in an earlier audit report and suggest that FMCSA uses these controls, as appropriate, when working with the states to develop management control practices to detect and prevent fraudulent testing and licensing activity.

RECOMMENDATIONS

We recommend that the FMCSA Administrator:

1. Direct the states to report on the final disposition of all suspect drivers identified by the states. These disposition reports should emphasize but not necessarily be limited to instances where there is specific or direct evidence that the driver participated in a fraudulent activity to obtain the CDL.

⁸ To meet the substantial compliance requirement, a state must have procedures in place to meet the minimum requirements for testing drivers, responding to violations, disqualifying drivers, licensing drivers, and checking driver's records. (49 CFR 384.301(a).)

⁹ 49 CFR § 384, et. seq.

2. Determine that state CDL programs are out of compliance, under Federal regulations,¹⁰ if the state fails to impose adequate internal controls to prevent fraud or fails to take or propose necessary corrective action.
3. Impose sanctions, under Federal regulations,¹¹ against those states that fail to establish adequate fraud control measures for their CDL programs.

MANAGEMENT COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FMCSA a draft of this report on October 27, 2005. In its December 12, 2005 written comments, FMCSA commented on our finding and recommendations and provided examples of initiatives it supports to counter CDL fraud. Based on FMCSA's comments, we revised the report findings to reflect the additional counter-fraud initiatives that FMCSA is undertaking. We also revised the findings and the recommendations to include additional detail and appropriate qualifications on the authority granted to FMCSA under Federal CDL regulations. FMCSA's complete comments are in the Appendix to this final report.

In response to recommendation 1, to direct the states to report the final disposition of the remaining 6,739 suspect CDL drivers, FMCSA stated that it does not believe it has the authority to direct states to report the disposition of all suspect CDL drivers. FMCSA agreed, however, that it has the authority to direct states to report the disposition of any drivers found to be involved in fraudulent activity and not merely a victim of an examiner's fraudulent activity. In responding to recommendations 2 and 3, to ensure states implement adequate fraud control measures and to impose sanctions against states that fail to do so, FMCSA generally agreed with the recommendations but provided specific regulatory requirements that must be met before states could be cited for noncompliance or sanctions could be imposed.

In our opinion, directing states to report on the disposition of all suspect drivers is a prudent action that is consistent with CDL regulations. To address any potential confusion, we revised the report to point out our recommendation only requires that states report on the disposition of suspect drivers, not that the states take any specific action, such as retesting a driver, when the facts of the case do not call for such action. We also revised recommendation 1 to make it clear that disposition reports should be

¹⁰ As required by CFR section 384.307(d), FMCSA should consider actual or planned corrective actions sufficient to correct any deficiencies before making a final determination of lack of substantial compliance.

¹¹ The authority to impose any sanctions is contingent upon a final determination of substantial noncompliance with standards and requirements of CFR sections 383 or 384.

required for both previously identified and any future suspect drivers. We revised recommendations 2 and 3 to include a reference to the appropriate regulations.

ACTIONS REQUIRED

We request that FMCSA provide written comments within 30 days containing its formal response to recommendations 1, 2, and 3, given the modifications made to those recommendations in the final report. The response should include milestones for recommendation 1 that address when FMCSA will obtain information from the states on the disposition of suspect CDL drivers, including interstate transfers.

We appreciate the cooperation and assistance provided by you and your staff during our review. If you have any questions or need further information, please feel free to contact me at (202) 366-2017 or Joe Com e, Program Director, at 202-366-0377.

EXHIBIT A. OBJECTIVE, SCOPE, AND METHODOLOGY

We conducted this performance audit in accordance with Government Auditing Standards prescribed by the Comptroller General of the United States. Our objective was to determine what actions FMCSA had taken to learn the status of suspect drivers identified by the states and to inform FMCSA of our recent observations regarding the issuance of fraudulent CDLs.

To identify actions FMCSA took to determine the status of suspect drivers, we discussed the issue with FMCSA officials responsible for the CDL program. We also obtained a written response from FMCSA on an informal discussion draft of this report.

