



REPORT OF
THE
STATE AUDITOR

**Motor Carrier Regulation
Public Utilities Commission and
Department of Revenue**

**Performance Audit
September 2003**

**LEGISLATIVE AUDIT COMMITTEE
2003 MEMBERS**

Senator Ron Tupa
Chairman

Representative Tambor Williams
Vice-Chairman

Senator Norma Anderson
Representative Fran Coleman
Representative Pamela Rhodes
Senator Stephanie Takis
Senator Jack Taylor
Representative Val Vigil

Office of the State Auditor Staff

Joanne Hill
State Auditor

Sally Symanski
Deputy State Auditor

Sarah Aurich
Claire Cyrnak
Melissa Dombroski
Greg Fugate
Jenny Page
Legislative Auditors



STATE OF COLORADO

JOANNE HILL, CPA
State Auditor

OFFICE OF THE STATE AUDITOR
(303) 869-2800
FAX (303) 869-3060

Legislative Services Building
200 East 14th Avenue
Denver, Colorado 80203-2211

September 10, 2003

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Colorado Motor Carrier regulation by the Transportation Section of the Public Utilities Commission and the Department of Revenue. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Public Utilities Commission, Department of Revenue, and Division of Insurance.

TABLE OF CONTENTS

	PAGE
REPORT SUMMARY	1
Recommendation Locator	7
OVERVIEW	11
FINDINGS AND RECOMMENDATIONS	
CHAPTER 1: REGULATORY ACTIVITIES	21
Insurance Coverage	22
Inactive Insurance Companies	25
Safety Inspection Selection	28
Scope of Safety Inspections	31
Follow-Up on Violations Identified in Safety Inspections	33
Quality Assurance for Inspections	36
Complaint Handling	37
Public Access to Complaint Information	39
CHAPTER 2: ENFORCEMENT	41
Penalties	41
Penalty Tracking and Collection	45
Revocation	47

	PAGE
CHAPTER 3: ABANDONED VEHICLES	51
Owner Notification, Appraisal, and Sale of Abandoned Vehicles	52
Fees	58
Controls Over Documentation	61
Security of Title Information	64
Complaints	67
Interagency Communication	69
CHAPTER 4: MANAGEMENT AND ADMINISTRATION	73
Records Management	74
Cash Processing	79
Use of the Motor Carrier Fund	82
Regulatory Oversight	84



JOANNE HILL, CPA
State Auditor

**Motor Carrier Regulation
Performance Audit
September 2003**

Authority, Purpose, and Scope

This performance audit was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the Office of the State Auditor to conduct performance audits of all departments, institutions, and agencies of state government. The audit focused on the Public Utilities Commission within the Department of Regulatory Agencies and its regulation of motor carriers in Colorado. The audit also evaluated the Department of Revenue's oversight of tow carriers and abandoned vehicle processes. The audit work, performed from March 2003 through August 2003, was conducted in accordance with generally accepted government auditing standards.

We acknowledge the assistance and cooperation extended by management and staff at the Public Utilities Commission, the Department of Revenue, and the Division of Insurance.

Background

The Public Utilities Commission (PUC) is statutorily charged with regulating motor carriers in Colorado. In general, the seven types of motor carriers regulated by the PUC are divided into two main categories: (1) motor carriers classified as public utilities and (2) exempt motor carriers. Carriers classified as utilities include passenger carriers such as taxicabs or other "for hire" carriers. These carriers are fully regulated with respect to rates, service area, hours of operation, insurance, and safety. In essence, the Public Utilities Commission oversees a regulated monopoly in which competition among carriers is limited and carriers provide services for regulated rates. The second category, exempt motor carriers, includes passenger carriers such as luxury limousines, charter scenic buses, or children's activity buses and property carriers such as tow carriers and vehicles transporting food, equipment, furniture, or other property. The PUC regulates insurance and safety for exempt carriers; competition among these carriers is not limited. For both types of carriers the PUC is given statutory authority to penalize and revoke carrier permits for noncompliance with state laws and PUC regulations. Additionally, the PUC shares enforcement authority for tow carriers with the Department of Revenue. The Department of Revenue is given statutory authority to register tow carriers, thereby allowing registered carriers to tow abandoned vehicles and perform searches of vehicle title information. The Department of Revenue is also the repository of reports of abandoned vehicle tows and sales. The PUC has statutory authority to revoke tow carrier permits for noncompliance with abandoned vehicle laws.

For more information on this report, contact the Office of the State Auditor at 303.869.2800.

SUMMARY

2 Motor Carrier Regulation PUC and the Department of Revenue Performance Audit - September 2003

Key Findings

Regulatory Activities

The Public Utilities Commission is responsible for regulating about 10,800 active passenger and property carriers in Colorado. We examined the PUC's processes and procedures for permitting and monitoring motor carriers and found that the PUC lacks basic controls and processes for significant areas of its operations. These deficiencies impact the PUC's ability to perform its regulatory and statutory responsibilities and to protect public safety. Our findings include:

- **Monitoring activities are not sufficient to identify underinsured or uninsured motor carriers, or carriers insured by inactive insurance companies.** Although the PUC is to receive insurance filings for all permitted motor carriers, our file review showed that insurance forms were not on file for about 17 percent of the carriers in our sample. Further, insurance forms on record for some carriers are out-dated, and in some cases more than 8 years old. We also identified 14 different insurance companies listed as inactive with the Division of Insurance that were insuring a total of 95 different motor carriers. These problems increase the risk that carriers are operating without appropriate insurance coverage, and consequently, put consumers at risk.
- **Safety inspection processes do not ensure high-risk carriers are adequately monitored.** The PUC currently has four compliance investigators responsible for conducting safety and compliance inspections for about 6,000 motor carriers throughout Colorado. Each of these carriers can own a fleet of vehicles that the PUC is required to inspect for safety. We found that the PUC has not established procedures to prioritize or schedule carrier inspections based on risk. Investigators have individual methods for selecting the order in which they inspect carriers. Often these methods ignore important risk factors, such as the number or type of violations noted in previous inspections, number of complaints, or history of penalty assessments. As a result, carriers with poor safety inspection histories are not reviewed any more frequently than carriers that have had few safety violations. Additionally, tow carriers are not routinely inspected for safety by either the PUC or the Colorado State Patrol.
- **Follow-up is not adequate to ensure that safety violations identified are corrected.** After a safety inspection, carriers are required to return a Certificate of Correction to the PUC stating that all violations have been corrected. We found that PUC investigators rarely return to the carrier to physically inspect violation corrections. We also found that carriers do not always correct violations as stated in the Certificate of Correction. Additionally, the PUC was unable to locate Certificate of Correction documents for 17 of the 50 (34 percent) compliance inspections we reviewed.

- **Complaint information is not centrally tracked, analyzed to ensure timely resolution, or made available to the public.** The PUC has seven staff who take and handle motor carrier complaints. While PUC staff are to maintain carrier complaints in the PUC's Consumer Contact Tracking System (CCTS), we found that staff do not consistently utilize the system to track complaints. While some staff enter complaint information into CCTS on an ongoing basis, other staff indicated they enter information in the system only after complaints are closed. We also found that staff often failed to document important complaint details, such as the circumstances of the complaint or staff's investigative procedures for resolving the complaint. Additionally, carrier-specific complaint information is currently only available to consumers via written request.

Enforcement

Statutes charge the Commission with ensuring that the provisions of state laws affecting public utilities are enforced and that violations of those laws are promptly prosecuted, and penalties assessed are collected. We reviewed the PUC's practices for enforcing laws and rules, including an evaluation of penalty assessments and collections, and the PUC's use of revocation for carrier noncompliance. We found that the PUC is not using the enforcement tools available to compel carriers to comply with rules and operate safely. Specifically, we found:

- **Procedures for penalty assessments and adjustments are undocumented and penalties are not tracked.** We found that the PUC does not have formal written procedures in place for assessing or reducing penalties, resulting in a process that appears unsystematic, subjective, and at risk for errors and irregularities. Further, we found that penalties are not centrally tracked and the PUC does not have a comprehensive list of all penalties assessed or collected. Based on the penalty documentation we were able to locate, we estimate that from Fiscal Years 2001 to 2003, the PUC drafted about \$470,000 in motor carrier penalties, which carriers negotiated down to \$153,000. Although penalty reductions are shown in final stipulation agreements, justification for the reductions is not clearly documented. The amount by which penalties are reduced also varied widely. These issues raise concerns about the fairness and integrity of the penalty assessment process, whether carriers are penalized appropriately for violations cited, and whether penalties have been paid.
- **Enforcement tools are not used efficiently.** To ensure compliance with laws and regulations, the PUC may pursue criminal penalties including a Class 2 Misdemeanor, seek a court injunction to cause the carrier to stop doing business, and/or issue civil penalties. We found that the PUC rarely takes these actions. PUC staff informed us that they currently revoke permits only for insurance-related issues. As a result, some carriers consistently disregard safety rules or fail to pay outstanding fines or required fees. We believe that progressive discipline is needed for willful offenders. Such discipline could include a graduated enforcement approach that implements larger penalties each time violations are noted and proceeds to revoke a carrier's permit for continued unremedied violations. We

SUMMARY

4 Motor Carrier Regulation PUC and the Department of Revenue Performance Audit - September 2003

also contacted 22 recently revoked carriers and found that 3 offered to provide services. This indicates that although the carriers' permits had been revoked, they continue to operate unchecked. The PUC rarely investigates revoked carriers to ensure that they do not continue to operate without a permit.

Abandoned Vehicles

The Department of Revenue and the Public Utilities Commission share responsibility for regulating tow carriers and enforcing the abandoned vehicles laws. Abandoned vehicles are defined by statute as vehicles left unattended for a specified period of time, depending upon whether the vehicle is abandoned on private or public property. Parts 18 and 21 of Article 4, Title 42 of the Colorado Revised Statutes define procedures for removal, storage, and disposal of vehicles abandoned on public and private property. We reviewed abandoned vehicle documentation and the Department of Revenue and PUC's processes for handling abandoned vehicle information and complaints. We found:

- **Owner notification, appraisal, and sale of abandoned vehicles is not conducted in accordance with the law.** Based on our review of a sample of abandoned vehicles, we found that owners were not notified within 10 working days of the vehicle tow (as required by statute) for 46 percent of our sample. Statute also requires that vehicles be appraised at market value. For the 31 vehicles in our sample for which market value could be determined, we found that the vehicles were appraised for significantly less than blue book value, and that the vehicles were not always appraised independently. This underappraisal could result in lost revenues to the State since any residual proceeds from the sale of abandoned vehicles is to be remitted to the Department of Revenue for deposit to the Highway Users Tax Fund (HUTF). We also found that, contrary to state law, abandoned vehicles are often sold to tow carriers that towed the vehicle, sold for less than their appraised value, and sold for less than market value. In total, the 31 vehicles in our sample were sold for \$46,500 less than blue book value.
- **Oversight of towing and storage charges is lacking.** Tow carriers and law enforcement agencies are allowed by statute to recover the reasonable costs of towing and storing vehicles abandoned on public and private property. State law requires the PUC to prescribe the maximum rates for towing and storing abandoned vehicles. The Department of Revenue is statutorily required to maintain forms for use by tow carriers and law enforcement agencies to report abandoned vehicle sales and distribute sales proceeds. We found that tow and storage rates on the Department's form (specifically the DR 5001, Report of Sale of Abandoned Vehicle) do not conform to the tow and storage rates allowed by the PUC. Additionally, we found that tow carriers often report keeping more than allowable tow and storage costs. Department of Revenue staff do not currently review the Report of Sale forms submitted for accuracy and appropriateness of costs recovered. As a result, carriers may be profiting beyond what is envisioned by law and the State may be losing revenue.

- **Basic documentation on abandoned vehicles is lacking.** Statutes specify that purchasers of abandoned vehicles submit documents reporting the abandonment, removal, and sale of the abandoned vehicles to the Department in order to receive a new title. We found that these documents were missing for vehicles that were clearly abandoned and sold. This indicates that county staff processing title documents issue new titles without proper documentation. Statutes also require that tow carriers and law enforcement agencies report tows of abandoned vehicles to the Department of Revenue. However, the Department does not maintain ongoing records of abandoned vehicles towed, and there is currently no mechanism for linking reports of vehicles towed to vehicles sold. Lack of system controls significantly increases the risk that carriers tow and sell vehicles without reporting the tow or sale to the vehicles' owners or the Department.
- **Security of title information is lacking.** The federal Driver's Privacy Protection Act of 1994 protects the confidentiality of vehicle title information. In April 2001, the Department implemented online title record searches for tow carriers and law enforcement agencies. Tow carriers are required to have an active PUC permit in order to search the titles information. We compared the list of active tow carriers permitted by the PUC to the list of active tow carriers registered with the Department of Revenue and found that 47 of the 310 carriers registered with the Department (15 percent) are not actively permitted by the PUC. We also found that the PUC revoked one carrier's permit in September 2002 and that carrier continued to search the Department's titles data until November 2002. In total the carrier performed 261 searches for 80 different vehicles after its permit had been revoked.

Management and Administration

The Public Utilities Commission handles regulatory and administrative duties including processing permit applications, tracking carriers' insurance, revoking carriers' permits for lapsed insurance, issuing vehicle identification stamps, collecting required fees, approving tariffs and rates, reviewing carriers for safety and compliance, assessing penalties, and processing complaints. This is a substantial responsibility given that, as of June 2003, the PUC had issued over 10,800 active permits. We reviewed records for a sample of 147 active carriers and 22 revoked carriers and found the following:

- **The PUC does not have controls in place to ensure that carrier documentation is maintained and managed appropriately.** The PUC was unable to locate significant amounts of basic documentation, including insurance forms, carrier applications, revocation notices, annual fee payment information, or compliance and safety inspection Certificates of Correction. We also found that duplicate data entry and lack of staff cross-training result in inefficient use of staff resources and potential for loss of institutional knowledge.

SUMMARY

6 Motor Carrier Regulation PUC and the Department of Revenue Performance Audit - September 2003

- **Controls over cash processing and Motor Carrier Fund resources are lacking.** PUC staff process application fees, annual stamp fees, and penalty payments for all types of permitted motor carriers. In Fiscal Year 2003, PUC staff processed about \$39,400 in motor carrier application fees, \$1.8 million in annual stamp fees, and \$54,000 in penalty payments. Our review of cash handling processes at the PUC identified problems, including: (1) cash receipts for incomplete applications are held in locked desk drawers and are not logged or deposited in a timely manner; (2) there is no complete transaction log; and (3) the PUC does not reconcile transactions to deposits. These deficiencies substantially increase the risk of fraud, error, and irregularities.
- **Regulatory oversight is inadequate.** The problems identified throughout the report indicate substantial deficiencies that limit the PUC's effectiveness in regulating motor carrier operations. Overall, from Fiscal Years 1999 to 2003, the State spent an average of about \$1.9 million annually in an effort to regulate motor carriers, or a total of about \$9.5 million. Despite this, Colorado's regulation of carriers is inadequate to ensure that even the most basic regulatory functions are carried out due to the pervasive problems described. For common and contract carriers, the current process restricts consumers to a limited choice of carriers but does not compel those carriers to operate safely or meet other requirements. Given the scope and responsibilities of its limited staff, the PUC needs to address fundamental issues regarding what it can effectively regulate and what needs to be streamlined or eliminated.

Our recommendations and the responses of the Public Utilities Commission, the Department of Revenue, and the Division of Insurance can be found in the Recommendation Locator.

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	24	Improve its monitoring of motor carriers for compliance with insurance requirements.	Public Utilities Commission	Partially Agree	January 2004
2	26	Work with the Division of Insurance to ensure identification of inactive companies insuring motor carriers, investigate inactive insurance companies, and determine whether it is appropriate for motor carriers to maintain insurance policies with inactive companies.	Public Utilities Commission	Agree	Implemented
3	27	Investigate inactive insurance companies identified by the PUC and work with the PUC to evaluate the appropriateness of motor carriers' being insured by inactive companies.	Division of Insurance	Agree	Immediately
4	30	Improve safety inspections.	Public Utilities Commission	Agree	December 2003
5	32	Reevaluate the safety and compliance inspection process and identify and incorporate specific value-added functions to improve safety and consumer protection.	Public Utilities Commission	Partially Agree	December 2003
6	35	Improve follow-up on safety and compliance inspection violations.	Public Utilities Commission	Agree	December 2003

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
7	36	Develop quality assurance standards for compliance investigations and consider eliminating one of the two levels of review over the safety and compliance inspection reports.	Public Utilities Commission	Agree	December 2003
8	38	Improve the management of complaint information.	Public Utilities Commission	Agree	June 2004
9	40	Improve public access to complaint information.	Public Utilities Commission	Agree	June 2004
10	44	Establish procedures for assessing and changing penalties and clearly document the methodology in the carrier files.	Public Utilities Commission	Agree	September 2003
11	46	Improve penalty tracking and collection.	Public Utilities Commission	Agree	December 2003
12	50	Develop procedures for implementing graduated systems of enforcement, automate processes for identifying carriers who have not paid annual stamp fees, and consider seeking statutory authority for additional enforcement tools.	Public Utilities Commission	Agree	September 2003
13	56	Improve enforcement of abandoned vehicle laws.	Department of Revenue	Agree	January 2004

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
14	57	Improve enforcement of abandoned vehicle laws.	Public Utilities Commission	Agree	September 2003
15	60	Improve oversight of tow and storage charges recovered from abandoned vehicle sales.	Department of Revenue	Agree	January 2004
16	63	Improve controls over the abandoned vehicle processes.	Department of Revenue	Agree	January 2004
17	66	Enforce the provisions of the federal Driver's Privacy Protection Act and associated laws by preventing inappropriate access to titles data.	Department of Revenue	Agree	November 2003
18	67	Develop a process for handling complaints related to abandoned vehicles that includes tracking complaints and improving communications with the Public Utilities Commission.	Department of Revenue	Agree	November 2003
19	68	Improve its handling of tow carrier complaints forwarded by the Department of Revenue by investigating all complaints in an efficient manner and reporting the outcome of the complaint to the Department.	Public Utilities Commission	Agree	September 2003
20	70	Work with the Public Utilities Commission to more efficiently coordinate communication of potentially fraudulent activities of tow carriers and formalize interagency correspondence and improve enforcement.	Department of Revenue	Agree	September 2003

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
21	70	Work with the Department of Revenue to identify efficient methods of communicating and documenting inappropriate tow carrier activities.	Public Utilities Commission	Agree	September 2003
22	78	Develop and implement controls over motor carrier information by implementing record management policies, standardizing data entry, and developing an archiving plan.	Public Utilities Commission	Agree	June 2004
23	81	Improve internal controls over the collection of fees and other revenue.	Public Utilities Commission	Agree	Implemented
24	82	Consider changing its policy for returning application fees for incomplete applications and making those fees a nonrefundable fee for processing the application.	Public Utilities Commission	Agree	September 2003
25	83	Ensure personal services costs are allocated to the appropriate fund cash funds.	Public Utilities Commission	Agree	Implemented
26	86	Explore options for improving the regulation of motor carriers in Colorado including ways to streamline regulatory activities and improve the efficiency of the current system of regulation.	Public Utilities Commission	Agree	June 2004

Overview

Background

The Colorado Public Utilities Commission (PUC), a division within the Department of Regulatory Agencies, was created in 1913 to regulate public utilities throughout the State. Article XXV of the Colorado Constitution assigns the responsibility of regulating public utilities to the General Assembly, and the PUC is vested with the authority to carry out such regulation until such time as the General Assembly designates some other body. Colorado law also defines public utilities to include any electrical, common carrier, pipeline, gas, telephone, telegraph, and water corporation that supplies services to the public. Section 40-1-103(1)(a), C.R.S., further specifies that a public utility includes “every corporation or person declared by law to be affected with a public interest.” Title 40 of the Colorado Revised Statutes provides legislative policy direction to the PUC and specifies how to carry out public utility regulation in Colorado.

