



HUMAN PERFORMANCE FACTORS ATTACHEMENT

**July 1, 2019 Memorandum on the Preliminary Review of State-to-State
Communications and Actions**

Randolph, NH

HWY19MH010

(7 pages)

MEMORANDUM

FROM: Marie Breen, MassDOT General Counsel and
Jamey Tesler, Acting Registrar of Motor Vehicles
RE: Preliminary Review of State-to-State Communications and Actions Underway
DATE: July 1, 2019

As you know, an in-depth review of the Registry of Motor Vehicle's state-to-state data sharing processes was triggered by the case of Volodymyr Zhukovskyy. Zhukovskyy held a Massachusetts Class D Driver's License and a Class A Commercial Driver's License (CDL). While the Massachusetts RMV has a responsibility to enforce the laws governing the safe operation of motor vehicles, an initial review of this specific case determined that the RMV had not acted expeditiously on information provided by Connecticut that should have triggered the termination of that individual's commercial driver's license (CDL). Based on that information, on Tuesday June 25 you accepted the resignation of the Registrar and appointed Jamey Tesler as Acting Registrar, also ordering an in-depth review of the Registry's state-to-state data sharing processes.

This memorandum summarizes the preliminary findings, actions taken to date and planned next steps for the top-to-bottom review of state-to-state information sharing based on five days of review, information-gathering and work undertaken from Wednesday June 26 through Sunday June 30. Our goal has been to identify deficiencies in existing processes, put new processes in place going forward and process identified backlogs of notifications from other states (starting with the most serious violations) that have not yet been processed properly.

Problems with RMV procedure were brought to light in this case with respect to both handling of out-of-state notifications with respect to Commercial Drivers' Licenses (CDLs) and processing of out-of-state notifications with respect to a far broader category of written, mailed information provided to the Registry by other states with respect to the drivers' license status of Massachusetts-licensed drivers. For context, there are 5.2 million licensed drivers in Massachusetts of which approximately 110,000 also have CDLs.

Commercial Drivers Licenses

As explained by the American Association of Motor Vehicle Administrators (AAMVA), the Commercial Driver's License Information System or CDLIS is "a nationwide computer system that enables state driver licensing agencies (SDLAs) to ensure that each commercial driver has only one driver's license and one complete driver record. State driver licensing agencies use CDLIS to complete *various procedures, including:*

- Transmitting out-of-state convictions and withdrawals
- Transferring the driver record when a commercial driver's license holder moves to another state
- Responding to requests for driver status and history"

CDLIS was established under the Commercial Motor Vehicle Safety Act (CMVSA) of 1986 and implemented by the Federal Motor Carrier Safety Regulations (FMCSRs) in 49 CFR 383 and 384. One

important procedure is that when a CDL holder commits an offense that should result in the termination of a CDL, the state that issued the CDL be informed of this out-of-state event within ten days.

Zhukovskyy was arrested for Operating Under the Influence (OUI) in Connecticut on May 11, 2019 and refused the chemical test, disqualifying him from operating a commercial motor vehicle. His right to operate a passenger vehicle in Connecticut was also suspended. As Zhukovskyy holds a passenger license and CDL in Massachusetts, Connecticut notified Massachusetts via two different systems, an electronic notice for the CDL and a paper notice sent via FedEx Ground Delivery. Connecticut provided electronic notification of the CDL suspension on May 29, 2019.

This electronic notification should have been processed by the Registry's ATLAS system. Because of the way that ATLAS was programmed, and because the Connecticut notification included a future effective date for the suspension (rather than a date coinciding with the date of the chemical test refusal), the ATLAS system did not process the CDL suspension. When ATLAS cannot properly process an electronic notification from CDLIS, it generates a queue of unprocessed notices which must be addressed manually by RMV personnel. ATLAS "kicked out" the Connecticut notification about Zhukovskyy for manual review by RMV personnel, adding it to an existing queue.

Preliminary Findings:

- No RMV personnel appear to have been assigned the task of reviewing the ATLAS-generated queue for unprocessed CDLIS and state to state notices. A queue was found of 365 notices reflecting serious offenses requiring manual review, which included the notice from Connecticut about Zhukovskyy.