We analyzed information provided to our investigators in response to a request to 50 states and the District of Columbia for a listing of suspect CDLs issued over a 5-year period (1998-2003). OIG investigators, with the cooperation of the FMCSA division offices, sent the requests to the states. We applied analytical procedures to the data received from the states including compiling, analyzing, and summarizing the information.

We limited our scope to the actions taken by FMCSA regarding suspect CDL holders. We examined the information obtained on suspect drivers but we did not test internal controls over, or validate the reliability of the data the states provided to the OIG investigators. As a result, the magnitude of suspect CDL holders may vary from the reported levels. However, it is our opinion that the information is sufficiently reliable to draw conclusions on FMCSA's policy on determining the status of suspect CDL holders.

To provide additional information to FMCSA on CDL fraud, we reviewed the requirements to obtain a CDL for 50 states and the District of Columbia and reviewed information obtained in prior and current audits and investigations. In addition, we created a flow chart of the CDL testing and issuance process and formed preliminary conclusions regarding the testing and issuance of CDLs. Also, to gain an understanding of any other work FMCSA performed on CDL fraud, we reviewed an October 20, 2000 FMCSA report, "Evaluating Commercial Driver License Program Vulnerabilities - a Study of the States of Illinois and Florida."

We performed the review from August 2003 to December 2004. The review was temporarily suspended (March to November 2004) due to other audit priorities.

EXHIBIT B. PRIOR AUDIT COVERAGE

The following are summaries of prior OIG reports on CDLs.

OIG Report Number MH-2000-106, “Disqualifying Commercial Drivers,” June 30, 2000

The objective of the audit was to determine the adequacy of FMCSA’s oversight for ensuring that states took actions, when appropriate, to disqualify commercial drivers. We found that states did not disqualify commercial drivers as required by law, granted special licenses to commercial drivers who posed a safety risk, and withheld convictions of disqualifying violations from drivers’ records. Further, the Federal oversight program of states’ CDL programs was inadequate to ensure that unsafe drivers were disqualified. These deficiencies were caused by a lack of FMCSA oversight of states’ CDL programs and the failure of FMCSA to impose sanctions on states to correct the problems.

We recommended that FMCSA (1) obtain corrective action plans from noncompliant states, (2) modify program reviews to make them comprehensive and include operational testing, (3) implement periodic training programs for personnel conducting CDL program reviews, (4) develop and implement centralized monitoring capabilities through CDLIS, (5) prepare a management report tracking each state’s implementation of prohibitions on masking and special licensing, (6) impose sanctions on noncompliant states, and (7) require states to report disqualifications with associated convictions.

OIG Report Number MH-2002-093, “Improving Testing and Licensing of Commercial Drivers,” May 8, 2002

The overall objective of the audit was to determine whether FMCSA (1) had an adequate basis for relying on annual certifications from the states that they meet Federal testing and licensing requirements of the CDL Program, (2) conducted oversight reviews sufficient to identify weaknesses in state CDL programs regarding the testing of commercial drivers and the issuance of CDLs, and (3) took action to ensure that significant weaknesses disclosed by Federal oversight reviews or annual state certifications were corrected.

We found that existing Federal standards and state controls were insufficient to defend against the alarming threat posed by individuals who seek to obtain fraudulent CDLs. One of the principle findings of the report was that most states have either experienced instances of fraudulent activities within their CDL program or have testing and licensing practices that make them susceptible to fraud. The report indicated that the activities ranged from cheating on tests to outright bribes to obtain a CDL without being tested. The report recommended

that FMCSA be more assertive in ensuring that problems identified in state programs are corrected and in using available sanctions when states do not correct significant problems.

OIG Report Number PT-2004-006, “Top DOT Management Challenges for 2004,” December 5, 2003

One of the top management challenges for the Department for FY 2004 involved the CDL program. To promote highway safety, aggressive action is needed to prevent drivers from obtaining CDLs through kickbacks or other fraudulent schemes.