The governing board of the PUC comprises three Commissioners charged with promulgating rules to ensure the proper administration and enforcement of public utility regulation. In addition, the Commissioners are authorized to establish reasonable requirements to promote the safety of operations for Colorado motor carriers. The Governor appoints the Commissioners to four-year terms, and appointments are confirmed by the Senate. Commissioners conduct business through weekly public meetings, as well as through deliberation and informational meetings as necessary.

The 93 staff of the PUC are divided into eight sections. These include the Executive Office, the Fixed Utilities Section, the External Affairs Section, the Administrative Hearings Section, the Administrative Services Section, the Gas Pipeline Safety Section, the Rail/Transit Safety Section, and the Transportation Section. Our audit covered the Transportation Section of the PUC, which is responsible for regulating all mobile utilities, or motor carriers.

Transportation Section

According to Title 40 of the Colorado Revised Statutes, the Transportation Section is responsible for issuing permits to motor carriers and enforcing related laws. The Transportation Section's Safety and Compliance, Operating Rights, and Rates and Authorities organizational units carry out this responsibility. The following table describes responsibilities of these units:

Public Utilities Commission Transportation Section Responsibilities by Unit	
Unit	Responsibilities
Safety and Compliance	<ul style="list-style-type: none"> • Provides safety oversight • Enforces compliance with regulations • Investigates complaints
Operating Rights	<ul style="list-style-type: none"> • Issues permits • Maintains the Single State Registration System for federally regulated interstate carriers • Registers motor carriers exempt from regulation as utilities
Rates and Authorities	<ul style="list-style-type: none"> • Provides regulation of rates, schedules, and service areas for carriers regulated as public utilities • Regulates towing rates for nonconsensual tows
Administration	<ul style="list-style-type: none"> • Oversees Transportation Section operations
Source: Office of the State Auditor's analysis of PUC information.	

The Transportation Section has one office, which is located in Denver.

Regulation

The Transportation Section is responsible for performing various levels of regulation for seven different types of carriers and processing federal permits for an eighth type of carrier. Regulatory activities include issuing permits, controlling carrier service areas, monitoring types of service provided, approving rates charged for service, and overseeing compliance with state insurance and safety requirements. Statutes allow the Section to revoke carriers' permits, assess penalties, seek court injunctions, and seek criminal prosecution for noncompliance with established laws, rules, and

regulations. The eight carrier types are divided into two main categories for the purposes of the PUC's regulation:

Motor Carriers Classified as Public Utilities—Common and contract carriers are legally classified as public utilities and by law are defined as being “affected with a public interest.” Carriers classified as utilities are subject to full regulation by the PUC, meaning that the PUC is responsible for designating the carriers' service area, service hours, rates charged, and types of service provided. State law limits competition among these carriers. Therefore, the PUC allows only certain carriers to operate in a given geographical location. As such, the permit issued to the utility carriers is actually a property right for the carrier; other carriers are not allowed to operate in that area. When the PUC revokes a utility carrier's permit, the PUC is in essence not only preventing it from operating but also revoking the carrier's property right. Once revoked, other carriers can apply for and be granted a permit to operate in that service area. Because competition is limited, the PUC also controls these carriers' rates for services. Carriers must submit requests for changes in rates to the PUC, which approves or denies the request based on analysis of the carrier's self-reported financial information, testimony by the carrier, and input from Rates and Authorities staff in the Transportation Section. All public utilities are also regulated by the PUC for safety and insurance requirements.

Exempt Motor Carriers—Tow carriers, exempt passenger carriers, exempt property carriers, hazardous and nuclear materials carriers, household goods movers, and federally regulated interstate carriers are exempt from regulation as public utilities. For these carriers, state and federal laws prescribe the PUC's level of regulation for rates, insurance, and safety. Unlike carriers classified as public utilities, exempt motor carriers are not limited with respect to service area or hours of operation, and with the exception of nonconsensual tow rates, these carriers' rates for service are not regulated. Because area of service is not regulated for these carriers, competition is not limited. The number of carriers operating in any given area is limited only by the economic laws of supply and demand and consumer choice.

Descriptions of each carrier type follow:

- **Common Carriers** (Article 10, Title 40, C.R.S.): Taxicabs and airport, hotel, or other “for hire” carriers that provide services to all members of the public who desire services.
- **Contract Carriers** (Article 11, Title 40, C.R.S.): Carriers that transport passengers to and from stated locations based on rates established in the carrier's contractual agreement with an entity, such as contracts between a county department of social services and a contract carrier for transportation of Medicaid clients. The PUC approves contract carrier terms and reviews

those terms to ensure that the contract carrier is not taking business away from a common carrier in the same geographical location.

- **Tow Carriers** (Article 13, Title 40, C.R.S.): Motor carriers that tow motor vehicles. One of the functions of tow carriers is towing abandoned vehicles from public and private property and processing those vehicles in accordance with state law and local ordinances. The PUC regulates the rates charged for nonconsensual tows, while the Department of Revenue's Motor Vehicle Business Group is required to collect reports of abandoned vehicle tows and residual revenue from abandoned vehicle sales for deposit into the Highway Users Tax Fund (HUTF).
- **Exempt Passenger Carriers** (Article 16, Title 40, C.R.S.): Luxury limousines, charter scenic buses, children's activity buses (not including school buses), and off-road charters, such as jeep tours. Most of the tour companies that operate driving tours in Colorado are registered as exempt passenger carriers.
- **Exempt Property Carriers** (Article 16, Title 40, C.R.S.): Vehicles that transport property, including food, equipment, furniture, or other property for hire within Colorado.
- **Hazardous and Nuclear Material Carriers** (Parts 2 and 5, Article 20, Title 42, C.R.S.): Motor carriers that transport hazardous or nuclear materials within or through Colorado.
- **Household Goods Movers** (Article 14, Title 40, C.R.S.): Any motor carrier that transports household goods (e.g., moving companies). During the 2003 legislative session, the General Assembly passed and the Governor signed HB 03-1289, which provides for the regulation of household goods movers as of August 2003. Because regulation of these carriers was only recently authorized, we did not include this category of motor carrier in our review.
- **Federally Regulated Interstate Carriers** (Title 49, Subtitle IV, Part B, U.S. Code): Carriers that transport passengers and/or property across state lines are regulated by the Federal Motor Carrier Safety Administration within the U.S. Department of Transportation (USDOT). Passenger carriers include vehicles carrying more than seven passengers across state lines and property carriers carrying goods including processed foods. To provide more efficient regulation of these carriers, Colorado participates in the Single State Registration System (SSRS) along with 37 other states. SSRS allows carriers to pay permit fees in their base state of operation and obtain permits for each

of the states in which the carrier will operate. We did not include these carriers in our review because the State has no regulatory authority over their operations.

The following table shows what areas are regulated for each type of carrier, the regulatory agency responsible for regulation, and the number of active permits.

Public Utilities Commission Motor Carrier Regulation and Active Permits by Carrier Type and Regulatory Agency As of June 24, 2003						
Carrier Type	Number of Active Permits	Permit	Service Area	Rates	Insurance	Safety
Common Carriers	159	PUC	PUC	PUC	PUC	PUC
Contract Carriers	45	PUC	PUC	PUC	PUC	PUC
Tow Carriers¹	754	PUC	—	PUC	PUC	PUC DPS
Exempt Passenger Carriers	415	PUC	—	—	PUC	PUC
Exempt Property Carriers²	7,296	PUC	—	—	PUC	PUC USDOT DPS
Hazardous and Nuclear Materials Carriers³	2,196	PUC DPS	DPS	—	PUC DPS	DPS
Federally Regulated Interstate⁴	NA	USDOT PUC	USDOT	USDOT	USDOT	USDOT
Household Goods Movers⁵	NA	PUC	—	—	PUC	PUC
TOTAL	10,865					

Source: Office of the State Auditor's analysis of Transportation Section data.

¹The Public Utilities Commission (PUC) only regulates insurance requirements and the rates tow carriers charge for nonconsensual tows. The Department of Public Safety (DPS) promulgates rules over safety requirements for tow carriers, and statute allows the PUC to enforce the safety rules.

²The USDOT and DPS have safety jurisdiction over interstate exempt carriers, while the PUC does not. However, the PUC and DPS have jurisdiction over the intrastate exempt carriers.

³DPS promulgates rules over insurance, safety, and routes of transportation for hazardous and nuclear materials carriers. The PUC is responsible for issuing hazardous and nuclear materials permits and monitoring insurance in accordance with these rules.

⁴Federally regulated carriers are permitted and regulated by the United States Department of Transportation (USDOT). The PUC merely collects permit fees and issues identification stamps for federally regulated carriers based in Colorado and distributes fees to other states in which those carriers operate. The PUC could not provide the number of federally regulated carriers based in Colorado.

⁵Regulation of household goods movers was recently authorized by the General Assembly in HB 03-1289, effective August 2003. As such, the PUC does not yet have information on the number of household goods movers.

Abandoned Vehicles

Some of the services tow carriers frequently provide are towing, storage, and disposal of abandoned vehicles from public and private property. Parts 18 and 21 of Article 4, Title 42 of the Colorado Revised Statutes prescribe the rules for towing, storage, and sale, or junking of abandoned vehicles. The Department of Revenue and the PUC share regulation of the tow carriers that provide abandoned vehicles services. The Department of Revenue is statutorily mandated as the repository of reports of abandoned vehicle tows and sales. The Department also is responsible for registering tow carriers, thereby permitting them to tow vehicles from private property and conduct searches of abandoned vehicle title information electronically through the Department's database. The PUC is statutorily responsible for revoking tow carrier permits for noncompliance with the State's abandoned vehicles laws.

Fiscal Overview

The Public Utilities Commission, as a whole, is cash-funded with fees paid by the regulated utility companies. The majority of fees come from gas, electric, telephone, water, and transportation utilities. For Fiscal Year 2003, PUC was appropriated about \$12.2 million and 93 FTE. Of that appropriation, the PUC apportioned about \$1.8 million and 17.6 FTE to the transportation function.

The Transportation Section is cash funded from the Motor Carrier Fund, which comprises revenue primarily from registration and permit fees paid by motor carriers. The following table shows the revenues, expenditures, and FTE for the Section for Fiscal Years 1999 through 2003.

Public Utilities Commission Transportation Section Revenues, Expenditures, and FTE Motor Carrier Fund Fiscal Years 1999 Through 2003					
Source	Fiscal Year 1999	Fiscal Year 2000	Fiscal Year 2001	Fiscal Year 2002	Fiscal Year 2003
Total Revenue	\$2,315,805	\$2,171,118	\$2,082,138	\$1,940,805	\$1,885,053
Expenditures					
Personal Services	\$1,323,415	\$1,494,264	\$1,370,019	\$1,358,694	\$1,353,202
Indirect Costs ¹	240,287	202,269	216,615	204,396	239,289
Operating	98,695	113,749	117,816	98,906	78,469
Leased Space	110,667	111,432	116,624	77,642	74,458
Legal Services	40,145	73,390	71,038	89,852	35,473
Information Technology	22,521	42,566	16,690	21,536	0
Other ²	31,318	28,631	23,905	19,672	26,213
Total Expenditures	\$1,867,048	\$2,066,301	\$1,932,707	\$1,870,698	\$1,807,104³
FTE	20.8	24	24	17.6	17.6
Source: Office of the State Auditor's analysis of COFRS data and Joint Budget Committee documents.					
¹ Indirect costs are billed to the Transportation Section by the Department of Regulatory Agencies for items such as information technology, a portion of the Executive Director's Office expenditures, and other support services.					
² Includes workers' compensation, purchased services, risk management, vehicle leases, and hardware/software.					
³ SB03-191 mandated a one-time transfer of \$1.3 million from the fund balance of the Motor Carrier Fund to the State's General Fund. This transfer is not reflected in these expenditures. Fund balance after this transfer and as of June 30, 2003, was \$2,038,044.					

Audit Scope and Methodology

During this performance audit we interviewed staff and analyzed data provided by the Transportation Section of the Public Utilities Commission, the Titles Division of the Department of Revenue, the Division of Insurance, and various Colorado law enforcement agencies to evaluate processes for regulating, permitting, and monitoring certain motor carriers in the State of Colorado. Audit work was conducted from March through August 2003. We would like to acknowledge the management and staff at the Department of Regulatory Agencies and the Department of Revenue for their efforts and cooperation during the audit.

Regulatory Activities

Chapter 1

Introduction

The Department of Regulatory Agencies, through the Transportation Section of the Public Utilities Commission (PUC) is responsible for regulating about 10,800 active passenger and property motor carriers throughout the State of Colorado. Passenger carriers within the PUC's jurisdiction include taxicabs, airport shuttles, chartered scenic buses, luxury limousines, and children's activity buses (which do not include school buses); property carriers include trucks under 26,000 pounds that carry goods including, but not limited to, unprocessed food, furniture, and heavy equipment. The PUC's oversight involves ensuring that carriers have appropriate insurance coverage and are inspected for safety and compliance with laws, and that complaints against carriers are appropriately resolved. According to documentation provided by the PUC, its strategic goals include to:

Protect consumers of regulated products or services from unfair or harmful practices by the vigorous enforcement of Colorado Law and registering or licensing only qualified persons or entities.

Provide Colorado citizens with access to a broad range of public information.

Use public resources that fund the Department efficiently and effectively.

The purpose of our audit was to evaluate the PUC's processes and procedures for regulating, permitting, and monitoring motor carriers. As part of the audit, we requested records for a sample of 147 actively permitted carriers. Our sample included common carriers and tow carriers. We evaluated the services provided and rates charged for a one-week sample period. In addition, we sent insurance policy confirmation letters to a sample of 32 insurance companies listed in the PUC's records as the active insurance providers for various carriers.

Overall, we found that the PUC lacks basic controls and processes for significant areas of its operations. We believe these deficiencies impact the PUC's ability to perform its regulatory functions and statutory responsibilities, and also its ability to

meet Departmental goals and objectives for protecting public safety and providing consumers with access to carrier information. Motor carriers are transporting people and property over the State's highways daily. It is critical that the PUC implement more effective systems of ensuring that state laws are enforced and public safety is protected. Our findings and recommendations follow.

Insurance Coverage

The Public Utilities Commission is responsible for enforcing insurance requirements for all carriers operating under its jurisdiction. In general, statutes and PUC rules specify that all motor carriers must maintain active insurance coverage to operate, establish the minimum liability coverage that a motor carrier must maintain, and identify the processes and forms necessary to file proof of insurance with the PUC. The PUC's rules require that companies insuring motor carriers file appropriate standard insurance forms notifying the PUC of such things as effective dates of new insurance policies, policy cancellation dates, and insurance company name and address changes. PUC staff use these standard forms submitted by the insurance company to ensure motor carriers maintain active insurance at all times. The PUC may revoke a carrier's permit for any lapse in insurance coverage.

Statutes and rules governing motor carriers specify insurance coverage requirements for common, contract, exempt passenger and property, and tow carriers. The Department of Public Safety promulgates rules that state the insurance coverage requirements for hazardous materials (hazmat) and nuclear materials carriers. Minimum liability coverage requirements differ, depending on the type of carrier, and the number of passengers or type of commodities transported. For example, common and contract carriers with a seating capacity of less than seven passengers, excluding the driver, must have at least \$500,000 in liability coverage. Luxury limousines with a seating capacity of 15 to 31 passengers, excluding the driver, must have at least \$1.5 million in liability coverage. Hazmat carriers must typically maintain between \$1 million and \$5 million in liability coverage depending on the rating of the hazardous materials transported.

We reviewed the PUC's processes for monitoring motor carrier compliance with applicable insurance requirements, sent confirmation statements to a sample of 32 insurance companies actively insuring motor carriers, and matched a sample of carriers' insurance companies to the Division of Insurance's list of active insurance companies. We found that the PUC's monitoring activities are not sufficient to identify underinsured or uninsured motor carriers, or carriers that are not insured by actively licensed insurance companies.

Insurance Monitoring

Public Utilities Commission staff receive standard insurance forms from companies that insure motor carriers. On a daily basis, PUC staff review these forms and enter insurance policy information, such as the effective dates and insurance policy number into the Operating Rights (OpRts) system. The OpRts system tracks the status of carriers' authority to operate. Twice a month, PUC staff run a program in the OpRts system to identify all carriers whose insurance will lapse or be cancelled in the ensuing two weeks. Based on this list, the PUC notifies carriers that their permits will be revoked in two weeks if new insurance policy information is not filed. This process is called the "show cause" process. If the carrier does not submit new insurance policy information, the PUC notifies the carrier via letter that its permit was revoked. We identified the following problems:

- **The PUC does not maintain insurance forms.** The PUC is to receive insurance filings for all permitted motor carriers. However, our file review showed that insurance forms were not on file for 25 of the 143 carriers in our sample (about 17 percent) where an insurance filing was required. Lack of documentation increases the risk of errors, coverage shortfalls, and lapses.
- **The PUC does not have processes in place to ensure that carriers have active insurance policies.** Companies that insure motor carriers are required to file all appropriate forms notifying the PUC of changes in insurance, and the PUC relies on insurance companies to self-monitor in this regard. However, insurance companies are not required to notify the PUC of standard annual renewals. As a result, the insurance forms on record for some carriers are outdated. As noted above, the PUC could locate insurance forms for only 118 of the 143 carriers in our sample. Of the 118 insurance filings that we were able to examine, 28 forms (about 24 percent) were filed with the PUC more than five years ago. Five of these 28 insurance filings were over 8 years old, and the oldest filing was 15 years old. In addition, we sent insurance policy confirmation letters to a sample of 32 insurance companies that insure motor carriers in Colorado. Of the 14 confirmation letters returned to our office, 3 indicated that the PUC's insurance data for carriers in our sample are not current. Two letters indicated that the motor carriers' policies had been cancelled. At the time of our review, the PUC's OpRts system showed the motor carriers' insurance policies as active. The third letter indicated that the motor carrier's insurance policy number and company name had changed; however, PUC had not noted this change in its records.