Actions Taken to Date:

- Teams from MassDOT and the RMV worked through the weekend to address this queue and enter all unacted upon CDL notices into the system. The backlog of notices reflecting serious offenses has been cleared and appropriate actions have been taken. Of the 365 notices in the backlog, 353 were duplicates of other reports already adjudicated (most commonly drivers who have moved from one state to Massachusetts and old offenses reported to Massachusetts). The remaining twelve were alcohol related, which, nine of which were duplicative of other issues already adjudicated. The last three unprocessed notices regarding serious offenses, of which only Zhukovskyy warranted an automatic suspension.
- The RMV has fixed the ATLAS coding to allow the acceptance of any suspension date within one year of an automated suspension, rather than "kicking out" a notice for manual review, so that future notifications like that for Zhukovskyy will be processed electronically.
- The State to State unit has been assigned responsibility for processing paper notifications from other states; the unit reports up through the RMV's Chief Operating Officer. Along with other tasks described below, this unit has been assigned the task of reviewing this queue daily and completing the required manual reviews, which now go to the top of an employees' work queue. All notices of serious violations kicked out by ATLAS last week have already been manually reviewed and processed as necessary.

Next Steps:

- While we believe we have corrected all of the processes related to handling of incoming electronic notices from other states about serious violations affecting CDL holders, this review and the audit review described below will include an end-to-end review of all electronic and manual processes for processing incoming and outgoing notices regarding CDLs in order to ensure that they fully comply with all federal and state requirements.

Out-of-State Notifications

Connecticut also sent Massachusetts a written notification by ground delivery, which was received on May 30. The RMV receives numerous out-of-state notifications each day by mail, some of which address issues that should trigger suspensions and others which involve less safety-critical matters such as speeding tickets. The mailed notification from Connecticut also had not been processed, leading us to begin a review of how the Registry processes paper/mailed out-of-state notifications concerning all drivers' licenses (not just CDLs).

For background, it should be noted that information on individuals whose privilege to operate a motor vehicle has been revoked, suspended, canceled or denied or who have been convicted of serious traffic-related offenses in any state is kept in the National Driver Register (NDR), which is maintained by a division in the National Center for Statistics and Analysis under the National Highway Traffic Safety Administration (NHTSA). State motor vehicle agencies responsible for issuing driver licenses are required to send information on all revocations, suspensions, and license denials within 31 days of receipt of the convictions from the courts to this system. Any time a person applies for a driver's license or the renewal of an existing license, the State driver licensing officials search the system to see if the license or privilege to drive a motor vehicle has been withdrawn by any State. So when a Massachusetts resident applies for or renews a drivers' license (every five years), the NDR is checked and no license is issued if outstanding issues from other states remain.

Massachusetts has 5.2 million licensed drivers. In any given year, roughly 230,000 suspensions are issued for matters ranging from non-payment to serious driving offenses such as OUI or motor vehicle homicide. It important to note that a single driver may receive several suspensions over time, meaning of the 234,612 suspension issued in FY19, 144,301 drivers were suspended. Over half of the suspensions issued are for civil infractions and non-payment and administrative issues. For example, in May of 2019, 36,076 suspension actions were issued (again, impacting fewer individual licenses), 11,814 of which were for non-payment default, 12,810 for surchargable events, 537 "immediate threat" reports, 734 chemical test refusals, and 2,221 OUI suspensions.

The vast majority of these suspensions are triggered by matters that occurred within Massachusetts. Every business day hundreds of Massachusetts licenses are suspended by Registry employees following detailed procedures designed to ensure both that dangerous drivers are not allowed to drive and that those who licenses are suspended are provided with appropriate opportunities to have their side of the matter considered. This review addresses the high priority and thus smaller but serious number of out-of-state notices that may trigger suspensions due to events that occur outside of Massachusetts. The top-to-bottom review will ultimately examine both the extent to which Massachusetts is expeditiously processing information received electronically and information that continues to arrive daily via mail from other states. Because of the findings described below, the preliminary work has focused on the processing of out-of-state notifications received via mail, like the one from Connecticut about Zhukovskyy, that involve serious infractions potentially requiring immediate suspension.

Preliminary Findings:

- Out-of-state notifications are received via mail sent to the Haymarket RMV. They are sent by courier on a daily basis to Quincy RMV headquarters for processing.
- Until September, 2016 the Driver Control Unit within the Registry of Motor Vehicles was responsible for processing out-of-state notifications through the antiquated ALARS system which was replaced in March 2018 with the new ATLAS system. DCU was unable to keep up with the volume of out-of-state notifications and responsibility was transferred to the Merit Rating Board (MRB), apparently because MRB had the ability to process and electronically capture image data and employees were already trained to process in-state citation data.
- This investigation has not yet been able to determine the status of the apparently substantial backlog that existed at the time, but has confirmed that in the fall of 2016 the MRB began processing out-of-state notifications.
- For reasons that have not yet been determined, in approximately March of 2018 MRB staff stopped processing out-of-state notifications and simply sorted them into mail bins and stored them in a records room in Quincy headquarters. More than 53 bins containing tens of thousands of individual notices were discovered in bins, sorted by month of arrival, on Wednesday June 26 as part of this investigation into the handling of the Zhukovskyy matter.