To achieve the Department’s 2008 goals of reducing all traffic fatalities to 1 per 100 million vehicle miles traveled and large truck fatalities to 1.65 per 100 million vehicle miles traveled, FMCSA needs to attack a range of challenging problems. FMCSA must ensure that only drivers with the requisite skills obtain and retain CDLs by:

- Curbing CDL fraud through more rigorous oversight of state testing programs and by having states adopt useful control techniques we have recommended, such as the covert monitoring of driver examiners.
- Promptly implementing revisions to the CDL program passed by Congress in 1999 that strengthen the regulatory framework of the program, such as a provision eliminating state programs that mask or withhold convictions from a commercial driver’s record.

OIG Report Number PT-2005-008, “Top DOT Management Challenges for 2005,” November 15, 2004

One of the top management challenges for the Department for FY 2005 involved the CDL program. Over the past 5 years the OIG has participated in the investigation and prosecution of CDL fraud schemes in 21 states. During this period, over 75 investigations carried out in cooperation with the Federal Bureau of Investigation and other law enforcement agencies found that individuals obtained CDLs through corrupt state or state-approved testing processes. These most often have involved “third-party examiners.” The report indicated that following up on suspect CDL holders and expanding the use of covert testing of third-party examiners are areas that need considerably greater attention. Additionally, demonstrating legal presence in the United States should be a requirement to obtain a CDL. In previous audit reports and again in 2004, we recommended to the Department that all CDL applicants demonstrate citizenship or legal presence. The Department plans to address this recommendation through a rulemaking.

EXHIBIT C. CDL FRAUD CONTROLS

The following information on positive practices, which is an update from a previous audit report,¹² is offered for dissemination throughout the CDL testing and licensing community. The information is intended to supplement other efforts under way to identify CDL best practices. The practices are grouped according to the 10 control areas.

Control Area #1—Identity: Controls to ensure that the person applying for a CDL provides the correct identity.

- Include a digitized photograph in the driver history record and review the photograph when replacement licenses are issued. This controls against different individuals obtaining a license by falsely claiming that a CDL was lost or stolen.
- Include fingerprints in drivers' record.
- Verify social security numbers with the Social Security Administration.

Control Area #2—Residency: Controls to ensure that applicants for a CDL have permanent residence in the State from which they are obtaining the CDL and provide an accurate address.

- Mail new licenses to the address as provided by applicants to control against use of false addresses.
- Do not accept post office boxes for addresses.
- Require applicants to provide copies of leases or utility bills as proof of residency.

Control Area #3—Record Checks: Controls to ensure that CDLIS and NDR are checked for eligibility before issuing a CDL¹³.

- Establish computer controls that do not allow transactions to continue until checks are performed. For example, establish automated controls that will not

¹² OIG Report Number. MH -2002-0903, "Improving the Testing and Licensing of Commercial Drivers," May 8, 2002.

¹³ CDLIS is the Commercial Driver License Information System. NDR is the National Driver Registry, which is a central repository of information on individuals whose privilege to drive has been revoked, suspended, canceled, or denied or who has been convicted of serious traffic-related offenses.

allow examiners to input results of an examination into the computer until CDLIS and NDR checks are performed.

- Establish computer controls that automatically check CDLIS and NDR for each CDL transaction to ensure that these checks are performed.
- If licensing clerks have the ability to override NDR checks, establish a reporting system showing the number of overrides and the licensing clerks responsible for the actions.

Control Area #4—Knowledge Tests: Controls to ensure that applicants pass the appropriate knowledge tests before they can receive a CDL.

- If permitted in knowledge testing, ensure that translators are on an approved list. Also, tape record translations to discourage cheating and permit later review if problems are suspected.
- Use fully computerized knowledge testing systems where questions are randomly selected and scores are automatically transferred onto the driver's record.
- If fully computerized systems are not feasible, use computer programs that randomly generate questions for knowledge tests. These can produce multiple printed versions of the knowledge tests so those individuals taking the test side-by-side do not have the same questions. An AAMVA committee has developed such a program for use by the states.

Control Area #5—Permits: Controls to ensure requirements are met before the issuance of a learner's permit. (Learner's permit holders are allowed to operate a commercial vehicle provided a CDL holder accompanies the person.)