Carrier insurance is an essential component of protecting the public. The PUC needs to establish a system to annually verify carrier coverage. Options

include (1) carriers submitting annual proof of insurance and (2) insurance companies submitting lists of covered providers on an annual basis. Kansas and Nevada, for example, both require motor carriers to file annual statements of insurance coverage to maintain their permits.

Insurance requirements are in place to protect passengers and property owners that use motor carrier services. Because compliance with insurance requirements is necessary to receive and maintain an active permit, the PUC has a responsibility to exercise due diligence in systematically monitoring motor carriers for insurance coverage.

Recommendation No. 1:

The Public Utilities Commission should improve its monitoring of motor carriers for compliance with insurance requirements by:

- a. Ensuring that all required insurance forms are kept on file.
- b. Establishing requirements that ensure appropriate insurance coverage, including requiring carriers to file annual proof of insurance or requiring insurance companies to file annual lists of motor carriers covered.

Public Utilities Commission Response:

Partially agree.

- a. Agree. As part of the new Operating Rights computer database system, all application documents and insurance filings are now stored electronically. The filings are electronically recorded, bar-coded and prepared for imaging at the first point of contact in the process. This new computer system is part of the PUC's new agency-wide, automated Integrated Filings Management System (IFMS), but was not fully operational at the time of the audit.

Implementation Date: The new Operating Rights computer database system was implemented on July 28, 2003. The elimination of the electronic imaging and filing backlog of insurance filings and applications is scheduled for completion in September 2003.

- b. Partially agree. As with other state and federal transportation regulators, the PUC relies on the issuance and filing of nationally approved and utilized proof-of-insurance forms. These forms legally bind the insurer until such time as the insurer cancels coverage by officially providing the PUC notice of cancellation. They are relied upon to verify that carriers have the required insurance coverage. The PUC would not rely on annual motor carrier filings to verify insurance coverage. The PUC will assess its authority to require annual insurance company filings and the utility of doing so. Regardless, during the upcoming vehicle registration renewal cycle, staff will request case-specific coverage verification from insurers based on pre-determined criteria.

Implementation Date: January 2004.

Inactive Insurance Companies

Under Colorado law, motor carriers are required to maintain continuous insurance coverage from an insurance company authorized to do business in the State of Colorado. The Colorado Division of Insurance (Division) licenses insurance companies issuing policies in Colorado and defines the status of an insurance company as either active or inactive. Inactive means that the insurance company is either unlicensed (i.e., had their license revoked by Division of Insurance), or has a suspended license. The Division can revoke or suspend insurance licenses for reasons including, but not limited to, insolvency, unsound business practices, or noncompliance with state laws. According to Division of Insurance staff, companies with suspended licenses are typically prohibited from issuing new insurance policies, but are not prohibited from renewing existing policies. Companies with revoked licenses are prohibited from issuing any insurance policies in the State.

To ensure that motor carriers maintain insurance with a company authorized to do business in Colorado, the PUC receives a weekly download of data from the Division of Insurance. These data are uploaded into the PUC's OpRts system and matched against the insurance companies that have issued policies to motor carriers. Although the data match is largely automated and occurs on a weekly basis, we determined that this process is not functioning as intended. Specifically, PUC staff believed they were receiving a download of active insurance companies, however, we determined that the PUC actually received a list of all insurance companies, active and inactive, on record at the Division of Insurance. As a result, none of the insurance companies used by motor carriers were showing up as inactive in the PUC's data match.

During our May 2003 carrier file review, we performed searches of the Division of Insurance database for 57 companies insuring 132 of the 147 motor carriers in our sample (the other 15 carriers either were not required by federal or state laws to have specific levels of insurance coverage or were self-insured at the time). We found that six motor carriers (about 4.5 percent) held policies with four separate insurance companies that were listed as inactive in the Division of Insurance's database. At the time of our review, these 4 insurance companies insured 40 different motor carriers with active permits. We extended our testwork and selected an additional sample of 64 insurance companies, about 19 percent of the 339 insurance companies listed in the PUC's OpRts system. We found that 10 (about 16 percent) of these insurance companies were listed as inactive in the Division of Insurance's database. In total, the 10 companies we identified as inactive insured 55 different motor carriers.

As previously mentioned, we sent confirmation letters to a sample of 32 insurance companies. This sample included the 10 inactive insurance companies discussed above. Of the 10 inactive insurance companies receiving letters, 3 returned confirmations stating that they insure motor carriers in Colorado. The Division of Insurance reports that it suspended these companies' licenses between 2000 and 2002, however, the Division determined that these companies acted within the terms of their suspension orders. At the time of our audit, the Division of Insurance was still completing its investigation to determine the appropriateness of the remaining seven insurance companies' actions.

Currently, PUC statutes only require that motor carriers are insured by companies authorized to do business in Colorado. While suspended insurance companies technically meet this criteria, it may not be desirable from a public policy perspective to allow motor carriers that transport passengers, property, and hazardous materials to be insured by insurance companies whose licenses have been suspended due to insolvency or some other impairment.

Recommendation No. 2:

The Public Utilities Commission should work with the Division of Insurance to:

- a. Ensure that information contained in the database is accurate and results in identification of inactive companies insuring motor carriers.
- b. Further investigate inactive companies insuring motor carriers.

- c. Determine whether it is appropriate for motor carriers to maintain insurance policies with companies whose licenses are under suspension and seek statutory change as appropriate.

Public Utilities Commission Response:

Agree. The deficiency identified by the auditors resulted from prior miscommunication between the Division of Insurance (Division) and the PUC. The content of the data that was provided electronically by the Division to the PUC regarding insurance companies authorized to do business in Colorado was misunderstood. On the same day that the auditors identified the data discrepancy, PUC staff pinpointed the source of the problem to various status codes in the Division database and implemented an automated fix. The PUC database was cleansed and, going forward, only data pertaining to authorized insurers is imported into the PUC database. Additional computerized tools are in place to identify when a previously authorized insurer's status changes. In addition, staff performed an immediate reconciliation of all carrier insurers with the cleansed PUC database and initiated action with carriers and insurers to resolve all identified inconsistencies. The PUC will notify the Division of potential instances of unauthorized insurer operations which are identified during the PUC's permitting processes. The PUC will consider whether to pursue a statutory change to require motor carriers to obtain insurance only from companies designated as active by the Division.

Implementation Date: Corrective action completed August 2003. See response of the Division of Insurance to Recommendation No. 3.

Recommendation No. 3:

The Division of Insurance should investigate the inactive insurance companies identified by the Public Utilities Commission as insuring motor carriers and take action against those companies as appropriate. In addition, the Division of Insurance should work with the Public Utilities Commission to evaluate the appropriateness of motor carriers' being insured by inactive companies.

Division of Insurance Response:

Agree. The Division of Insurance will follow up on any insurer referred by the Public Utilities Commission that holds an inactive license and that has recently issued a commercial auto insurance policy to a motor carrier. We will determine whether the insurer acted properly by issuing the policy. The

Division will take action against any company that issued a policy in violation of its licensure status. The disposition of the matter will be communicated back to the PUC. The Division will also notify the PUC any time a commercial auto insurer's licensure status changes.

Implementation Date: Immediately.

Safety Inspection Selection

Sections 40-2-116(1), C.R.S., and 40-16-105(1), C.R.S., require the Public Utilities Commission to establish reasonable standards for safe operation of certain motor carriers in Colorado, including common and contract carriers, exempt passenger carriers (such as luxury limousines, children's activity buses, off-road and scenic charters), and property carriers with gross vehicle weight of less than 26,000 pounds. Additionally, Section 42-4-235(4)(b), C.R.S., gives the PUC the authority to enforce safety standards promulgated by the Department of Public Safety for tow carriers. All motor carrier safety standards are to be based on the safety regulations established by the United States Department of Transportation. Carriers are required to operate according to those standards in order to retain their Colorado permit and avoid fines, penalties, and prosecution. The Department of Public Safety has primary statutory authority for safety inspection of inter- and intrastate commercial vehicles (vehicles weighing more than 26,000 pounds), and hazmat and nuclear material carriers.

The PUC's safety and compliance inspections are to include a review of the safety of the vehicle (e.g., brakes, suspension, exhaust, steering, tires, wheels, lights, windshields, horn); driver records (e.g., whether drivers are licensed, whether drivers are driving too many hours consecutively, whether drivers passed necessary road tests, and whether drivers are undergoing drug testing); and insurance documentation. Safety and compliance inspections are the cornerstone of the PUC's ability to protect public safety. We identified a number of weaknesses related to the PUC's safety and compliance inspection activities that raise concerns about the frequency of inspection, the adequacy of follow-up to ensure deficiencies are corrected, and the scope of what investigators inspect.

Currently the PUC has four compliance investigators responsible for conducting safety and compliance inspections for carriers located throughout the State of Colorado. As of June 2003, there were about 6,000 motor carriers under the PUC's jurisdiction, of which about 600 were passenger carriers and the remaining 5,400 were property carriers. The PUC cannot determine the total number of actual vehicles operating at any given time. Each carrier may have multiple vehicles that the compliance investigator is required to inspect. For example, one of the larger taxi

companies in Colorado operates under a single permit number but has about 400 vehicles that at some point should be inspected by the PUC. In Fiscal Year 2003 the PUC's compliance investigators completed 371 inspections for 363 different carriers. This is 6 percent of the total number of carriers for which the PUC is responsible for ensuring safe and compliant operations. Compliance investigators report their first priority is to inspect passenger carriers, and they typically inspect each passenger carrier about every 18 months. Investigators indicated that property carriers are inspected about once every five years. However, our review of inspection data showed that property carriers are often inspected even less frequently, or not at all. Upon review of the PUC's current safety and compliance inspection process, we found that the PUC is not inspecting every passenger carrier every 18 months. Specifically, we found:

- **The PUC has not established procedures for prioritizing or scheduling carrier inspections.** Investigators have various individual methods for selecting the order in which they inspect carriers. This informal and unsystematic process results in not inspecting some carriers in a timely manner. For example, we identified one charter scenic bus carrier that has operated for nearly 15 years without ever having a safety and compliance inspection performed by the State. This carrier was, however, inspected by federal inspectors in 1997. Additionally, there are 10 passenger carriers, permitted for two years or more, that have not been inspected. These carriers included taxicabs, children's activity buses, luxury limousines, and charter scenic buses.
- **Because of the above, important risk factors are ignored.** Compliance investigators do not take into consideration the number and types of safety and compliance violations from previous inspections, and they do not review the number and types of complaints and civil penalties assessed against the carriers. For example, the PUC did not reinspect a luxury limousine carrier for over three years after an April 2000 inspection revealed that the carrier "failed to systematically inspect, repair, and maintain all four vehicles" it operated. Moreover, no documentation exists showing that the April 2000 violations were corrected.
- **The PUC does not inspect tow carriers for safety and compliance.** Section 42-4-235(4)(b), C.R.S., specifically states that the PUC may enforce safety rules promulgated by the Department of Public Safety for tow carriers. However, the PUC does not currently inspect tow carriers. We also interviewed Colorado State Patrol (CSP) staff at the Department of Public Safety, who indicated that CSP does not inspect tow carriers unless it receives a complaint.

The PUC requires compliance investigators to inspect seven carriers per month and 37 vehicles per month. The investigators stated that meeting these goals is typically “easy,” and one investigator actually completed three times the number of required inspections for one of the months of inspection data we reviewed. Therefore, it is likely that the PUC could give investigators more aggressive performance goals. Implementing a formal monitoring system is important because it provides a structure for ensuring that the highest-risk carriers are monitored and made to comply in a timely manner, thereby reducing risks to public safety. We believe that the PUC’s current limited staff resources for conducting safety and compliance investigations mandate that investigations be scheduled using a risk-based approach and conducted to provide the most assurance that higher-risk carriers comply with safety regulations.

Recommendation No. 4:

The Public Utilities Commission should improve safety inspections by:

- a. Developing a risk-based approach for scheduling carriers for safety and compliance inspections that includes the number and types of safety and compliance violations, number and types of complaints and penalties, and the time frame of the most recent inspection.
- b. Coordinating with the Colorado State Patrol to ensure that tow carriers around the State are periodically inspected.
- c. Increasing performance requirements for investigators.

Public Utilities Commission Response:

Agree.

- a. Due primarily to significant resource limitations, the PUC faces tremendous challenges in attempting to ensure the public’s safety through its safety and compliance audits and inspections. In light of these constraints, the PUC focuses its safety efforts primarily on passenger carriers as posing the greatest potential risk to the public. Implementing a more precise risk-based approach will improve the effectiveness of the passenger carrier safety program. The PUC will develop such a program to incorporate the recommended factors and others, and will look to models used by other states and the Federal Motor Carrier Safety Administration.

- b. The PUC will coordinate with the Colorado State Patrol concerning periodic inspections of towing carriers.
- c. Investigator performance requirements will be re-evaluated and modified as appropriate to implement the new risk-based approach to scheduling of safety and compliance inspections.

Implementation Date: A risk-based approach to scheduling passenger carrier safety and compliance inspections will be developed and implemented by December 2003. It will then be applied to the remaining inspections scheduled for Fiscal Year 03-04 and will be used as the primary scheduling baseline for Fiscal Year 04-05 and beyond.

Scope of Safety Inspections

Currently safety and compliance inspections comprise several components, including vehicle inspection, review of compliance with statutory requirements and PUC rules, and driver reviews. Our analysis of the safety and compliance inspection process and interviews with the compliance investigators identified some areas in which the inspection process should be clarified and the scope of the inspections should be broadened.

- **Safety and compliance inspection requirements are unclear.** Our interviews with compliance investigators revealed some procedural inconsistencies in the way that reviews are conducted. Currently investigators have different understandings of whether vehicle inspections are required at the time of the on-site inspection, how many of the carrier's fleet they should inspect (or what percentage), and whether the investigator should follow up to inspect vehicles that were off-site at the time of the initial inspection. While the PUC has guidance sheets and a procedures manual with inspection instructions, investigators continue to perform inspections inconsistently.
- **Review of rates, area of service, and hours of service is not conducted.** As discussed previously, the PUC limits the rates charged for services, the service area, and service hours for those carriers classified as utilities (common and contract carriers). However, except upon receipt of a consumer complaint, the PUC does not currently review carrier records to determine whether the carriers charge rates for services in accordance with the rates approved by the PUC or provide services only within the boundaries and hours of service approved by the PUC. Our review of 25 common carrier rate

schedules and a sample of trip sheets (or service logs) provided by carriers for a one-week period in April 2003 identified some problems with carrier records. Of the 25 common carriers in our sample, 1 overcharged customers for taxi services during the period. After our inquiry, PUC staff contacted the carrier, who claimed they had faxed the PUC a new tariff schedule in January 2003 and they were not overcharging. However, the PUC had no record of the carrier's request for a rate increase and, therefore, had not approved the rate increase. In addition, 3 of the 25 carriers in our sample (12 percent) provided trip sheets that were insufficient to determine whether the carrier was charging appropriate rates. The trip sheets were missing information such as the number of passengers, mileage, pick-up and drop-off locations, baggage, time of service, number of hours of rental, and type of vehicle rented. The combination of poor documentation and the PUC's lack of review increases the risk that carriers may charge consumers inappropriate amounts.

Safety and compliance inspections are fundamental to the PUC's ability to regulate motor carriers. Improvements in the areas listed above should make the process both more consistent and efficient, and add value by ensuring that carriers adhere to additional regulatory requirements.

Recommendation No. 5:

The Public Utilities Commission should reevaluate the safety and compliance inspection process and identify and incorporate functions to improve safety and consumer protection. At a minimum, improvements should be made by:

- a. Identifying clear procedures for conducting safety and compliance inspections, including requirements for inspecting vehicles at the time of the carrier's review, the volume or percentage of a carrier's vehicle fleet that should be completed for each inspection, and procedures for following up when vehicles or paperwork are not reviewed at the time of the initial inspection. Additionally, compliance investigators should be trained and evaluated based on the stated policies.
- b. Adding components to safety and compliance inspections that require compliance investigators to review carrier trip sheets to assess compliance with approved tariff schedules, review prior compliance and safety inspections as part of the current review to identify important trends in non-compliance, and document the results of these reviews as a basis for enforcement action.

Public Utilities Commission Response:

Partially agree.

- a. Agree. The PUC is developing written procedures based on the Federal Motor Carrier Safety Administration guidelines that will include all of the elements listed in this recommendation. When the procedures are implemented, all compliance investigators will receive individual, in-depth training on the procedures and their adherence to the procedures will be evaluated on an ongoing basis.
- b. Partially agree. The new procedures will include a requirement to review prior safety and compliance inspections as part of both the new risk-based scheduling approach and in preparation for conducting inspections and determining potential enforcement actions. Currently, only taxicab companies are required to maintain rate-related trip sheets. Similarly, only taxicabs are required to post the rates in each taxicab to protect customers from being charged an unauthorized rate. Proper posting of taxicab rates is confirmed during vehicle inspections. The PUC will assess the utility of requiring and reviewing carrier trip sheets for tariff rate compliance, as well as posting requirements, for non-taxicab carriers. Given the dearth of non-taxicab consumer rate complaints, further research needs to be conducted to see if the proposed solutions fit the problem.

Implementation Date: Written procedures for conducting safety and compliance inspections will be developed and implemented by December 2003.