- Place the applicant's photograph on the learner's permit.
- Enter CDL learner's permit holders in the CDLIS to preclude individuals from obtaining multiple learner's permits in different states.
- Do not accept permits transferred from other states, or if transfers are permitted, be aware of state differences regarding passing the knowledge tests before issuance of permits.

Control Area #6—Issuance: Controls to ensure that licenses are issued only to individuals who have completed all testing requirements.

- Before a license is issued, have a different unit reconcile and verify documents involved in the transaction.

- As an alternative to pre-issuance reviews, conduct a post-transaction audit to verify that the results of knowledge and driving tests are correctly entered into the computer system.
- Establish computer system controls that cannot be overridden, which will not allow the issuance of a CDL without completion of all required steps.

Control Area #7—Training Qualified Examiners: Controls to ensure that driving examiners are properly trained and qualified to administer the skills tests.

- Require formal training to become a driving examiner, plus annual refresher training. The AAMVA certification training provides for a minimum of 40 hours of initial training and 10 hours of annual refresher training.
- Require state examiners as well as examiners working for third-party testers to have CDLs.
- Conduct annual driver history and criminal checks on examiners.
- Combine the training for state and third-party testers to ensure that tests administered by the two types of testers are consistent.

Control Area #8—Skills Test: Controls to ensure that an applicant takes and passes the appropriate skills test before receiving a CDL.

- Design counterfeit-resistant certificates for use by third-party testers to show that driving tests have been successfully completed.
- Use standard written preprinted instructions for applicants when giving the test to promote consistent administration of the tests, including checks to see that tests are conducted in a vehicle representative of the one that will be used by the applicant after the license is issued.
- Hold periodic meetings for driving examiners from across the state to promote greater consistency in the examination process.
- Establish written descriptions of how the driving test is to be conducted in the state.

Control Area #9—Review Examiners: Controls to ensure that third-party examiners are monitored to ensure they are complying with the CDL Program.

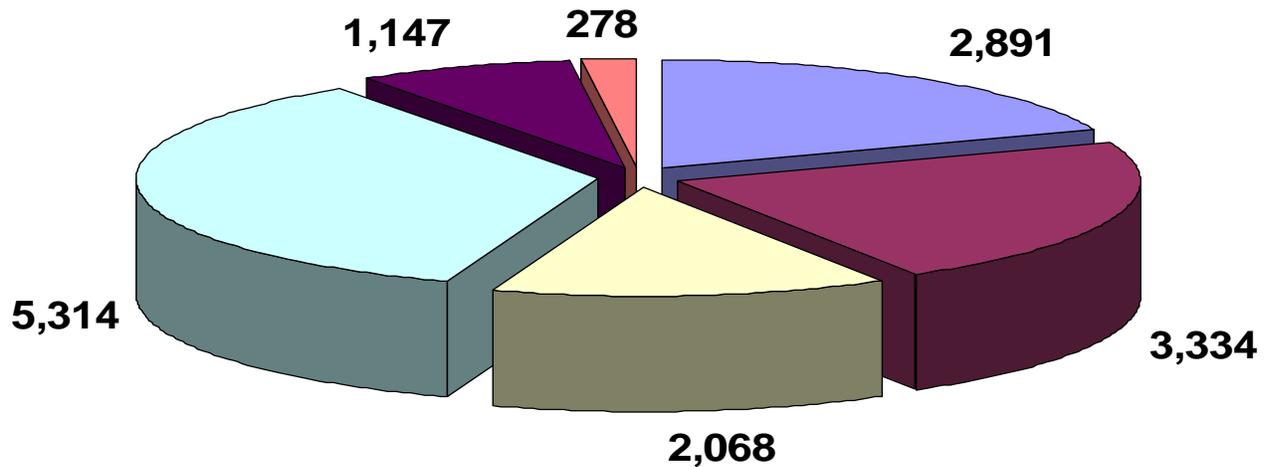
- Conduct routine covert reviews of third-party testers.
- Assign state examiners the task of reviewing third-party testers, thus promoting consistency in testing.

- Use pass/fail statistics on examiners to focus the reviews of third-party testers or state examiners who show unusually high pass rates.
- Perform checks of all score sheets completed by examiners and plot the scores on sampled tests to identify suspicious scoring patterns. Take action if review shows that the applicant was not properly passed.
- Establish up-to-date oversight files on all third-party examiners. For example, ensure all files contain the same items (that is, initial application; background checks; medical, criminal, and training records; information on pass/fail rates; and copies of recent audits).

Control Area #10—General Oversight: Controls established to generally ensure that the CDL Program is working as intended.

- Perform statewide audits related to the CDL program. For example, check third-party testers with state employment records to ensure that third-party testers properly record their employer.
- Conduct audits to include tracing a sample of CDLs issued according to the computer system to score sheets and written tests.
- Remove from the program third parties that do not take or successfully complete the required training.
- Maintain an up-to-date database of third-party testers, along with date of most recent audit, and training.
- Review statistics AAMVA prepares on licenses issued and exchange of records across states to ensure consistency with state-generated data.
- Ensure that score sheets used for driving tests record length of time for the examination and the signature of the applicant and the tester.
- Program computer systems so that examiner identification numbers associated with tests can be retrieved and so that the licensing clerk involved with specific transactions can be identified.
- Require third-party testers to be bonded.

Revoke testing privileges from third-party testers who do not administer a certain minimum of driving tests each year (in one state it was 24) to ensure the costs of oversight do not exceed the benefits that accrue from having the third-party tester.

EXHIBIT D. DISPOSITION OF SUSPECT CDL HOLDERS

- Drivers retested or provided adequate evidence to keep their CDL
- Drivers had their CDL cancelled, disqualified, revoked, suspended or failed retesting
- Drivers had their CDL downgraded or they voluntary surrendered their CDL
- Drivers CDL reported as suspect but final disposition was unknown
- Drivers had transferred their state of residence
- Drivers had not been retested or were unsolved for other reasons

EXHIBIT E. MAJOR CONTRIBUTORS TO THIS REPORT**THE FOLLOWING INDIVIDUALS CONTRIBUTED TO THIS REPORT.**

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APPENDIX. FMCSA COMMENTS



Memorandum

U.S. Department
Of Transportation
Federal Motor Carrier
Safety Administration

Subject: **INFORMATION:** Draft Report on the Federal
Motor Carrier Safety Administration's Oversight of the
Commercial Driver's License Program
Project Number: 04M3008M000

Date: **DEC 12 2005**

From: Annette M. Sandberg
Administrator

In Reply Refer To: MC-P

To: Kurt Hyde
Assistant Inspector General
for Surface and Maritime Programs (Attn: JA-40)

This memorandum is in response to your October 27, 2005, draft report regarding the Office of Inspector General (OIG) Audit of the Federal Motor Carrier Safety Administration's (FMCSA) oversight of the Commercial Driver's License (CDL) Program. The report focuses on fraud vulnerabilities and actions taken against individuals suspected of obtaining their CDL fraudulently. These CDL holders are considered suspect because they obtained their CDL from State employees or State-approved third party examiners who were suspected of fraudulently providing licenses. In addition, you expanded your review by examining whether FMCSA has authority to compel States to establish fraud control measures for the CDL program. You also examined procedures implemented by FMCSA to counter CDL fraud. We have reviewed the report and offer the following comments and responses to the specific recommendations contained in the report.

Comments

FMCSA has supported many initiatives to combat CDL fraud. As you reference, FMCSA and the American Association of Motor Vehicle Administrators (AAMVA) entered into a cooperative agreement in September 2002 which resulted in the development of specific actions related to combating CDL fraud, including:

- Developing fraudulent document recognition training for law enforcement and CDL Coordinators;
- Establishing uniform administrative processes and procedures for the secure issuance of driver's licenses;
- Holding an International Fraud Symposium (November 2002) centered on fraud-related issues in driver licensing;
- Developing a CDL Best Practices Manual; and,

- Developing a fraud e-warning system that will allow the United States jurisdictions' motor vehicle administrators and law enforcement officials to report fraudulent driver licensing and identification activities.