Follow-Up on Violations Identified in Safety Inspections

Following a carrier inspection, compliance investigators are to complete a formal safety and compliance inspection report and provide a copy to the carrier. Investigators typically distribute the final report to a carrier within 10 days of completing the investigation. Carriers are required to return a Certificate of Corrections to the PUC within 20 days of receipt of the inspection report. The Certificate of Corrections is the carrier's statement certifying that all violations noted in the safety and compliance inspection report are remedied. There were a total of

55 compliance and safety inspections for the 97 carriers (or about 57 percent) in our sample that were eligible for a review by the PUC. Of these 55 inspections, 50 had documented violations. Our reviews of these inspection reports identified problems with the PUC's follow-up on safety and compliance violations, including:

- **PUC investigators do not reinspect for correction of safety violations.** The investigators reported that they typically rely on the carrier's Certificate of Correction and rarely return to the carrier to physically inspect violation corrections. Our review found that carriers do not always correct violations as stated in the Certificate of Correction. For example, one taxi company was cited with 136 violations, some of which were for having cracked windshields on four vehicles. The carrier stated it had corrected these violations in its Certificate of Corrections. However, two months after the initial inspection, a police officer rode in one of the taxis. The officer complained to the PUC about the safety condition of the vehicle, noting that the seatbelt didn't work, the vehicle had a cracked windshield, and the vehicle was vibrating so badly the officer was concerned that he would not get home safely. The officer requested that the PUC perform a safety inspection of the taxi company's vehicles. Compliance investigators returned to the carrier to inspect the vehicles and found that the carrier had never actually corrected the violations as stated in the Certificate of Correction.
- **Documentation showing that carriers correct violations is missing.** For the 50 safety and compliance inspections with violations that we reviewed, we found that 17 (about 34 percent) had no documentation showing that the carrier had corrected any violations cited. In the 17 files that contained no documentation of corrections, the most recent violations cited by the compliance investigators included 9 instances of missing driver documentation such as medical exam information and 11 missing records of duty status, which indicate the number of hours a driver has worked. Some files pointed to other violations, such as four instances of incomplete driver files, including missing road tests and proof of a valid driver's license, and three instances of "unqualified drivers."
- **Carriers do not always use Certificates of Correction.** As stated previously, carriers are required to return the Certificate of Correction to compliance investigators within 20 days. However, of the 32 files we reviewed that had some kind of documentation that the carrier had corrected the violations, only 12 (about 38 percent) of the files contained an actual Certificate of Correction. As an alternative, some carriers merely signed the vehicle inspection report, signifying that they had corrected the violations noted.

We believe the safety and compliance inspections should provide necessary controls and safeguards for the PUC and for the State. Without standard, consistent, and formal inspection and follow-up procedures, the PUC has limited ability to ensure public safety.

Recommendation No. 6:

The Public Utilities Commission should improve follow-up on safety and compliance inspection violations by:

- a. Developing and implementing standard procedures for ensuring that safety and compliance issues identified are corrected. The scope of follow-up should be based on the types of violations and degree of risk associated with each violation. To ensure that problems are corrected as stated by the carrier, the Public Utilities Commission could also implement a random sample follow-up approach.
- b. Establishing consistent procedures for carriers to document correction of violations.
- c. Ensuring that the statements of correction are obtained from carriers and included in the carriers' safety and compliance inspection files.

Public Utilities Commission Response:

Agree. The PUC employs the same methodology as the Colorado State Patrol and the Federal Motor Carrier Safety Administration regarding vehicle inspections and certifications of correction and compliance. The PUC uses a separate certification of correction form for records compliance violations. Written procedures for targeted, risk-based, follow-up verifications of correction for both vehicle and records violations will be incorporated into the new procedures for conducting safety and compliance inspections. Specific written procedures for carriers to follow to document corrective actions are included in the compliance audit reports that are provided to the carriers. The missing Certificate of Correction documents are unacceptable. Going forward, all certificates of correction are imaged and electronically filed in the Integrated Filings Management System.

Implementation Date: Written procedures for follow-up violation correction verification will be developed and implemented by December 2003.

Quality Assurance for Inspections

The Public Utilities Commission currently has two levels of supervisory review of safety and compliance inspection reports. During our review of safety and compliance inspections, we found that the review process adds little value. Quality review should be used to ensure that inspections are carried out consistently and in accordance with PUC rules and procedures. As previously discussed, compliance investigators are not conducting safety and compliance inspections consistently, and the investigators interviewed were unclear about what components are required to be completed during an inspection. Further, we did not find evidence (such as supervisor initials) of such review on the inspection documents. According to PUC staff, investigators sometimes provide inspection results to carriers without a supervisory review taking place. With limited staff resources, the PUC should consider whether a two-tier review process is necessary and, if not, consider redirecting resources to complete additional inspections. Additionally, quality assurance procedures should be carried out in a manner that helps the PUC ensure that investigators carry out their job duties efficiently and effectively.

Recommendation No. 7:

The Public Utilities Commission should develop quality assurance standards for compliance investigations. Further, the Public Utilities Commission could consider eliminating one of its two levels of review over the safety and compliance inspection reports and use the additional staff time to complete carrier safety reviews.

Public Utilities Commission Response:

Agree. The standards for performing safety and compliance inspections will form the basic framework of the new written procedures for conducting those inspections. Quality assurance reviews and performance assessments will be conducted and documented on a regular basis. There will be only one level of direct supervisory review for safety and compliance inspection reports, with random additional reviews being periodically conducted by the Transportation Section Chief. Prior to the final development and implementation of the new procedures, safety and compliance inspection reports will be subject to the revised supervisory review process outlined above to foster improved consistency among inspectors and to aid in the development of standard procedures.

Implementation Date: December 2003.

Complaint Handling

The Public Utilities Commission routinely handles complaints regarding motor carrier operations from the general public, other motor carriers, and any other aggrieved party. Response to consumer complaints is an important responsibility for any governmental agency. During Fiscal Year 2003 the PUC documented about 400 complaints. We reviewed files for 147 sampled motor carriers and found 48 carriers with complaints on file. We evaluated the most recent complaint for these 48 carriers and aggregate information concerning the total number of complaints, and identified weaknesses in the PUC's complaint handling process.

Complaint Management

Consumers can file complaints in writing or over the phone. In total, the PUC has seven staff who take and handle motor carrier complaints, four of which are the compliance investigators. Each of the staff handles complaints for all types of carriers, except for one who handles all tow carrier complaints. The PUC maintains complaint information in its Consumer Contact Tracking System (CCTS). Details maintained in CCTS include complainant and respondent contact information, a description of both the complaint and the PUC's investigation, and the dates the complaint was received and resolved. The PUC also maintains complaint information, with the exception of tow carrier complaints, in the carriers' master files. We found a number of problems with the manner in which complaint information is handled. Specifically:

- **PUC staff do not consistently utilize CCTS.** One staff member indicated that complaints are entered into CCTS only after they are closed, whereas other staff indicated they enter information for all complaints on an ongoing basis. According to staff, tow carrier complaints include only those complaints that staff believe are important enough to warrant documenting. We noted that in Fiscal Years 2000 and 2001, there were a total of 469 towing complaints; during Fiscal Years 2002 and 2003, this total was only 74 complaints, a decrease of approximately 84 percent. Obviously, this decrease may not be attributable to a fall in consumer complaints but rather to a lack of routine tracking of the complaints received.
- **Complaint information is incomplete.** We found a total of 374 complaints from 1997 through 2003 for 48 carriers in our sample. Out of these complaints, we found that for nine complaints (about 2 percent), a close date, or evidence of the investigation's being completed, was not included in CCTS. One of these had been listed as open since March 1997. We also

found that 19 complaints (about 5 percent) were missing complaint and/or investigation notes. Failure to document comprehensive complaint information makes it difficult to ensure that complaints are handled appropriately and timely.

- **Complaint documentation is scattered.** One staff member maintains his own complaint files in order of the month received, not by carrier, making it difficult to locate all complaints for any given carrier. Towing complaint information is not filed in the carriers' files at all, while other carrier complaints are located in the carrier's master file. We found that 13 out of 129 complaints from CCTS (10 percent, excluding towing complaints that are not filed) were missing from the carriers' master files. This lack of a centralized location for complaint information makes it cumbersome for the PUC to establish a complaint history for any carrier.

Complaint Analysis

We also found that the PUC does not routinely review or analyze complaint information. CCTS does not have standard categories for identifying the nature of a complaint. Unless complaint information is categorized systematically and accurately, the PUC is limited in its ability to analyze information and to identify problem areas. CCTS also does not have reporting capabilities. Therefore, management cannot review the data to ensure that all complaints are addressed or handled in a timely manner. As a result, staff do not utilize complaint information to identify areas of concern, outstanding complaints, problem carriers, or other trends that would assist compliance investigators in dealing with carriers.

The PUC's mission is to achieve a regulatory environment that provides safe and reliable utility services to all on just and reasonable terms. Proper complaint handling procedures should be a priority. Establishing standard complaint documentation procedures, centralizing complaint information, and performing periodic analysis of complaint data are critical to overseeing carriers. Further, using data systematically would help the PUC to develop a risk-based compliance review process, identify areas of concern that warrant more attention during compliance reviews, and focus carrier training needs.

Recommendation No. 8:

The Public Utilities Commission should improve the management of complaint information by:

- a. Developing and implementing a formal complaint process that includes standards for documenting, categorizing, and maintaining complaint information.
- b. Training staff on the complaint handling process and use of the complaint tracking system.
- c. Establishing a central database with query and reporting capabilities for maintaining complaint information.
- d. Analyzing complaint data to identify and address problem carriers, ensure timely handling of complaints, and identify carrier training needs.

Public Utilities Commission Response:

Agree. Currently, the PUC has a computerized consumer complaint tracking system that already has many of the recommended capabilities, but it was not being consistently used for processing transportation complaints. In October 2003, PUC staff and the Department's information technology staff are scheduled to begin the definition of the business requirements and project scope for an upgraded consumer complaint processing and tracking system. This development of an upgraded system had been identified and planned for as part of Phase III of the implementation of the PUC's Integrated Filings Management System. The system will provide the central database for queries and reports, which will allow better analysis of complaint data. Staff will be trained on the new system. In the interim, transportation staff has been directed to input complaint data into the existing consumer complaint system on a daily basis as transportation complaints are received and to update the database for all actions taken to achieve resolution.

Implementation Date: The upgraded consumer complaint tracking system is currently scheduled for implementation by June 2004.

Public Access to Complaint Information

The Public Utilities Commission allows public access to complaint information through written request. Both the Director of the PUC, and the Chief of the Transportation Section of the PUC review this request. If the request for information is approved, the PUC typically responds to the request within three working days. While statistical complaint information can be provided over the phone, carrier-

specific complaint information is only available by written request. The information is not immediately available to the public, and as a result, consumers do not necessarily have the opportunity to make an informed decision regarding services provided by various carriers and cannot compare complaint data between different carriers. In some cases, carriers are serving vulnerable populations, such as children, Medicaid recipients, or persons enrolled in the State's mental health care system.

Other regulatory agencies make complaint information on the service providers they investigate available over the Internet. For example, the Department of Public Health and Environment has an online searchable database of all founded complaints made against nursing homes it regulates. The budget request for the Department of Regulatory Agencies indicates plans to provide complaint initiation and tracking and disciplinary actions on the Internet.

Recommendation No. 9:

The Public Utilities Commission should improve public access to complaint information by providing a searchable database on its Web site. Alternatively, the PUC should post a notice on its Web site detailing how complaint information may be obtained and streamlining the process to obtain complaint information.

Public Utilities Commission Response:

Agree. The PUC currently makes available to the public consumer complaint information on its website concerning jurisdictional telecommunications and energy companies. The reports cover information on a monthly and fiscal year basis. The reports show the number of consumer contacts per company and how often a company was found not in compliance with PUC rules. The reports also include complaint topic information for the largest utilities such as Xcel Energy and Qwest. All of these reports are available on the PUC home page under the Consumer Assistance and Publications sections. With the upgrade of the computer consumer complaint tracking system, the PUC will ensure that similar reports can be generated for transportation companies. It is currently in the project scope for a future phase of the Integrated Filings Management System to provide a search function for information on the PUC website.

Implementation Date: The upgraded consumer complaint tracking system is currently scheduled for implementation by June 2004.

Enforcement

Chapter 2

Introduction

According to Section 40-7-101, C.R.S., "It is the duty of the Commission to see that the provisions of the constitution and statutes of this state affecting public utilities. . . are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. . . ." To enforce compliance, the Public Utilities Commission (PUC) has statutory authority to pursue criminal penalties, including a Class 2 Misdemeanor; seek court injunctions to cause carriers to stop doing business; issue civil penalties to carriers known to be operating without permits; and revoke carriers' permits for noncompliance. We reviewed the PUC's practices for enforcing laws and rules, including evaluation of penalty assessments and collections, and the PUC's use of revocation for carrier noncompliance. We found that the PUC is not using the enforcement tools available to compel carriers to comply with rules and operate safely.

Penalties

The Public Utilities Commission has statutory authority to assess penalties against motor carriers for various violations including operating without insurance, operating without registering or obtaining a permit, and intentionally violating any statute or PUC rule. In total, for Fiscal Years 2001 to 2003, we estimate that the PUC drafted \$470,000 in motor carrier penalties. After negotiations with carriers, final penalty assessments totaled \$153,000. We estimate that during Fiscal Year 2003 the PUC collected a total of about \$54,000. As will be discussed later, the condition of the PUC's records for penalty assessments and collections does not allow for a complete accounting of all penalty assessments or collections.

Senate Bill 03-225, effective in May 2003, increased the maximum penalty amounts that the PUC may assess. Increases mirrored amounts set in United States Department of Transportation (USDOT) regulations. Penalties we reviewed were for amounts authorized in statute prior to the passage of this bill. The following table describes the various penalties and the corresponding amounts, both before and after passage of Senate Bill 03-225.

Public Utilities Commission Penalties for Motor Carrier Violations¹		
Violation	Maximum Daily Penalty²	
	Before SB 03-225	After SB 03-225
Operating without insurance	\$400	\$11,000
Operating without a certificate of public convenience and necessity	\$400	\$1,100
Operating without a permit	\$400	\$1,100
Operating without registering with the PUC	\$400	\$1,100
Intentional violation of statute, PUC rule or safety rules of the Department of Public Safety	\$400	\$1,100
<p>Source: Office of the State Auditor’s analysis of Colorado Revised Statutes and SB 03-225. ¹ Penalties listed apply to all carriers under Articles 10, 11, 13, and 16, of Title 40, C.R.S. Hazmat and nuclear materials carriers are excluded from the PUC’s authority for assessing penalties. ² Maximum amounts, per occurrence, allowed by statute. Each day of continued violation can be deemed a new occurrence. Penalties may be assessed at less than the amounts shown.</p>		

As noted in the table, operating without insurance carries the most significant fine at up to \$11,000 per occurrence. Hazardous and nuclear materials carriers are under the jurisdiction of the Colorado Department of Public Safety and, therefore, excluded from penalties assessed by the PUC.

Penalty Assessments and Adjustments

Penalties assessed by the PUC are typically initiated by compliance investigators as a result of violations identified during compliance and safety reviews. Penalties are initially drafted by the investigators and are reviewed for technical and legal accuracy by the supervisor. Oversight by the supervisor includes ensuring that staff can validate the allegations for each penalty imposed, determining whether noted violations are duplicative, or determining whether a violation should be increased for repeat violations, as allowed by statute. Staff report that the penalty amounts originally recommended are reduced about half of the time by supervisors prior to negotiations with the carrier. Once a penalty assessment draft is finalized, the supervisor negotiates (or stipulates) the penalty amounts with the carrier. At this point, penalties are typically further adjusted downward, and the original penalty

amount and the amount of the reduced penalty are entered in a stipulation agreement. The stipulation agreement is sent to an Administrative Law Judge (ALJ) for review and approval. In general, the ALJs approve the agreements without change.

As stated previously, the PUC does not have authority to issue penalties for hazmat or nuclear carriers. Excluding the 25 hazardous and nuclear material carriers from our file sample of 147 carriers, we reviewed files for the remaining 122 carriers and found penalty assessments for 10 carriers (about 8 percent) totaling \$24,850. We reviewed the most recent penalty for each and found that:

- **Penalty assessments appear subjective.** The PUC does not have formal written procedures in place for assessing penalties or reducing penalties once assessed. This results in a process that appears unsystematic, subjective, and at risk of errors and irregularities. Although statute sets the maximum amounts and specifies the types of violations that may be penalized, the PUC has discretion regarding whether all violations or all occurrences are included in calculating the penalty assessment. For example, if a violation occurs over multiple days, staff decide whether to penalize for one or more days of the violation. While judgment may be necessary, the PUC should, at a minimum, have standard guidelines specifying the factors that should be considered when determining the penalty amount that should be assessed. Without a standard methodology for making these decisions, the PUC is left vulnerable to potential abuses of the process and questions of inequitable treatment among carriers.
- **Justification for penalty reductions is not documented.** The PUC does not have a central log of all penalties assessed or collected. Therefore, we reviewed staff files, CCTS data, and carrier files, and compiled a list of penalty assessments for the last three fiscal years. In total, we estimate that the PUC issued 130 penalties originally totaling about \$470,000 over the past three fiscal years. We could not locate documentation of the final penalty assessments for 20 of these penalties. Of the remaining 110 penalties for which we could find documentation, 83 (about 75 percent) were reduced in negotiations between PUC staff and the carrier, resulting in final penalty assessments of \$153,000. Although the amount of the penalty reduction is identified in the stipulation agreement, justification for penalty reductions is not clearly documented. For example, the amount by which the 8 penalties in our sample was reduced varied widely. While one penalty started at \$10,000 and was reduced to \$5,000, another penalty started at \$1,600 and was reduced to \$200. Including staff's justification or reasoning behind penalty reductions would help to prevent possible impropriety in the penalty reduction process. This would also provide the Administrative Law Judges

with more information about the penalty assessment for use in making decisions to approve or deny the negotiated penalty amounts.

Because of the poor quality of documentation, concerns are raised about whether carriers are being penalized appropriately for violations cited. Fairness and integrity in the penalty assessment process are critical for the effective function of any regulatory body. The PUC should mitigate the risk of improprieties by establishing a standardized methodology and well-documented processes.

Recommendation No. 10:

The Public Utilities Commission should establish procedures for assessing and changing penalties, including the methodology used and factors to be considered in determining penalty amounts and adjustments. The methodology for all penalty assessments and adjustments should be clearly documented in the carrier files.