In addition to the initiatives funded by the cooperative agreement with AAMVA, FMCSA established a fraud component within the CDL Compliance Review Program, and findings related to fraud vulnerabilities are now reported as "Program Improvement" items in the final report to the State. Also, in June 2004, the Technology Division within FMCSA entered into an agreement with AAMVA to develop software for detecting/preventing/deterring fraud by third parties involved in skills testing. Most recently, FMCSA contracted with Oak Ridge National Laboratory to conduct an evaluation of the CDL Compliance Review Process as part of a continuing effort to objectively analyze the effectiveness of the CDL program.

We undertook these initiatives to assist States in identifying areas of fraud vulnerabilities, to develop model training materials to identify fraudulent documents and practices, and to develop and share with the States a CDL Best Practices Guide that addresses practices designed to reduce the possibility of fraud. In short, these initiatives reflect FMCSA's role as a **resource** in combating CDL fraud. They have not been designed to reflect an enforcement role as FMCSA has not felt that it had regulatory authority under 49 CFR parts 383 and 384 to make fraud, per se, a compliance issue (see attached discussion of FMCSA's legal authorities in this area). FMCSA cites fraud vulnerabilities as noncompliance findings when the vulnerability results in the State's failure to satisfy the requirements of a specific regulation within Parts 383 and 384.

The Agency's long term anti-fraud policies and requirements will also be guided by the related regulations and standards that the Department of Homeland Security will establish in implementing the provisions of the Real ID Act of 2005 (H.R. 1268, P.L. 109-13, Title II of REAL ID, Improved Security for Driver's Licenses and Personal Identification Cards). The Act establishes Federal standards for State issuance of drivers' licenses and identification cards and includes several security and fraud prevention standards which will improve the integrity of driver's license issuance processes for all types of licenses, including CDLs. These standards require, in part, that States 1) ensure the physical security of locations where driver licenses are produced and the security of document materials and papers from which driver licenses are produced, 2) subject all persons authorized to manufacture or produce driver licenses to appropriate security clearance requirements, and 3) establish fraudulent-document-recognition training programs for appropriate employees engaged in the issuance of driver licenses. FMCSA is working with the Department of Homeland Security to ensure that the concerns of the CDL program are adequately considered in the implementing regulations. Once the final standards are published, FMCSA will be in a better position to determine what additional measures, if any, are necessary.

The following section-specific comments will, we believe, improve the report and we recommend you incorporate them.

Page 3 –second paragraph: Although identified in the Table on page 5, there is no mention in the narrative on this page that 1,147 of the drivers the report lists as not being tracked no longer

reside in the State in which they took the CDL Skills Test. The report assumes that FMCSA has the authority to require a new State of Record to expend considerable time and expense to locate and retest drivers who were not tested in their State and for whom no direct evidence of fraud can be provided.

Page 5 -- first paragraph: Although FMCSA has previously worked with the States (most notably Florida and Illinois) to track drivers who were tested by an examiner found to have engaged in fraud, an inference should not be drawn that FMCSA believed on those occasions that it had the authority to compel States to take action to track suspect CDL holders.

Page 6 -- third paragraph: The report does not cite any specific regulation within Parts 383 and 384 which can be cited as providing FMCSA with the authority to enforce counter-fraud measures. Findings generated from a Compliance Review must be mapped to a specific section in the Federal Motor Carrier Safety Regulations. Moreover, an occasion of fraudulent activity is not de facto evidence that a State can be cited as lacking adequate internal control procedures to combat fraud. Indeed, fraud often occurs despite internal controls. A criminal act is not necessarily the result of a lack of deterrent procedures, regulations or laws.

Responses to Specific Recommendations

Recommendation 1. Direct the States to report the final disposition of the remaining 6, 739 suspect CDL drivers.

Response: FMCSA does not believe that it has the authority to direct the States to report the disposition of all remaining 6,739 "suspect drivers." FMCSA agrees that it has authority to direct States to report the disposition of the drivers in this group for which any specific or direct evidence exists that the driver was involved in fraudulent activity and not merely the victim of being tested by an examiner who engaged in fraudulent activity with another driver on a different date.

Recommendation 2. Ensure that the States implement adequate fraud control measures for their CDL programs and take appropriate actions against future suspect CDL holders.

Response: FMCSA does not agree with this recommendation in its entirety. However, FMCSA does concur that it has authority to cite States for noncompliance with section 384.201 (Testing Program) and section 384.202 (Test Standards) which require a State to ensure the fitness of persons to operate commercial motor vehicles (CMV) in accordance with part 383 and prohibit a State from authorizing a person to operate a CMV unless such person passes a knowledge and driving skills test for the operation of a CMV in accordance with part 383. In determining whether a State should be held accountable for a violation of either section 384.201 and/or 384.202, FMCSA is required to consider the combined effect of the State's statutes, regulations, administrative procedures and practices, internal control mechanisms and enforcement practices. Thus, a State can be found to be out of compliance if FMCSA finds it failed to impose adequate internal controls to prevent fraud and/or failed to take or propose necessary corrective action after the fraud is discovered. However, FMCSA is required under section 384.307(d) to take into consideration actual or planned corrective action sufficient to correct the deficiencies before

making a final determination of lack of substantial compliance. FMCSA concurs that States must take action against suspect drivers in the future but disagrees that all drivers who were tested by an examiner found to have engaged in fraudulent activity are by virtue of that connection “suspect.”

Recommendation 3. Impose sanctions against those States that fail to establish adequate fraud control measures for their CDL programs.

Response: The authority to impose sanctions is contingent upon a final determination of substantial noncompliance. Before finding substantial noncompliance, FMCSA must first find an actual violation of one or more of the standards and requirements codified in parts 383 and 384. Identifying vulnerabilities to fraudulent practices in a State’s CDL program is not enough to arrive at a finding of noncompliance. The vulnerabilities must also violate a provision in Part 384 subpart B. For example, we could sanction a State if a fraudulent CDL was issued as a result of the State failing to provide the oversight of the testing program as required by section 383.75 (third party testing). If FMCSA makes a final determination of noncompliance, it may impose the sanctions authorized by statute and codified in part 384.

We look forward to working with OIG to reduce the instances of fraud in the CDL program. If you need additional information or clarification, please do not hesitate to contact me or Bill Paden, Associate Administrator for Enforcement and Program Delivery, at 202-366-2525.

Attachment

FMCSA Chief Counsel's Legal Opinion
(dated June 17, 2005)

Authority to Sanction States for Fraudulent Activities under the CDL Regulations

Issue: Can the Federal Motor Carrier Safety Administration (FMCSA) sanction States if: (1) compliance reviews of State commercial drivers license (CDL) programs determine current State CDL actions, procedures, processes, etc., are susceptible to fraud; or (2) actual fraudulent activities are documented during the compliance review or as a result of a State or Federal criminal investigation. FMCSA's State Programs Division believes no sanctions can be taken against a State if the State complies with the applicable regulatory requirements, but fraudulent CDLs are issued by State employees or contractors.

Background: Title 49 United States Code (U.S.C.) section 31311 sets forth numerous minimum requirements for State CDL programs. Sanctions for failing to comply with these requirements are set forth in 49 U.S.C. §§ 31312 and 31314. Regulations implementing these statutory provisions have been codified in 49 CFR parts 383 and 384. Part 383 sets forth the standards and requirements that States must apply in issuing CDLs. Part 384 includes: (1) minimum standards for substantial compliance by the States; (2) procedures for determining whether States are in compliance; and (3) sanctions for noncompliance.

The minimum standards for substantial State compliance are codified in subpart B of part 384. Two of the most important standards require States to: (1) adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles (CMVs) in accordance with the minimum Federal standards contained in part 383 (49 CFR 384.201); and (2) not authorize a person to operate a CMV unless such person passes the appropriate knowledge and driving skills tests in accordance with part 383 (49 CFR 384.202).

Subpart C of part 384 contains procedures for determining whether a State is in substantial compliance with the statutory and regulatory requirements. To be in substantial compliance with these requirements, a State must meet each and every standard of subpart B "by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment and personnel), and enforcement practices." [49 CFR 384.301(a)].