Public Utilities Commission Response:

Agree. The PUC will review and make recommendations as to creating a mandatory penalty system similar to the federal sentencing guidelines so that discretion is removed from the transportation staff. Such a system would give the Administrative Law Judge (ALJ) authority to reduce penalties based upon stated factual criteria. In the meantime, the PUC had established procedures in place concerning the assessment of penalties and adjustments, but had not documented these procedures. Written procedures are now documented in a Policy Directive signed by the PUC Director on September 5, 2003. In every case, the initial penalty assessment notice reflects the maximum penalty specified in statute for a particular violation. Prior to the audit, carrier files included penalty information, including the final order of the ALJ. Final action on any penalty assessment rests with the ALJ, not with Transportation Section staff. In each case, the ALJ's order clearly documents the amount of the penalty, the justification for any penalty, and/or the rationale or justification for any adjusted amount in an ALJ-approved settlement agreement. This process will continue in effect until subsequently modified by a mandatory system that limits staff and ALJ discretion.

Implementation Date: September 2003.

Penalty Tracking and Collection

As discussed, the Public Utilities Commission assesses penalties against motor carriers for various violations. During our audit we reviewed penalties assessed against 122 of the 147 carriers from our sample (we excluded hazmat and nuclear materials carriers because penalties for these carriers are under the jurisdiction of the Department of Public Safety). In addition, we reviewed aggregate penalty information from Fiscal Years 2001 through 2003 in order to obtain a comprehensive account of penalty assessments. In total, we identified 130 penalties assessed between Fiscal Years 2001 and 2003. Because of the condition of the penalty records, we could not determine that the 130 penalties we identified represent a complete listing of penalties assessed by the PUC. Specifically, we found:

- **The PUC does not have a complete record of penalty assessments.** CCTS tracks complaints and also houses limited penalty information, including penalty assessment and payment amounts. We found that while some staff use CCTS, other staff maintain penalty information in their own files, separate from any other motor carrier information. Overall, we found that 74 of the 130 penalties (about 57 percent) were duplicatively located in multiple files, and 12 of these penalties were maintained in four different sets of files. We also found that CCTS does not track penalty information related to tow carriers. In fact, penalties for tow carriers are not tracked in any kind of centralized manner, and one staff member indicated he tracks this penalty information by memory. As a result, the PUC has no complete listing of penalty assessments.
- **We could not determine whether penalties have been collected.** Based on the penalty information we were able to obtain, we estimate that between Fiscal Years 2001 and 2003 approximately 130 penalties totaling about \$470,000 were originally issued by the PUC. At the time of our audit, two of these had been sent to Central Collection Services and another five were pending a hearing with an ALJ. Of the remaining 123 penalties, we found that information for 55 penalties (about 45 percent) was incomplete. These included 20 penalties that were missing final assessment amounts. As a result, we were unable to estimate the final amount assessed for the 130 penalties. Of the 110 that did have final amounts, we estimated the total at about \$153,000. Additional missing information included assessment dates and payment information. Therefore, we were unable to determine whether penalties had been paid. Based on information from the State's accounting system and information from the Ports of Entry Division of the Department of Revenue (which deposits penalty collections into the same fund and account as the PUC), we estimated that the PUC collected a total of about

\$54,000 during Fiscal Year 2003. We were not, however, able to attribute these collections to specific penalties and, therefore, cannot determine which penalties have been paid, partially paid, not paid at all, or whether funds have been misappropriated.

- **Outstanding penalties are not sent to Central Collection Services.** State Fiscal Rules require that outstanding debts owed to the State be turned over to Central Collection Services (Collections) within the Department of Personnel and Administration 30 days after the debt is past due. PUC staff indicated that they do not regularly forward outstanding penalties to Collections after this expired time. Collections reported it had received four penalties from the PUC over the past three fiscal years. In one case, PUC staff indicated that a penalty totaling \$800 had been sent to Collections, but neither Collections nor the PUC has a record of this penalty being sent. Due to lack of complete penalty information, we were unable to fully identify all outstanding penalties or those that the PUC should have sent to Collections.

All revenue owed to the State should be collected in a timely manner. Penalty collections are deposited in the State's General Fund. Inadequate tracking of penalties precludes the PUC from properly identifying all outstanding penalties, including those that should be turned over for collection purposes. There is also the risk that the longer a penalty remains uncollected, the less chance the State has to collect the debt. The PUC should adequately track penalty information and comply with Fiscal Rules to ensure the State has the opportunity to collect all money owed.

Recommendation No. 11:

The Public Utilities Commission should improve penalty tracking and collection by:

- a. Developing and implementing a centralized database of penalty information with reporting functions to track penalty assessments and payments in a more global manner.
- b. Sending past due penalties to Central Collection Services in accordance with the State Fiscal Rules.

Public Utilities Commission Response:

Agree. All civil penalty assessments and payment status are and have been entered into and tracked in the PUC's Integrated Filings Management System. These docket-tracking functions are completed by the PUC's Case

Manager and are performed as part of the daily case management function. Since the Transportation Section staff does not perform this function, they were unaware of existing system capabilities and had not received the training necessary to utilize them. The PUC is working with the Department's information technology staff to develop specific civil penalty reporting functionality for use by Transportation Section staff. In the interim, until the improved capabilities are available, staff will receive appropriate training on existing tracking capabilities. All information about past-due penalties has been forwarded to Central Collection Services. The PUC will continue to forward all future past-due penalties to Central Collection Services in accordance with the State Fiscal Rules.

Implementation Date: The capability to generate reports for penalty assessments is anticipated by December 2003. Past-due penalties recommendation implemented in August 2003.

Revocation

We found the Public Utilities Commission does not use enforcement tools efficiently. Motor carriers are required to obtain a permit to operate in Colorado. Statutes stipulate that the PUC is responsible for enforcing the requirement that all carriers have permits and for enforcing rules and ensuring that violations are promptly prosecuted. The PUC is authorized to revoke or penalize common, contract, tow, exempt passenger and property, and hazmat and nuclear material carrier permits for noncompliance with the permit terms and conditions, including, but not limited to, insurance and safety requirements. To ensure compliance, the PUC may pursue criminal penalties, including a Class 2 Misdemeanor; seek a court injunction to cause the carrier to stop doing business; and/or issue civil penalties to carriers known to be operating without permits. The PUC rarely takes these actions, and since 1999 has only taken court action seeking injunctions against two carriers.

To determine the PUC's use of these enforcement tools, we reviewed a sample of 147 motor carriers with active permits, as well as 22 revoked motor carriers. We found the following:

- **Progressive discipline is needed for willful offenders.** Statutes specify that revocation should be used as an enforcement tool when carriers fail to comply with applicable rules and regulations. PUC staff informed us that they currently revoke permits only for insurance-related issues such as failure to carry an active insurance policy. The PUC does not use the revocation process as an enforcement tool for any other noncompliance issue, such as

carriers' consistently disregarding safety rules, failing to pay outstanding penalties, or failing to pay required fees. As an example, the PUC penalized a large taxi company about \$20,000 in each of the last two years for repeated violation of driver service hours. According to PUC staff, the taxi company would rather pay large penalties than ensure that its drivers drive safely and meet the PUC's standards of driving only 10 hours per day and not more than 80 hours in an eight-day period. During the PUC's most recent inspection and penalty assessment for this carrier, it found that one driver was falsifying driving records, and in four consecutive days the longest break the driver took from driving his cab was seven hours. The PUC should consider establishing a graduated enforcement approach that implements larger penalties each time violations are noted and that proceeds to revoke a carrier's permit for continued unremedied violations.

- **Revoked carriers operate without permits.** We contacted a sample of 22 carriers recently revoked for insurance lapses and found that 3 offered to provide services, indicating that they continue to operate without a permit. At the time we contacted them, these carriers had operated for an aggregate 148 days without permits. If the PUC investigated these revoked carriers, it could have levied penalties of about \$59,200 at the penalty rates in effect prior to the implementation of SB 03-225. Penalties are not part of the PUC's cash funding but are deposited in the State's General Fund. An internal PUC memo dated November 2001 states that "the Transportation Section will investigate each carrier being reinstated with a lapse of insurance coverage to determine whether there were any operations during the lapse." Further, it states that "a carrier found to have been operating during the lapse of coverage will be issued a [penalty] for a violation of [PUC rules]" and that "[penalties] may be issued regardless of whether the motor vehicle was operated for hire (with or without passengers or freight on board)." PUC staff do contact passenger carriers, and this contact consists of a phone call to inform the carrier that they should not continue to operate without a permit. However, the PUC rarely investigates these carriers or assesses penalties for operating without a permit. In addition, PUC staff informed us of four carriers who openly operate without permits and stated that the PUC relies on other entities, such as law enforcement agencies and the Ports of Entry, to catch these noncompliant carriers. While it is good to utilize all available resources to help detect carriers operating illegally, the PUC should also have preventative controls in place to prevent carriers from continuing to operate without a permit.
- **Carriers do not always pay the mandatory annual stamp fees.** Section 40-2-110.5(1), C.R.S., requires that every motor vehicle carrier issued a permit by the PUC pay an annual stamp fee of five dollars for each vehicle

that the carrier owns, controls, operates, or manages (hazmat carriers are excluded from paying annual stamp fees). The vehicle stamps are valid for the calendar year and the stamp fees are credited to the Motor Carrier Fund, which tracks funds collected and spent by the PUC. PUC staff remind carriers of the annual stamp fee requirement via yearly correspondence. However, after this correspondence, the PUC does not follow up to identify and suspend permits of carriers that fail to pay their annual stamp fees. During our file review of 106 motor carriers required to purchase annual stamps, we found that the PUC had no record indicative whether 17 carriers (approximately 16 percent of our sample) had paid their 2003 stamp fees. Two of these carriers did not purchase stamps or pay fees in 2002 or 2003, and one carrier did not purchase stamps in 2001, 2002, or 2003. We estimate that these 17 carriers have a total of over 60 vehicles for which the \$5 stamp fee has not been paid, and in total, we estimate the State has lost about \$375 in revenue. If similar percentages of the nearly 8,700 active carriers required to purchase annual stamps are not paying, the total amount of uncollected revenue could be significant.

- **Carriers may obtain new permits to avoid paying penalties.** We found that when the PUC imposes penalties for noncompliance and the carrier fails to pay, the same carrier is allowed to apply for and obtain a new permit in order to avoid paying penalties. In some cases, revoked carriers change their official business name in order to acquire new permits and continue operating with PUC authority. One compliance investigator informed us that carriers will sometimes claim to go out of business or claim bankruptcy, then reopen under a new name to avoid paying penalties.

We believe that more appropriate enforcement of state laws and PUC rules is needed to ensure the safety of passengers, property, and others traveling the roads with regulated motor carriers. The PUC should improve its use of the enforcement tools already available, including seeking criminal and civil penalties, penalizing and seeking court injunctions for carriers operating without permits, and revoking permits for carrier noncompliance with insurance, safety, rate, service area, and fee requirements. Some improvements could include performing sting operations to identify carriers that continue to operate without permits and automating processes and procedures for tracking and ensuring carriers pay motor carrier fees. The PUC could also benefit from additional enforcement tools. Taking additional and more frequent enforcement action may require an increase in the PUC's legal services resources.

We conducted a survey of other states' practices and found there are a number of additional enforcement tools the PUC could use to improve compliance. For example, motor carrier regulators in Nebraska and Nevada seize and impound

vehicles of carriers found to be operating without permits. Additionally, the PUC should prevent carriers from getting new permits under a new business name to avoid compliance or avoid paying penalties.

Recommendation No. 12:

The Public Utilities Commission should:

- a. Develop procedures for implementing graduated systems of enforcement including procedures for warning, penalizing, and revoking carrier permits due to repeated and continued noncompliance with safety-related rules and regulations, failure to comply with insurance requirements, and failure to pay penalties or annual fees.
- b. Automate processes for identifying carriers who have not paid annual stamp fees and suspend or revoke carrier permits when fees are not paid in a reasonable amount of time.
- c. Consider seeking statutory authority for additional enforcement tools, including impounding vehicles and preventing carriers with outstanding penalties from obtaining new permits.

Public Utilities Commission Response:

Agree. The PUC will develop written procedures for a graduated system of enforcement for any violations of statutes or Commission rules and orders pertaining to motor carriers. As part of the Integrated Filings Management System, Phase II of the system was implemented on July 28, 2003. The automated system now allows the PUC to identify and take appropriate action against carriers that have not paid the required annual vehicle identification stamp fees. In consultation with the Department of Regulatory Agencies, the PUC will consider seeking additional statutory authority in the coming legislative session for additional enforcement tools relating to transportation carriers.

Implementation Date: Written procedures regarding graduated enforcement will be developed and implemented in September 2003. The new automated processes were implemented in July 2003.

Abandoned Vehicles

Chapter 3

Introduction

Abandoned vehicles are defined in statute as vehicles left unattended for specified periods of time, depending upon whether the vehicle is abandoned on private or public property. Part 18 of Article 4, Title 42 of the Colorado Revised Statutes defines procedures for removal, storage, and disposal of vehicles abandoned on public property, while Part 21 of Article 4, Title 42 of the Colorado Revised Statutes defines procedures to be used for vehicles abandoned on private property. In general, the procedures for removing, storing, and disposing of abandoned vehicles are similar for vehicles towed from public or private property; the key difference is that private-property tows may be initiated by any property owner on whose property the vehicle was abandoned, and public property tows are initiated by law enforcement agencies. Abandoned vehicles may be towed for the following reasons:

Public Property: Statute defines vehicles as abandoned if they are left for 48 hours or longer on government-owned property, left unattended on public property for longer than any limit prescribed by local ordinance, or left at a police impound lot for longer than 72 hours.

Private Property: Statute states that any property owner can request that a tow carrier remove a vehicle from his/her property if the vehicle has been left unattended for 24 hours or longer, left unattended for longer than limits prescribed by any local ordinance, not removed from voluntary impound in accordance with the agreement (such as leaving a car with the auto mechanic), or not removed from involuntary impound within 48 hours (such as a vehicle that has been towed for illegally parking in a private lot).

The Department of Revenue and the Public Utilities Commission (PUC) share responsibility for regulating tow carriers and enforcing the abandoned vehicles laws. These agencies have the following duties:

Department of Revenue. The Titles Section within the Motor Vehicle Business Group at the Department of Revenue is responsible for administering state abandoned vehicle laws. The Department is responsible for registering tow carriers that are authorized to perform nonconsensual tows. Registration permits

the carrier to tow vehicles from private property, search the Department's electronic database on vehicle titles, and obtain a possessory lien on an abandoned vehicle. Possessory liens allow the tow carrier to be reimbursed for allowable towing and storage costs before the vehicle's other lienholders. The Department has the authority to cancel the registration of tow carriers who do not comply with statutory provisions related to these areas. The Department is responsible for maintaining the database of vehicle title information that is used by registered carriers and law enforcement agencies to search vehicle ownership information online. Additionally, the Department is responsible for collecting and maintaining forms submitted by tow carriers and law enforcement agencies related to tows of abandoned vehicles.

Public Utilities Commission. The PUC is responsible for issuing permits to tow carriers for the purposes of operating a tow truck in Colorado and for performing compliance and safety inspections, as discussed previously in this report. With respect to abandoned vehicles, the PUC is responsible for prescribing the maximum allowable towing charges and storage fees that carriers can recover for nonconsensual tows. Section 40-13-109, C.R.S., gives the PUC authority to revoke a tow carrier's permit to do business in Colorado for noncompliance with the abandoned vehicles laws and PUC rules or regulations. Carriers can be charged with a Class 2 Misdemeanor for non-compliance with abandoned vehicle laws.

During our audit we reviewed title information, tow carrier information, and law enforcement agency information for two samples of abandoned vehicles. We also interviewed law enforcement agencies and compared appraisal and sales values for abandoned vehicles to market value. We identified significant concerns with the handling of abandoned vehicles in Colorado.

Owner Notification, Appraisal, and Sale of Abandoned Vehicles

In order to determine compliance with state laws for abandoned vehicles, we reviewed information on tow carrier and law enforcement agency searches of the Department of Revenue's vehicle titles database and cross-matched this with information from motor vehicle title records. Carriers and law enforcement agencies are required to search the titles data in order to determine ownership of an abandoned vehicle. Law enforcement agencies may also search the database for other reasons, such as research on whether the vehicle was involved in criminal activity. Our sample methodology was twofold:

Abandoned vehicles identified as a result of the data match of the Department's records. We selected a sample of 73 vehicles searched by 23 different tow carriers and 16 different law enforcement agencies from the Department's database of title searches. We requested title history information from the Department for these vehicles and found evidence that 34 of the vehicles had been towed, stored, and sold as abandoned vehicles. We requested information on these 34 vehicles from the tow carriers and law enforcement agencies that searched the vehicles' titles.

Abandoned vehicle sales reported to the Department on form DR 5001 (Report of Sale of Abandoned Vehicle). We sampled 23 Report of Sale documents the Department held for us at our request; typically, these forms are shredded upon receipt.

In total, we reviewed 57 abandoned vehicle sales. Since not all information was available for all the vehicles in our sample, as discussed later in this chapter, the results below are based only on cases in which the applicable information was available for the particular requirement being tested. Our findings follow.

Owner Notification—Statutes require that tow carriers and law enforcement agencies notify vehicle owners, lienholders, and the Department of Revenue of abandoned vehicles towed from private or public property within 10 working days of the tow. In our sample from the titles database, we found that notification of the owners and lienholders did not occur within 10 working days for 16 of the 35 vehicles (46 percent) sampled. We noted that, in one case, the tow carrier sent the owner's notification to the vehicle driver's address rather than to the vehicle owner's address, raising questions of whether the owner had ever received notice that the vehicle had been towed. In this case, the driver was not the owner but only the lessee of the vehicle. The notification to the driver was returned as "undeliverable." The vehicle was a newer model vehicle with a blue book value of nearly \$12,000.

Appraisal of Abandoned Vehicles—State law requires that abandoned vehicles be appraised by a licensed auto appraiser. Sections 42-4-1802(4) and 42-4-2102(2), C.R.S., specifically define an appraisal for an abandoned vehicle as "a bona fide estimate of reasonable market value." We found that vehicles are not appraised independently or at market value. Specifically, out of 50 abandoned vehicle sales for which we could determine who appraised the vehicle, two abandoned vehicles (about 4 percent) were appraised by the same entity that purchased the vehicle. Twenty-seven of the thirty-one vehicles in our sample (87 percent) were appraised for less than blue book trade-in value. In total, the appraised value for these vehicles was about \$45,000 lower than the blue book value, or about \$1,700 per vehicle. This underappraisal could result in lost

revenues to the State. Additionally, one law enforcement appraiser told us that he appraises all vehicles, regardless of actual market value at \$201. This is especially risky for consumers purchasing abandoned vehicles, since state law specifically requires that vehicles appraised at less than \$200 be junked, and that these vehicles cannot be re-titled. Overappraising vehicles that have market values less than \$200 could result in consumers' driving vehicles that are not roadworthy.

Sale of Abandoned Vehicles—Statutes require that abandoned vehicles towed from both private and public property be sold in a commercially reasonable manner. According to statute, commercially reasonable methods for sale include sale by a licensed motor vehicle dealer or wholesaler, or sale through a classified newspaper advertisement published in Colorado. Further, vehicles are not to be sold to any party with an interest in the vehicle, including an owner, officer, or partner of the tow carrier that towed the vehicle. We found significant problems with vehicle sales, including:

- 25 of the 34 vehicles (74 percent) in our data match sample contained no evidence of public sale. We did not review this information for vehicles in our report of sale sample.
- 23 of the 39 vehicles (59 percent) where we could determine who towed and bought the vehicle were sold to the tow carrier that towed the vehicle.
- 20 of the 52 vehicles (38 percent) in our sample for which we had appraisal and sales price information were sold for a total of \$7,700 less than their appraised value.
- 28 of the 31 vehicles (90 percent) where there was enough information to determine a blue book value were sold for a total of more than \$46,500 less than blue book value.

On the basis of our review, it appears that abandoned vehicles are in some instances inappropriately sold by tow carriers without proper owner notification, and some carriers are appraising and selling vehicles for less than market value and then buying the vehicles themselves. Law enforcement agencies are appraising vehicles at less than market value and selling or giving the vehicles to the tow carrier that towed the vehicle.

The Department of Revenue does not currently review forms submitted for accuracy or compliance with state laws and PUC rules. The Department does not currently have a process in place to correlate information from abandoned vehicle tow reports with abandoned vehicle sales reports. Therefore, the Department cannot track the

number of vehicles towed, sold, or returned to owners or determine if owners are notified timely, if vehicles are sold after expiration of appropriate notification periods, or if tow carriers' recovery of storage charges is appropriate. Consequently, tow carriers may be frequently profiting on abandoned vehicle sales beyond what is statutorily intended, and revenue to the Highway Users Tax Fund (HUTF) has likely been lower than it should be. While we have no way of determining the total number of abandoned vehicles towed and sold (as discussed later), the table below shows actual revenue remittances from abandoned vehicle sales for the last three fiscal years.

Department of Revenue Abandoned Vehicles Revenue Remittances Fiscal Years 2001 to 2003			
	Fiscal Year 2001	Fiscal Year 2002	Fiscal Year 2003
Revenue Remitted	\$25,175	\$13,814	\$29,380
Transferred to HUTF	\$20,971	\$12,855	\$24,271
<p>Source: Office of the State Auditor analysis of COFRS financial information. Note: Differences between revenues remitted and transfers to HUTF are timing differences in which funds were held over to the following fiscal year in order to comply with Sections 42-4-1809(2)(d) and 42-4-2108(2)(c), C.R.S., which require that the Department hold proceeds from the sale of an abandoned vehicle for 120 days before crediting the funds to the Highway Users Tax Fund (HUTF).</p>			

The Department of Revenue and the PUC are both given statutory authority to enforce abandoned vehicle laws. For example, Sections 42-4-1806(2)(b) and 42-4-2105(2)(b), C.R.S., give the Department the authority to cancel its registration of tow carriers who do not comply with Parts 18 or 21 of Article 4, Title 42 of Colorado Revised Statutes. Cancellation of registration prevents tow carriers from searching vehicle titles electronically and from towing vehicles from private property or obtaining a possessory lien on an abandoned vehicle, and thus getting paid for the tow and storage charges prior to other lienholders. The PUC is also given authority to revoke a tow carrier's permit to do business in Colorado for noncompliance with the abandoned vehicles laws or PUC rules and regulations. Additionally, carriers can be convicted of a Class 2 Misdemeanor for noncompliance with abandoned vehicle laws. We found that neither agency uses the enforcement tools available for compelling tow carriers to comply with the law. In fact, the Department of Revenue does not currently have the hearing processes in place that are statutorily required to cancel carrier registrations, and as stated previously, the PUC does not currently revoke carrier permits for anything other than insurance violations.

Recommendation No. 13:

The Department of Revenue should improve enforcement of abandoned vehicle laws by:

- a. Consolidating abandoned vehicle reports as necessary to facilitate correlation of information on abandoned vehicle tows and sales for analysis of compliance with state laws and regulations.
- b. Analyzing abandoned vehicle reports to ensure that vehicles are sold in a commercially reasonable manner, sold and appraised at appropriate values, and that the correct amount of revenue is remitted to the State. The Department should take appropriate corrective action for noncompliant carriers and enhance training.
- c. Issuing guidelines for appraisal and sale of vehicles and providing training to tow carriers and law enforcement agencies on appraisal and sale standards for abandoned vehicles.
- d. Using enforcement tools currently available, such as cancellation of carrier registration, prosecution of carriers, and reporting information to the Public Utilities Commission, for possible revocation of the carrier's permit.

Department of Revenue Response:

- a. Agree. The Department is currently in the process of combining the DR2173 Motor Vehicle Bill of Sale and the DR5001 Report of Sale of Abandoned Motor Vehicle documents. The combining of these forms will enhance the Department's ability to correlate information on abandoned vehicle tows and sales.

Implementation Date: January 2004.

- b. Agree. The Department will establish a process to review the new Reports of Sale of Abandoned Vehicles that are submitted to the Department. The new form consolidates the information on two prior forms, and will make it easier to identify instances of non-compliance. In addition, the Department will establish procedures and follow-up when non-compliance is identified.

Implementation Date: January 2004, depending upon the availability of resources.

- c. Agree. The Department will issue guidelines to assist local law enforcement agencies and others who appraise abandoned vehicles. Initially the Department will post the new guidelines on its website in a new section being developed, with the goal of adding in-person training as resources become available.

Implementation Date: Internet Web site enhancements - January 2004.

- d. Agree. The Department will continue to work with the PUC and cancel carrier registrations when warranted. The Department is taking steps with the PUC to develop systems for documenting complaints and notifying each agency of tow carrier status changes. Placement of the enforcement function within the Auto Industry Division may enhance the Department's ability to address non-compliant carriers.

Implementation Date: January 2004.

Recommendation No. 14:

The Public Utilities Commission should, in coordination with its efforts to improve regulatory activities discussed in Chapters 1 and 2, improve its efforts to enforce abandoned vehicle laws.

Public Utilities Commission Response:

Agree. The PUC Transportation Section Chief met with the Department of Revenue's Director of Titles and Registration to coordinate both agencies' efforts to improve regulatory activities and the enforcement of the abandoned vehicle laws and agency rules. The PUC is committed to enforcing the abandoned vehicle laws with respect to potential towing permit revocations whenever violations are identified by the Department of Revenue and are brought to the PUC for action. The PUC has effective processes and rules in place to deal with potential permit revocation actions. The responsibilities, functions, and processes of the respective agencies have been clarified and agreed to by both agencies.

Implementation Date: September 2003.

Fees

Tow carriers and law enforcement agencies are allowed by statute to recover the reasonable costs of towing and storage of vehicles abandoned on public and private property. State law requires the PUC to prescribe rules that set the maximum rates for towing and storage of abandoned vehicles. State law also allows local governments to establish their own processes that supercede state laws for handling vehicles abandoned on public property. State law specifically allows local governments to develop local policies for towing, appraising, and selling abandoned vehicles, and allows them to contract with tow carriers directly, prescribing tow and storage rates within those contracts. Unless local ordinances for public property tows specifically state that residual sales revenues after recovery of tow costs are to be kept by the municipality, all residual revenues are required to be submitted to the Department of Revenue and deposited to the HUTF. We found that oversight of towing and storage charges is lacking, thereby creating opportunity for carriers to profit beyond what is intended by law for towing the vehicles.

Discrepancies Between Published Rates and Allowable Rates

The Department of Revenue is statutorily responsible for maintaining forms for use by tow carriers and law enforcement agencies in reporting the sale of an abandoned vehicle and for distribution of sales proceeds. The Department publishes form DR 5001, the "Report of Sale of Abandoned Vehicle" form, for reporting these sales and the tow and storage costs kept by the carrier. We reviewed the DR 5001 form and found that it contains incorrect information on the allowable tow and storage rates. The tow and storage rates listed on the DR 5001 form do not conform to the non-consensual tow rates set by the PUC. The differences are as follows:

Abandoned Vehicle Towing and Storage Rates Allowed by the PUC vs. Rates on the Report of Sale of Abandoned Vehicle Form		
	PUC Rule 723-9-17	Department of Revenue’s Report of Sale of Abandoned Vehicle Form (DR 5001)
Towing Rates	Tow: \$130, which includes first 24 hours of storage. Mileage: \$2.50/mile	Tow: \$50 maximum Mileage: \$1.00/mile
Storage Rates	\$20/day for up to a maximum of 60 days	\$4/day for up to a maximum of 60 days
Source: Office of the State Auditor’s analysis of Department of Revenue’s forms and PUC rules.		

These inconsistencies are complicated by the fact that law enforcement agencies may contract with tow companies directly, setting towing and storage rates that differ from the PUC rules.

Oversight of Rates Charged

In addition to problems with the Department’s forms, we reviewed a sample of 23 Report of Sale documents and found that tow carriers often report keeping more than the allowed towing costs. On 5 of the 23 Report of Sale documents (22 percent), carriers reported storage fees of more than \$2,000. This is nearly double the maximum amount that a carrier is allowed to charge for 60 days of storage under PUC rules. One carrier recovered \$12,000 for storage. The amount of storage costs reported and recovered by carriers is important, since the tow carriers are allowed to recover costs before sending other lienholders or the State residual revenues. Department of Revenue staff confirm that they do not currently review Report of Sale forms submitted, and as discussed later, unless these forms are remitted with revenue, the Department shreds the forms upon receipt. Additionally, neither the Department nor PUC tracks which municipalities have developed ordinances regarding towing and storage of abandoned vehicles, and therefore, neither agency can determine if carriers are charging inappropriate rates. Consequently, the Department is likely not identifying carriers that charge more than allowed for towing and storing vehicles, and the State may be losing revenue. Further, the PUC does not routinely perform audits of rates charged by any motor carriers, including tow carriers. This lack of controls over rates charged creates a risk that consumers are overcharged and that revenues to the State are underreported.

Recommendation No. 15:

The Department of Revenue should improve oversight of tow and storage charges recovered from abandoned vehicle sales by:

- a. Revising the Report of Sale of Abandoned Vehicle form to ensure that tow and storage rates stated on the form are in compliance with Public Utilities Commission rules. The form should indicate whether the tow was conducted in accordance with the contractual requirements of a law enforcement agency and, therefore, not subject to state limits on towing and storage rates.
- b. Requesting that law enforcement agencies report information on contractual agreements with tow carriers that provide for different tow and storage rates than allowed by Public Utilities Commission rules.
- c. Reviewing all Report of Sale of Abandoned Vehicle forms submitted for compliance with limits on towing and storage fees and following up as appropriate.

Department of Revenue Response:

- a. Agree. The Department is in the process of revising the Report of Sale of Abandoned Vehicle form. To facilitate the evaluation of compliance recommended in this report, the new form will require towing carriers to indicate actual towing fees charged as well as an indication if the fees are based on a contractual arrangement with a local law enforcement agency, and if so, which agency. The form will also include a notice that fees must be in compliance with rates set in PUC regulations unless they qualify for the contractual exemption above.

Implementation Date: January 2004.

- b. Agree. The Department will request information from local law enforcement agencies about their contractual agreements with private tow carriers and use their responses to help identify instances of non-compliance.

Implementation Date: January 2004.

- c. Agree. The Department will establish procedures to review the Report of Sale of Abandoned Vehicle forms and for following up when instances

of non-compliance are identified. We will initially review a sample of the forms, and will increase the percentage of forms reviewed based on resource availability.

Implementation Date: Dependent upon resource availability.

Controls Over Documentation

Because of a lack of documentation, the Department of Revenue does not have basic information on abandoned vehicles, including the number of vehicles towed, returned to owners, or sold. Additionally, county staff processing new title documents and transferring titles for abandoned vehicles to new owners are not following statutory requirements for issuing new titles. When combined, these deficiencies create significant risk of fraud and abuse in the towing, storage, and sale of abandoned vehicles.

Re-titling of Abandoned Vehicles

Statutes require specific documentation for transferring the title for an abandoned vehicle to its new owner. Specifically, purchasers of abandoned vehicles must submit documents reporting the abandonment, removal, and sale of the abandoned vehicle to the Department of Revenue in order to receive a new title. We found that these documents were missing for vehicles that were clearly abandoned and sold. Law enforcement agencies did not report the abandoned vehicle tow to the Department for 4 of the 34 sold vehicles (12 percent) in our sample. There was no documentation that the law enforcement agency had reported the tow to the Department in either the Department's title history records or in the law enforcement agency's records. This also indicates that county staff processing new titles are not requiring that all information be submitted before issuing a new title for an abandoned vehicle. These documentation requirements are stipulated in statute, and in the Department's instructions for processing abandoned vehicles. Additionally, the Report of Sale document for abandoned vehicles was not included in the title history for 32 of the 34 abandoned vehicles in our sample (94 percent).

System Controls

This lack of documentation is a serious weakness in controls over the towing and sale of abandoned vehicles in the State. Statutes require that tow carriers and law enforcement agencies report tows of abandoned vehicles to both the Department of Revenue and the Colorado Crime Information Center (CCIC), a database

administered by the Colorado Bureau of Investigation (CBI) within the Department of Public Safety. CCIC tracks information reported by law enforcement agencies around the State. However, neither the Department of Revenue nor CBI maintains ongoing records of abandoned vehicles towed, and there is currently no mechanism for linking reports on towed vehicles to those on vehicle sales. Specifically, Department of Revenue staff stated that paper reports of abandoned vehicle tows and sales (with no revenue reported) are shredded upon receipt, and CBI purges records of abandoned vehicle reports submitted by law enforcement agencies after about 10 days. Without information, neither the Department of Revenue, the PUC, nor CBI has complete records of abandoned vehicles towed or the outcome of the tow. This lack of information systematically limits the Department's ability to analyze critical data and identify trends in carrier or law enforcement agency behavior that could be the result of fraudulent or corrupt activity. Lack of system controls, combined with the problems discussed earlier in this chapter, significantly increases the risk that carriers are towing vehicles, selling them, and not reporting the tow or sale to the owners or the Department.

In addition to purging most reports of abandoned vehicles received, Department staff also allow tow carriers and law enforcement agencies to report less than statutorily required information on abandoned vehicle tows. Department staff indicated that they believe statutory reporting requirements for registered tow carriers and law enforcement can be satisfied by an online abandoned vehicle search of the Department's vehicle titles data. However, we do not believe that the online search process satisfies statutory reporting requirements. Statutes require that carriers and law enforcement agencies report information on abandoned vehicles towed, including (1) who authorized the tow, (2) when the vehicle was towed, (3) where the vehicle was towed from, (4) contact information for the tow carrier that towed the vehicle, and (5) contact information for the law enforcement agency that checked if the vehicle was reported as stolen. However, the Department's online vehicle titles search database merely tracks the registered tow carrier or law enforcement agency performing the search and which vehicle's title is being searched by the carrier or agency. From the information in the titles search database, it is not possible to determine who authorized the vehicle tow, when the vehicle was towed, where the vehicle was towed to, or statutorily required contact information.

The Department of Revenue is the only entity in the State that receives documentation from each stage of the abandoned vehicle process from tow to sale. Because the Department does not track and store this information, there is no way to determine the total number of abandoned vehicles towed in Colorado or how many of those vehicles are sold, as opposed to the number claimed by the owner. Further, the Department cannot effectively identify patterns of fraud or other abuses of the abandoned vehicle processes, including determining if revenues are appropriately submitted to the State's Highway Users Tax Fund.

Recommendation No. 16:

The Department of Revenue should improve controls over the abandoned vehicle process by:

- a. Implementing policies and procedures and training county staff on processing requests for new title documents for abandoned vehicles. Procedures should ensure information submitted is complete and accurate and should prevent a new title from being issued without the submission of all required reports.
- b. Tracking and recording critical information on abandoned vehicle tows and sales in a searchable database that allows Department staff to analyze trends in carrier and law enforcement practices for processing abandoned vehicles.
- c. Making appropriate changes to the title search database to incorporate the statutorily required aspects of an abandoned vehicle report and, if possible, linking the abandoned vehicle information to the centralized database discussed in Part b. of this recommendation.

Department of Revenue Response:

- a. Agree. The Department will provide training to counties for processing new title documents for abandoned vehicles. In addition, the Department recently revised the Titles Manual and is in the process of making it available to the County Clerks electronically. The Department will also work on enhancing its Web site to provide easily accessible information to the counties regarding these titling procedures.

Implementation Date: January 2004.

- b. Agree. The Department will analyze available alternatives to establish a searchable database to track abandoned vehicle towing data as recommended by the auditors. Implementation priority will depend on monetary costs and other resource requirements.

Implementation Date: Dependent upon the availability of resources.

- c. Agree. The Department will analyze available alternatives to upgrade the current title search database to include the recommended compliance information and to link the titles search database to the tracking system

in item (b) above. Implementation priority will depend on monetary costs and other resource requirements.

Implementation Date: Dependent upon the availability of resources.

Security of Title Information

The federal Driver's Privacy Protection Act of 1994 protects the confidentiality of vehicle title information. The Act was in response to concerns that title records and other driver information were being used to inappropriately access an individual's personal information, including addresses, through searches of vehicle identification numbers or license plates. The Department of Revenue is responsible for the enforcement of this law in Colorado because it oversees the State's vehicle titles database.