If FMCSA determines a State is not in substantial compliance with one or more of the minimum standards (after following the procedures set forth in 49 CFR 384.307), the State is subject to: (1) withholding of Federal-aid highway funds (up to five percent following the first year of noncompliance and up to ten percent following subsequent years of noncompliance) [49 CFR 384.401(a)(1) and (b)(1)]; and (2) withholding of MCSAP grant funds [49 CFR 384.401(a)(2) and (b)(2)].

A State has a grace period of one full fiscal year before Federal-aid highway funds can be withheld following a determination of noncompliance. If a determination of noncompliance was made at any time during the current fiscal year, for example, funds could not be withheld until October 1, 2006 (the start of FY 2007). Moreover, FMCSA has no authority to withhold

Federal-aid highway funds—the power to withhold such funds is specifically reserved to the Secretary under 49 CFR 1.44(j).

If the State is determined to be in substantial noncompliance with title 49, chapter 313, its CDL program must be decertified. Statutory authority to decertify a State CDL program (49 U.S.C. § 31312) was enacted into law by section 203(a) of the Motor Carrier Safety Improvement Act of 1999. Because of the severity of the sanction and the potential effect on drivers and motor carriers located in States found to be in noncompliance, FMCSA stated this sanction would be invoked in rare situations, and only after attempts to bring the State into substantial compliance with CDL requirements through other means have failed (see 67 FR 49750, July 31, 2002). Therefore, decertification would not be used as an alternative to fund withholding, but as a sanction of last resort. In determining whether to decertify a State's CDL program, the Administrator must consider at least five specific conditions, including the failure of the State to properly administer knowledge and/or skills tests to CDL applicants or drivers [49 CFR 384.405(b)]. However, the deficiencies described in § 384.405(b) must affect a substantial number of either CDL applicants or drivers to warrant decertification [49 CFR 384.405(c)].

Analysis: The State Programs Division correctly states that no sanctions can be imposed against a State if it complies with the relevant part 383 and 384 requirements. However, the opinion is based on the incorrect assumption that fraudulent acts committed by State employees or contractors may not be imputed to the State in determining whether the State has complied with these requirements.

Section 384.202 prohibits States from authorizing persons to drive a CMV if they have not passed a knowledge and driving skills test for the operation of a CMV in accordance with part 383. Consequently, issuing CDLs to persons who have not taken or failed the requisite tests would violate this prohibition. In determining whether the State should be held accountable for the violation (i.e., whether it is in substantial compliance with section 384.202), FMCSA is required to consider the combined effect of the State's statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments, and enforcement practices. Thus, even if CDLs were fraudulently issued in violation of State law and without the State's knowledge, the State could still be found out of compliance if FMCSA finds it failed to impose adequate internal control mechanisms to prevent the fraud and/or failed to take or propose necessary corrective action after the fraud is discovered (FMCSA is required under section 384.307(d) to take into consideration actual or planned corrective action sufficient to correct the deficiencies before making a final determination of lack of substantial compliance). If FMCSA makes a final determination of noncompliance, it may impose the sanctions authorized by statute and codified in part 384, as described in the Background section of this document.

The authority to impose sanctions is contingent upon a final determination of substantial noncompliance. Before finding substantial noncompliance, FMCSA must first find an actual violation of one or more of the standards and requirements codified in parts 383 and 384. It must then decide whether to make a formal determination of substantial noncompliance after considering all aspects of the State CDL program, including actual or proposed corrective action designed to correct identified deficiencies. Consequently, if fraudulent CDLs are issued to

individuals who have not passed the requisite tests, FMCSA could still conclude the State is in substantial compliance with regulatory requirements if the State had in place adequate procedures, practices and internal control mechanisms or if the State has taken, or agrees to take, corrective action adequate to correct identified program deficiencies. On the other hand, failure to correct program deficiencies which FMCSA determines encouraged, or failed to adequately protect against, fraud could result in a finding of substantial noncompliance and the imposition of sanctions against the State.

In our opinion, sanctions may not be imposed based solely on the conclusion that a CDL program may be susceptible to fraud. If the practice or process that makes the program susceptible to fraud also violates a provision of subpart B, sanctions could be applied as explained in the analysis above. Similarly, we could sanction the State if fraudulent CDLs were issued based on a flawed program or inadequate oversight by the State.