Until April 2001, the Department performed all title searches by written request only, and individuals or tow carriers requesting information had to list the reasons they were searching the title record. In April 2001, the Department implemented online search capabilities for title searches and began allowing all tow carriers and law enforcement agencies registered with the Department to search the titles data electronically. One of the requirements for a carrier to be registered to search titles data online is an active permit with the PUC. In July 2001, the Department developed a Memorandum of Understanding with the PUC, stating that the PUC would provide information on revoked tow carriers to the Department twice per month. However, Department staff report that this process did not begin until February 2003. Upon receipt of the list, Department staff report that they cancel the carriers' ability to obtain titles information from the Department either electronically or by written request. However, we found that the Department's processes are not eliminating revoked carriers' ability to access vehicle title information.

In February 2003, we reviewed the list of all tow carriers registered with the Department to perform online searches of titles data and compared this list for the same point in time with the Transportation Section's records of actively permitted tow carriers. We found that out of 310 tow carriers registered to perform online searches of the titles database, 47 carriers (15 percent) did not have active PUC permits as required by statute. For example, the PUC revoked the permit of one carrier in our sample in September 2002. However, this carrier continued searching the Department's database until November 2002 and performed 261 searches for 80 different vehicles. Carriers without active PUC permits are not statutorily allowed to perform nonconsensual tows and, therefore, should not be allowed to access the Department's title and registration data.

We are also concerned about the high volume of online searches conducted by tow carriers. Search volumes appear to be excessive given the percentage of searches in our sample that we were able to link to an abandoned vehicle. In our sample of 32 searches conducted by tow carriers, 6 (about 19 percent) had no evidence that the vehicle was either towed or sold as an abandoned vehicle. It is possible that these six vehicles were either returned to their current owner and not re-sold, or that the sale of the vehicle has not progressed to the point of issuing a new title. Because tow carriers (as opposed to law enforcement agencies) are only allowed to search titles data to determine ownership of an abandoned vehicle, we expected that more of the searches would have resulted in documentation in the title history that indicated the vehicle had been abandoned. In other words, it appears that almost 20 percent of the searches conducted by tow carriers were not performed for the purpose of searching an abandoned vehicle’s title. (Because government agencies and law enforcement agencies are allowed to search for more reasons than only abandoned vehicle purposes, we did not perform this analysis on government searches.) Online search volumes for the past three fiscal years for tow carrier searches have risen by about 66 percent.

Department of Revenue Online Vehicle Title Searches Performed by Tow Carriers Fiscal Years 2001 to 2003				
	Fiscal Year			Increase Over 3 Years
	2001¹	2002	2003²	
Tow Carrier Searches	21,816	28,552	36,208	66.0%
<p>Source: Office of the State Auditor’s analysis of vehicle title search database of all searches from July 1, 2000, to March 22, 2003.</p> <p>¹ Online searching capabilities were not fully implemented until April 2001, however, the Department began testing and piloting the system in July 2000.</p> <p>² Fiscal Year 2003 data are through March 22, 2003.</p>				

Additionally, it is interesting to note that there were 36,000 tow carrier searches in Fiscal Year 2003, but the State collected about only \$30,000 from the sale of abandoned vehicles during this period. As discussed previously, the Department needs to make changes to the abandoned vehicle reporting process that will enable it to track all vehicles towed as abandoned, and reconcile those reports to sales information. Once the Department begins tracking abandoned vehicle reports, it should compare those reports with online searches to identify patterns of abusive carrier access of titles data.

Recommendation No. 17:

The Department of Revenue should enforce the provisions of the federal Driver's Privacy Protection Act and associated state laws by:

- a. Restricting tow carrier access to the title search database for reasons other than abandoned vehicle tows. As part of this, the Department should match information in the required abandoned vehicle reports to the searches conducted. Instances of identified carrier abuse of online searches should result in cancellation of the carrier's access to the data.
- b. Periodically comparing its entire carrier database with the Public Utilities Commission's list of active carriers, either online or through a download from the Public Utilities Commission's Web site, to ensure against any carrier with a revoked permit illegally accessing the Department's titles data.

Department of Revenue Response:

- a. Agree. The Department currently requires that all tow carriers complete a Request and Release form annually. Tow carriers use this form to certify that the information they obtain will be used to provide notice to the owner of a towed or impounded vehicle. The Department will examine the feasibility of adding additional functionality to the IDS system to require tow carriers to specifically identify the purpose of each search. Implementation priority will depend on monetary costs and other resource requirements.

Implementation Date: Dependent upon resource availability.

- b. Agree. The Department will periodically examine the complete list of tow carriers and their permit status as provided through the PUC Web site and update the Tow Carrier Registration database to prevent tow carriers whose status is anything other than active from searching the database for owner information.

Implementation Date: November 2003.

Complaints

Other than law enforcement, the Department of Revenue is the most visible state agency handling vehicle title-related issues, including tows of abandoned vehicles. The notice that tow carriers are required to send to the vehicle owner and lienholders states that the vehicle "has been reported abandoned to the Colorado Department of Revenue, Motor Vehicle Titles Section." As a result, the Department receives complaints from consumers that relate to tow carrier services and abandoned vehicle tows. Department staff stated that generally complaints are related to the tow's being unauthorized or the tow carrier's charging too much for towing and storing the vehicle.

During our audit we found that the Department does not have a system for tracking and processing complaints, and does not typically forward complaints to the PUC. As discussed in Chapter 1, we found that PUC staff do not enter tow carrier complaints into the PUC's system in a timely manner. The Department has limited enforcement authority over tow carriers, while the PUC has more powerful enforcement authority including the ability to inspect tow carrier records, issue civil penalties, and revoke tow carrier permits, thus eliminating their ability to provide tow services. As such, it is critical that the Department of Revenue notify the PUC of complaints about inappropriate tow carrier practices. This lack of coordinated effort results in unresponsive and ineffective government services for consumers and tow carriers.

Recommendation No. 18:

The Department of Revenue should develop a process for handling complaints related to abandoned vehicles that includes:

- a. Formalizing procedures to track complaint data such as the date of receipt, the date closed, and the disposition of the complaint.
- b. Working with the Public Utilities Commission to develop a reasonable method for tracking and reporting complaints against tow carriers.
- c. Implementing a systematic process for communicating complaints regarding tow carriers to the Public Utilities Commission.

Department of Revenue Response:

- a. Agree. The Department will formalize procedures to track data related to abandoned vehicle complaints to include the date of receipt, the date closed and the disposition of the complaint.

Implementation Date: November 2003.

- b. Agree. The Department and the PUC have begun working to develop a process for tracking and reporting towing carrier complaints related to abandoned vehicles as well as other tow carrier issues not related to abandoned vehicles.

Implementation Date: November 2003.

- c. Agree. The Department will formalize its process to communicate information including suspected instances of towing operator non-compliance and abandoned vehicle complaints to PUC.

Implementation Date: November 2003.

Recommendation No. 19:

The Public Utilities Commission should improve its handling of tow carrier complaints forwarded by the Department of Revenue by investigating all complaints in an efficient manner and reporting the outcome of the complaint to the Department.

Public Utilities Commission Response:

Agree. There have been discussions with the Department of Revenue and agreement has been reached as to how complaints will be handled. A complaint intake form has been developed and will be used by the Department of Revenue. The form will document the pertinent complaint information necessary to facilitate further PUC action. Complaint information will be sent electronically by the Department of Revenue to the PUC. The complaints will form the basis upon which the PUC can initiate potential permit revocation proceedings.

Implementation Date: September 2003.

Interagency Communication

Since the Department of Revenue and the PUC share the responsibility for administering state laws on abandoned vehicles, the two agencies must effectively communicate information in order to ensure that problems are identified and enforcement action is taken as appropriate. House Bill 99-1024 created specific enforcement authority within the PUC to revoke tow carrier permits for non-compliance with abandoned vehicle laws. Prior to this, the PUC had authority to revoke tow carrier permits only for the carrier's noncompliance with the public utilities laws and PUC rules and regulations. The legislative summary for HB 99-1024 stated that the intent of the Act was to serve as "a means to reduce the corrupt activities of tow carriers who illegally possess and sell abandoned vehicles." However, the PUC does not have direct access to important abandoned vehicle information, such as information on the sales of abandoned vehicles or the fees charged by tow carriers.

The Department of Revenue and the PUC entered into a Memorandum of Understanding (MOU) dated July 2001 to facilitate reporting of tow carrier problems and complaints related to abandoned vehicles and thereby to provide the information needed by the PUC to pursue enforcement action. The MOU required the PUC to provide the Department of Revenue with information on the revocation of tow carrier permits, and the Department was to communicate consumer complaints related to tow carrier activities to the PUC. Additionally, the two agencies were to meet quarterly to discuss tow-carrier-related issues. However, staff at both agencies confirm that the communication outlined in the MOU does not occur. Further, both agencies report that the MOU was not renewed for Fiscal Year 2003 and, at the time of our audit, had not been renewed for Fiscal Year 2004.

As discussed, we found that the Department does not review or reconcile abandoned vehicle documentation, including reports of abandoned vehicle tows, abandoned vehicle sales, and carriers' reports of tow and storage fees. As a result, the Department has little information about the vehicles towed, whether those vehicles were sold, and whether carriers are following the statutory requirements for owner notification, sales, and revenue disbursement. Therefore, it is unlikely the Department could identify, document, or report inconsistencies or potentially fraudulent tow carrier practices to the PUC.

Our findings are similar to those identified over two years ago in an audit completed in May 2001 by the Department of Revenue's internal audit section. The audit recommended that state agencies work together to better enforce the abandoned vehicle laws. There are significant risks related to the treatment of abandoned

vehicles that are not being addressed by either the Department or the PUC. In order to maximize the efforts of both agencies, increased communication of problems, including evidence of abusive tow carrier practices, is essential for the enforcement of state laws and protection of consumers.

Recommendation No. 20:

The Department of Revenue should work with the Public Utilities Commission to more efficiently coordinate communication of potentially fraudulent activities of tow carriers and formalize interagency correspondence to improve the PUC's ability to perform additional research and revoke permits as appropriate.

Department of Revenue Response:

Agree. The Department and the PUC have agreed to meet on a monthly basis in order to coordinate communication regarding potentially fraudulent activity of tow carriers and to enhance the PUC's ability to perform additional research and revocations as appropriate.

Implementation Date: September 2003.

Recommendation No. 21:

The Public Utilities Commission should work with the Department of Revenue to identify efficient methods of communicating and documenting inappropriate tow carrier activities, and use such communication to take effective action against non-compliant carriers.

Public Utilities Commission Response:

Agree. In addition to the complaint handling procedures identified for Recommendation No. 19, the PUC Transportation Section Chief and the Department of Revenue's Director of Titles and Registrations have agreed to meet periodically to discuss towing carrier activities of mutual interest. Improved communication between the two agencies should result in better coordination of the respective agencies' regulatory activities with respect to towing carriers and more effective enforcement efforts. Adherence to formalized complaint tracking procedures of the Department of Revenue will assist in identifying potential enforcement proceedings under the PUC's

jurisdiction. Sustaining effective interagency communication is the responsibility of the individuals involved and emphasis will be placed in that area.

Implementation Date: September 2003.

Management and Administration

Chapter 4

Introduction

As noted earlier, the Public Utilities Commission (PUC) handles regulatory and administrative duties including processing permit applications, tracking carriers' insurance, revoking carriers' lapsed insurance, issuing vehicle identification stamps, collecting required fees, approving tariffs and rates, reviewing carriers for safety and compliance, assessing penalties, and processing complaints. This is a substantial responsibility given that, as of June 2003, the PUC had issued over 10,800 active permits for seven different types of passenger and property carriers. In turn, each carrier may operate a fleet consisting of numerous vehicles. The primary objectives for this audit were to determine whether the PUC has adequate controls and procedures in place to ensure that motor carriers are properly permitted, insured, monitored, and revoked for noncompliance as appropriate.

As part of the audit, we reviewed records for a sample of 147 active carriers. Documentation reviewed included permit applications, insurance forms, revocation notices, annual fee payments, compliance and safety inspections, tariff schedules, penalty assessments, and complaint information. We requested information from a sample of common carriers and tow carriers relating to the services provided and rates charged for a one-week sample period. We also reviewed a sample of 22 motor carriers whose permits were recently revoked. We found that the PUC does not have controls in place to ensure that documents submitted by carriers and other carrier-related information are maintained and managed appropriately. Because of this, we were unable to conduct a comprehensive review of carrier information. We believe that the condition of the PUC's records significantly impacts its ability to ensure that carriers operate safely, are properly insured, charge only the allowed rates, and operate only in allowed service areas. Further, we found that the PUC needs to improve its general management and staff oversight to ensure greater accountability for the quality of regulation for which it is responsible. These issues are detailed in this chapter.

The PUC has four information systems it uses to track various carrier documentation. These systems include:

- **Operating Rights System (OpRts)**—Tracks information on all carriers, including contact information for the carrier; permit information (such as the permit number, date of issue, and permit status); insurance information, including insurance company, policy number, and effective dates; and activity logs that capture changes in carrier record information, such as dates and number of annual stamps purchased by date, carrier name changes, “show cause” status, revocations, changes in insurance policies, and carriers’ permit status.
- **Consumer Contact Tracking System (CCTS)**—Tracks complaint information for all carriers and penalty information for all except tow carriers. CCTS is capable of tracking complainant information, date of complaint and resolution of complaint, contact notes to describe how the complaint is handled, and penalty assessment and payment information.
- **Integrated Filings Management System (IFMS)**—Tracks dockets, orders, and other relevant documentation for common and contract carriers regulated by the PUC. Additionally, the IFMS system tracks and indexes all microfilmed and electronically imaged documents for all types of motor carriers. There is some overlap between the OpRts system and the IFMS system in tracking carrier information.
- **Automated Transportation Application Program (ATAP)**—Generates formal letters, notices, and orders for common and contract carriers. Letters address such things as information necessary to complete an application for permit and public notices informing common or contract carriers that new applications for a permit will be heard by the PUC. Public notices provide other carriers the opportunity to protest the issuance of a new utility permit.

Records Management

After initial review of basic, required carrier information and documentation, we noted that significant numbers of documents were missing. These include application and insurance forms. We submitted a list of the missing documentation to the PUC; however, PUC staff were only able to locate a portion of the missing carrier information. The following table shows the documentation and information that was missing or unavailable during our initial search and after receiving the additional documentation from PUC staff.

Public Utilities Commission Missing Carrier Documentation by Information Type					
Document Type	Documents Requested	Missing After Initial Review		Missing After Secondary Review	
		Documents Missing	Percentage of Population	Documents Missing	Percentage of Population
Carrier Applications¹	147	54	37%	17	12%
Carrier Insurance forms²	143	99	69%	25	17%
Revocation notices³	14	13	93%	10	71%
Revocation notices⁴	22	22	100%	22	100%
Annual Fee Information⁵	106	57	54%	17	16%
Compliance and Safety Inspection Certificates of Correction⁶	50	19	38%	17	34%
Passenger carrier tariff files⁷	25	1	4%	0	0%
Penalty Information⁸	10	3	30%	2	20%
Complaint Information⁹	374	51	14%	5	1.3%

Source: Office of the State Auditor’s documentation review statistics.

¹ For our total sample of 147 carriers.

² For our sample of 147 carriers, only 143 are required to file insurance forms.

³ For our sample of 147 carriers, only 14 had at some point been revoked.

⁴ For the separate sample of 22 revoked carriers.

⁵ For our sample of 147 carriers, only 106 are required to pay annual stamp fees.

⁶ For our sample of 147 carriers, only 50 were cited violations during safety and compliance inspections and would therefore be required to file a Certificate of Correction.

⁷ For our sample of 147 carriers, we reviewed the tariff files for the 25 common carriers only.

⁸ For our sample of 147 carriers, we found 10 penalties cited.

⁹ For our sample of 147 carriers, we found 374 complaints. A portion of missing complaint information was not provided in hard copy or electronic format by the PUC; it is based on staff recollection of the information.

As indicated in the table, the Public Utilities Commission was able to locate all documents for only one type of item (passenger carrier tariff files) out of the nine types of documentation requested. For the remaining documentation types, substantial information was missing. The high incidence of missing documents raises serious concerns about the PUC’s ability to perform its regulatory duties effectively. In addition, the lack of controls over documentation, combined with the other concerns discussed below, presents a significant risk of fraud and abuse. Other inconsistencies and problems associated with the PUC’s management of carrier documentation are as follows:

- **The PUC lacks standardized policies and procedures for maintaining documentation.** Staff maintain carrier information inconsistently. Staff frequently use their own files rather than central filing systems for information including complaints, penalties, and tariff analyses files. Further, staff use different filing methodologies. For example, as discussed earlier, we found that some staff enter complaints and penalties into CCTS, while others maintain records in separate personal files or do not maintain any documentation at all. We found that most staff file information by permit number or carrier name, while one staff member files important documents by date. Additionally, PUC staff analyses related to carrier requests for rate increases are maintained on the Local Area Network, rather than in the carriers' tariff files. Often these network files are difficult to associate with a particular carrier because staff use different naming conventions for the files. These inconsistencies make it difficult to locate all records and documents for a given motor carrier.
- **Archiving methods are inconsistent and inefficient.** Problems with the PUC's archiving procedures include (1) indexing information for imaged documents is located in two different subsystems of IFMS, neither of which was comprehensive; (2) indexing information was incorrect, and as a result, the imaged documents for four carrier applications in our sample (about 3 percent) could not be located; (3) the PUC has a backlog of approximately three years for archiving various documents, including motor carrier applications, insurance coverage and cancellation forms, and notices of permit revocation. As a result, thousands of documents are in stacks and boxes and cannot be easily searched or reviewed; and (4) of the 50 carriers we reviewed that had been cited for violations found during safety and compliance inspections, staff could not locate 17 Certificates of Correction. Staff believe they may have mistakenly purged some of these items and may have never received others.

Insurance cancellation notices, revocation notices, and Certificates of Correction of safety violations are important documents that substantiate the PUC's regulatory actions related to a carrier's ability to continue operating safely. For example, if the PUC needed to assess penalties or pursue injunctions to prevent a carrier from continuing to operate without a permit, the PUC would be at risk for not being able to locate documentation demonstrating that it had appropriately notified the carrier of the permit revocation. The State Archives Management Manual specifies that information of permanent value should be properly protected and retained, and advises state agencies to develop archiving standards and retention schedules to ensure proper record maintenance. While the PUC has a policy in place for archiving, staff are not following the policy and it is not inclusive

of all types of records maintained by the PUC. For example, the policy does not include how the PUC plans to treat documents such as safety inspections, tariff schedules, insurance forms, or applications for hazmat, interstate, or tow carriers.

With respect to the PUC's various information systems and data management procedures, we found the following:

- **Data are often maintained duplicatively.** The PUC lacks a comprehensive source and central tracking system for motor carrier information. For example, application information is maintained in three different systems (OpRts, ATAP, and IFMS), each with differing screens and views. Consequently, staff must often data enter information into more than one system. This is an inefficient use of staff time and resources, and increases the risk of errors. We estimated that on application information alone, staff spend a combined total of approximately four hours per week performing duplicate data entry among different systems.
- **Staff are not cross-trained on multiple systems, report generation, and the locations of important documents.** We found that only one staff member can generate a penalty report from CCTS and only one staff member is responsible for handling towing complaint and penalty information. Further, different staff are trained on different systems, while none are able to operate all systems. Lack of proper information management has created increased reliance on institutional knowledge and generated a vulnerability to loss of knowledge within the PUC. For example, compliance investigators and other staff cannot utilize some past compliance review reports or complaint information to monitor carriers because documentation is not centrally located. Staff often rely on anecdotal information from one another because information is not documented or important carrier documentation cannot be found.
- **Data entry of complaint information is not completed in a timely manner.** Complaint details for tow carrier complaints, such as the complainant, nature of complaint, and PUC action to investigate and resolve the complaint, were not entered into CCTS until we inquired about missing information for tow carrier complaints. Staff entering the complaint information did not keep paper files of complaints and reported entering most of the complaint information into the system from memory. This information was entered into CCTS subsequent to our review. Some of the complaints were as old as 1997. This leads us to question the integrity of the complaint data.

- **Data entry methods are not standardized.** We found that some staff enter information into the PUC's various computer systems differently. Examples include (1) permit numbers and issue dates for a number of active carriers in the PUC's OpRts system were left blank; (2) the "permit status" for a number of carriers in the PUC's OpRts system was incorrectly specified by the system (i.e., never changed from pending to denied in the system); and (3) if a particular carrier does not require insurance, staff make up a company and enter it into the system in order to fill blank fields, making it difficult to distinguish between carriers that should be insured and those that are not, or to track information on which insurance companies are insuring which carriers.

Many of the problems identified above are the result of the PUC's general lack of management standards and of inconsistent staff oversight. The PUC was upgrading its system at the time of our audit. The system was not implemented until July 2003 (after the fieldwork for our audit was complete). According to PUC staff, the recent upgrade will solve many of the documentation management problems identified during the audit. However, this upgrade is only planned to reduce the duplicate data entry of carrier information currently occurring in the OpRts and IFMS systems. Further, the upgrade will not address the need for having an effective system of controls over information management in place and operating. Without standardized procedures, the new system will not function as envisioned. It is essential that the PUC develop system controls to ensure the completeness, accuracy, and reliability of the motor carrier data that are fundamental to regulatory oversight.

Recommendation No. 22:

The Public Utilities Commission should develop controls over motor carrier information. Controls should include, at a minimum:

- a. Revising standard record management policies and procedures for maintaining all carrier information, including standards that adhere to state records management and archiving rules.
- b. Developing consistent standards and methods for data entry. This should include a review and assessment of current data entry procedures.
- c. Cross-training all staff on standards for documentation maintenance and data entry of information into the Public Utilities Commission's systems, periodically reviewing staff performance to ensure procedures are followed correctly, and taking corrective action as necessary.

- d. Developing a plan and schedule for eliminating duplicative systems and duties and for addressing the archiving backlog.

Public Utilities Commission Response:

Agree. The PUC has been actively involved in improving its records management and information systems for several years. While this is a massive undertaking and great strides have been made, more needs to and will be done. The objective is to migrate from "paper processing" and a reliance on maintaining manual filing systems to an agency-wide, integrated, and automated filings management information system. The system maintains electronically imaged documents in the database and no longer relies on manual paper files going forward. The first phase has been fully implemented and focused primarily on telecommunications and energy companies. The second phase, implemented in July 2003, integrated Transportation's Operating Rights and Automated Transportation Application Programs into IFMS. The third phase will begin in October and will integrate/upgrade the consumer complaint tracking system. As segments are developed, the underlying records maintenance and documentation management procedures and archiving requirements are revised. Data entry standards are implemented and extensive employee training is conducted. Transportation's master files are being completely overhauled and written procedures have been implemented.

Implementation Date: The first two phases have been implemented. The third phase is scheduled for implementation by June 2004. Master file overhaul to be completed by October 2003.

Cash Processing

The Public Utilities Commission staff process application fees, annual stamp fees, and penalty payments for all types of permitted motor carriers. Depending on the type of permit sought, application fees range from as little as \$10 for a tow carrier to as much as \$500 for a carrier hauling nuclear materials. Annual stamp fees for all motor carriers are \$5 for each vehicle that the carrier owns, controls, operates, or manages. Carriers typically operate multiple vehicles and, in some cases, hundreds of vehicles. Upon payment of the annual stamp fees, motor carriers receive stamps (i.e., windshield stickers) to display in each permitted vehicle as proof of payment.

Generally, Transportation Section staff collect application and stamp fee payments, write receipts, and send all revenue and receipts to the Administrative Services Section of the PUC on a daily basis for deposit. These deposits are credited to the Motor Carrier Fund and the Hazardous Materials Safety Fund. Additionally, the Administrative Services Section receives penalty payments and credits the penalty to the appropriate General Fund account. Penalty receipts are also forwarded to the Transportation Section. In Fiscal Year 2003, Transportation Section staff processed approximately \$39,400 in motor carrier application fees and \$1.8 million in annual stamp fees, and we estimate that the PUC received about \$54,000 in penalty payments.

We reviewed the PUC's internal controls over the processing and handling of cash receipts and identified several weaknesses:

- **Inadequate tracking of cash receipts associated with incomplete applications.** The PUC does not deposit application fees for carriers whose applications are incomplete. If after 45 days the applications are still incomplete, the PUC returns the application fee to the carrier. PUC staff informed us that they hold the application fees for these incomplete applications in locked desk drawers. During this period, staff work with the carrier to complete the application. If this time period is exhausted and the application remains incomplete, the application and application fee are returned to the applicant. At one point during our audit, staff had approximately \$2,400 in cash, checks, and credit card transactions awaiting deposit for 45 incomplete permit applications.

Additionally, statutes say that the fees for obtaining a permit are "filing fees." A filing fee would suggest that the fee is related to filing for a permit, and the fee is therefore nonrefundable. Interviews with staff in other regulatory divisions within the Department of Regulatory Agencies, and also at other state agencies, confirmed that typically filing fees are nonrefundable, regardless of whether the application is incomplete or denied. Divisions of the Department of Regulatory Agencies, including the Board of Medical Examiners, Division of Registrations, and Division of Insurance keep all registration and application fees regardless of whether the application is complete or accepted. The Departments of Public Health and Environment, Agriculture, and State also keep application and registration fees regardless of the outcome of the application process. The PUC should consider discontinuing its policy of returning application fees for incomplete applications. These additional funds, if appropriated to the PUC, could be used to improve the PUC's safety and compliance inspection processes.

- **Lack of a transaction log.** The PUC uses the OpRts system to maintain carrier information and record permitting activity. However, this system does not currently record revenue received for activity such as payment of permit and stamp fees. Staff use a manual receipt process to track these payments. Staff also maintain a manual log that includes all transactions for serially numbered identification stamps (regardless of payment method) and cash-only transactions (i.e., not checks or credit card payments) for all other types of transactions, including permit and application fees. We reviewed the log and found it to be incomplete. For example, when carriers pay for their application fee with checks, but do not purchase annual identification stamps for their vehicles, staff do not record the checks in this log. Without a complete transaction log, the PUC cannot ensure that all revenue received for application and stamp fees is accounted for.

- **Cash receipts not reconciled with internal systems, complete transaction logs, or COFRS.** The Administrative Services Section deposits cash receipts received from the Transportation Section on a daily basis and enters the information into the State's accounting system. However, the Administrative Services Section does not reconcile the daily deposit with an internal system or other complete transaction log. The number and types of applications processed by the Transportation Section are not reconciled with the amount of cash that the Section submits for deposit. This problem is compounded by the fact that the Transportation Section does not maintain a complete log of permit activity and associated revenue, as discussed above. Without regular reconciliations of revenue to permitting and stamp activity, PUC substantially increases the risk of fraud, errors, and irregularities.

Recommendation No. 23:

The Public Utilities Commission should improve internal controls over the collection of fees and other revenue by:

- a. Establishing procedures for timely deposit of all revenues received.
- b. Maintaining a complete activity log of all revenue received.
- c. Performing daily reconciliations between activity logs, revenue deposited, and amounts recorded on the State's accounting system.

Public Utilities Commission Response:

Agree. All monies received are now appropriately receipted and timely deposited. The upgrade and integration of the Operating Rights system into the Integrated Filings Management System now generates a daily transaction log that summarizes and categorizes all received revenues. This transaction log is now used to reconcile daily activity with transportation revenue deposits. All amounts are properly recorded on the State's accounting system.

Implementation Date: August 2003.

Recommendation No. 24:

The Public Utilities Commission should consider changing its policy for returning application fees for incomplete applications and consider making those fees a nonrefundable fee for processing the application.

Public Utilities Commission Response:

Agree. The PUC reviewed its policy of returning fees for incomplete applications and agrees with the recommendation. The PUC now considers these monies to be filing fees and as such are non-refundable. All fees are now deposited upon receipt.

Implementation Date: September 2003.

Use of the Motor Carrier Fund

As previously mentioned, the Transportation Section of the PUC is funded through cash funds from the Motor Carrier Fund. Section 40-2-110(2)(a)(I), C.R.S., specifies that "the general assembly shall determine the amounts to be expended by the [PUC] for its administrative expenses in the supervision and regulation of motor carriers. . . and shall appropriate such amounts from the [PUC's] motor carrier fund." During our audit we found that the Motor Carrier Fund subsidizes the activities of several other cash funds, including:

- **The Fixed Utilities Fund.** By statute, regulatory activities related to fixed utilities are to be paid out of the Fixed Utilities Cash Fund. One staff member indicated that he spends a significant percentage of his time on fixed

utilities functions, but he is paid entirely out of the Motor Carrier Fund. We estimate that approximately \$19,800 should have been paid out of the Fixed Utility Fund for this employee's salary during Fiscal Year 2003. We also estimate that this misallocation has occurred since 1998 when the staff member's job duties were changed by PUC management.

- **The Hazmat Fund.** The Transportation Section processes applications for the various motor carriers, including those that transport hazardous materials. Section 42-20-107(2), C.R.S., specifies the permitting activities related to hazmat carriers are to be paid out of the Hazardous Materials Safety Fund, which is appropriated to the Department of Public Safety and the Colorado State Patrol for overseeing hazmat carriers. Although statutes for the Department of Public Safety designate the hazmat permitting processes to the PUC, the PUC does not receive any funds from the Hazardous Materials Safety Fund to cover the costs of personal services. We estimate that approximately \$24,300 should have been paid out of this fund during Fiscal Year 2003 to account for the portion of time that two PUC staff spend processing hazmat applications. We also estimate that this misallocation has occurred since 1987 when the PUC began permitting hazmat carriers.
- **Federal Funds Paid to the Colorado State Patrol.** We found that one of the PUC's compliance investigators spends a portion of his time each month performing carrier inspections outside of the PUC's regulatory authority. These carriers are regulated by the Colorado State Patrol, which receives federal funding for these inspections. The PUC does not have a statutory obligation or authority to complete these inspections, nor does it receive federal funding for performing these inspections. We estimate that approximately \$1,200 was inappropriately paid out of the Motor Carrier Fund during Fiscal Year 2003 for time spent on these inspections. This misallocation has occurred since November 2002 when this investigator began performing these reviews.

In total, we estimated that approximately \$45,300 was paid out of the Motor Carrier Fund during Fiscal Year 2003 that should have been paid from other sources. Appropriate accounting is required to set carrier fees and appropriately bill the federal government for federally funded inspections. The PUC should take immediate steps to ensure that all staffing costs are allocated to the appropriate funds.

Recommendation No. 25:

The Public Utilities Commission should ensure personal services costs are allocated to the appropriate fund by:

- a. Performing a review of all current job duties to ensure personal services costs are allocated to the appropriate fund.
- b. Developing a methodology to allocate staff time for activities unrelated to the Motor Carrier Fund.
- c. Reallocating staffing costs to the appropriate funds in accordance with job duties.
- d. Working with the Department of Public Safety to receive reimbursement for inspections performed under the authority of the Colorado State Patrol, or discontinuing this practice.

Public Utilities Commission Response:

Agree. The PUC has a methodology to attempt to ensure that personal services costs are allocated to the appropriate fund. The auditors identified a misallocation for one staff member. The PUC immediately corrected the misallocation. In addition, current job duties were reviewed to verify the appropriate personal services cost allocations. The PUC found no other problems and believes that all staff positions are allocated to the appropriate funding source. The PUC will confer with the Departments of Regulatory Agencies, Public Safety, and Revenue to pursue a budget request for an appropriation from the Hazardous Materials Safety Fund for the PUC's Hazmat permitting functions. Statutory change may also be necessary to increase the prescribed Hazmat permit fees. The PUC has discontinued the practice of allowing PUC compliance investigators to conduct inspections under the authority of the State Patrol. These inspections were only conducted on rare occasions for the purpose of maintaining Commercial Vehicle Safety Alliance inspector certification. Inspector certification will be maintained through vehicle inspections that are under the PUC's direct jurisdiction.

Implementation Date: August 2003.

Regulatory Oversight

As noted throughout this report, we identified substantial deficiencies that limit the Public Utilities Commission's effectiveness in regulating the operations of motor

carriers in accordance with requirements outlined in state statutes. These deficiencies include:

- **Lack of consistent processes and procedures for conducting regulatory activities and enforcing state laws, rules, and regulations.** We found that (1) some carriers operate without the required insurance coverage, (2) carriers are not required to correct identified safety violations, (3) safety inspections are not prioritized to ensure high-risk carriers are inspected more frequently, (4) carriers with numerous complaints continue to operate unchecked, (5) carriers continue to operate without required permits, (6) the assessment and reduction of penalties lacks a consistent methodology, and (7) penalties, penalty payments, and complaints are not tracked in a centralized manner.
- **Lack of records management and retention.** PUC staff were unable to locate significant numbers of the documents requested for carriers in our samples; in one instance, the PUC could not locate any of the particular type of document requested for the carriers selected. Further, the PUC could not provide a complete list of penalties it has assessed for a given period of time. As discussed earlier in this chapter, we believe the poor condition of the PUC's records has a critical impact on its ability to ensure consumer complaints are handled efficiently or to ensure carriers are operating safely, are properly insured, charge only the allowable rates, and operate only in allowed service areas. Further, the condition of the records was such that we could not analyze complaints, penalties, or safety and compliance violations in an aggregate manner for all carriers.
- **Lack of basic administrative controls.** We found significant deficiencies in internal controls over cash processes and determined that the PUC is not sending past due penalty payments to Central Collection Services as required by State Fiscal Rules. Additionally, we found that PUC staff are performing duties that should be paid for out of other cash funds, which means that costs for some activities are not accurately reflected on the State's financial reporting system. As discussed in this chapter, these issues raise questions about the PUC's ability to safeguard assets and prevent misappropriation of cash receipts and ensure that appropriations are used for the statutory purposes intended.

Overall, from Fiscal Years 1999 through 2003, the State spent an average of about \$1.9 million annually in an effort to regulate motor carriers, or a total of about \$9.5 million. Despite this, Colorado's regulation of carriers is inadequate to ensure that even the most basic regulatory functions are carried out due to the pervasive problems described. In particular, for common and contract carriers, where the PUC is responsible for issuing permits, for regulating rates and service areas, and for

monitoring for safety and insurance requirements, the current process restricts consumers to a limited choice of carriers but does not compel those carriers to operate safely or meet other requirements. The PUC faces some significant challenges in improving its regulatory oversight of motor carriers. Given the scope of its responsibilities and limited staff, the PUC needs to address fundamental issues regarding what it can effectively regulate and what needs to be streamlined or eliminated.

All seven of the states we surveyed maintain some degree of state-level regulation over both passenger and property carriers. In one state (Washington), some carriers are primarily regulated by counties. While it is difficult to compare systems across states, we found that five of the seven states that have some level of state regulation have relatively fewer carriers regulated by a larger staff than Colorado. Colorado regulates about 10,800 carriers with 18 FTE, which is a ratio of about 600 carriers per FTE. It is possible that further study of other state practices could reveal if other models are available that the PUC could implement to increase its effectiveness as a regulatory body.

While resources may not be available to increase staffing levels at the PUC for carrier regulation, the State could consider limiting regulatory activities to basic functions such as inspecting driver records and the safety of vehicles, verifying carrier insurance coverage, and investigating consumer complaints related to safety. Eliminating or streamlining regulation of carrier service areas and rates would free up some resources within the Transportation Section and allow consumer choice and competition to determine the rates carriers charge for services provided. Further, the PUC could review other state models to determine whether streamlining the types of carriers regulated is an option.

Should the PUC decide that its regulatory scope is appropriate, and eliminating or streamlining regulatory activities is not an option, the PUC needs to develop a plan to address the recommendations in this report.

Recommendation No. 26:

The Public Utilities Commission should explore options for improving the regulation of motor carriers in Colorado including ways to streamline regulatory activities and improve the efficiency of the current system of regulation. Should the PUC decide to continue its current scope of regulatory activities, it needs to develop a plan for implementation of the recommendations contained in this report. The plan should include prioritizing critical functions, developing automated systems, and ensuring clear delineation of responsibilities.

Public Utilities Commission Response:

Agree. The PUC will explore options for revising regulatory activities related to motor carriers and will confer with the Department of Regulatory Agencies to determine whether statutory changes should be pursued to alter the existing motor carrier regulatory framework. Specifically, DORA will look at eliminating economic regulation (rates, routes, and services) and removing market entry barriers for passenger transportation carriers. This would allow the PUC to more directly focus on safety and insurance. The PUC takes the deficiencies identified in this report and the recommendations for corrective action very seriously. Of the 19 recommendations pertaining to the PUC, nine have already been implemented. An aggressive plan is in place to implement another six by December 2003, with the remaining four scheduled for implementation by June 2004.

Implementation Date: As noted above.

The electronic version of this report is available on the Web site of the
Office of the State Auditor
www.state.co.us/auditor

A bound report may be obtained by calling the
Office of the State Auditor
303-869-2800

Please refer to the Report Control Number below when requesting this report.

Report Control Number 1521