Actions Taken to Date:

- A new process has been established for same-day processing of out-of-state violations and has been implemented as of Friday June 28. Going forward, RMV's goal is to process all paper out-of-state notifications on the day they are received or within one business day thereafter. A dashboard is being established to ensure that RMV managers have the information available, in real time, to ensure that this new process is followed.
- A three-step process was set up to address the unprocessed out-of-state notifications dating back to March 2018 that were found at Quincy headquarters. This involves a manual review, with teams of lawyers, auditors and RMV and MRB staff, examining, sorting and acting on thousands of documents. Work began on Wednesday and continued all day on both Saturday and Sunday. The process involves three steps:
 - Triage: A team of RMV employees, including lawyers, developed a triage system to prioritize those unprocessed violation notices that could trigger immediate suspension actions and indicate the highest likelihood of dangerousness. These high priority "codes" contained on the out-of-state notifications address issues such as OUI, Possession, Driving with Suspended License, Reckless Driving, and Habitual Offender Status. All of the unprocessed out-of-state notifications have now been triaged into two high priority groups: those involving alcohol/OUI and other high priority issues.
 - "Look Up": Another team of employees has been looking up drivers' records identified in the triaged notices, both to ascertain their current eligibility for licensure and find out whether other entries in the National Driver Registry are relevant to licensure status. The "look up" process for the highest priority matters (alcohol/OUI) is complete; the process for the remaining high priority violations is ongoing and will be done before the Fourth of July holiday.
 - Suspension: When this process indicates that suspension is appropriate, a team of RMV officials and lawyers has been working to complete the suspension process as

expeditiously as possible while ensuring all legal requirements are followed. As of mid-morning on Monday June 30 the team has completed 655 suspensions involving 546 unique individuals and any remaining suspensions relating to alcohol/OUI will be completed by close of business today. Our target is for the results from the “look up” process for priority non-alcohol violations to be processed and any necessary suspensions completed before the Fourth of July holiday.

- All of the suspensions accomplished within roughly the past three days have been entered into driving records so, if stopped by law enforcement today, these individuals would come back as driving on a suspended license. In addition, rather than use the regular system which would generate and mail a letter to those whose licenses were suspended, letters have been generated and sent by priority mail via the South Station postal annex in order to ensure that suspended drivers are made aware that their licenses have been suspended.

Next Steps

- Given the gravity of these findings, the complexity of the process for suspensions and the need for both expert legal and auditing oversight of actions being undertaken to address the backlog of unprocessed out-of-state notifications and create a real-time process going forward, we have taken two steps to expand this review and external oversight of the Registry’s process for addressing out-of-state notifications:
 - External Audit: MassDOT is in the process of securing the services of an audit firm to conduct an end-to-end audit and process review of the process for receiving and acting on out-of-state notifications. The auditors will be asked to produce a preliminary report and recommendations within 60 days.
 - Out of an abundance of caution, and to ensure our records are up to date, we have decided to conduct a comprehensive review of all Massachusetts licensure records against the National Driver Registry to ensure that state records accurately reflect all information in the NDR and that any needed actions affecting licensure status are taken expeditiously (rather than waiting until a driver applies for re-licensure, at which time all items in the NDR will be automatically addressed). We have contacted AAMVA and begun the process of conducting an automated comparison of all 5.2 million licensed drivers against the NDR. The tentative schedule is for the “batch processing” to be completed within six weeks; we are still working through how the findings of this process will be triaged and acted upon.
- We will also engage a number of other internal and external partners to brief them on the results of the review to date and allow them to conduct their own reviews of the RMV’s planned changes in processes and protocols:
 - The MassDOT Board of Directors and board Finance and Audit Committee, chaired by Board Director Betsy Taylor, will be briefed regularly on the results of this review and resulting changes, beginning at their July meeting.
 - MassDOT’s Internal Audit Team and the Office of the Inspector General’s Internal Special Audit Unit for MassDOT will be briefed and may conduct their own investigations.
- Registry officials and MassDOT counsel will meet with and brief both the U.S. Department of Transportation’s Inspector general and the Federal Motor Carrier Safety Administration, the RMV’s federal oversight agency.

- As we complete the process of working through the backlog of documents found at RMV Headquarters, the RMV will also be working to determine what happened to the pre-September 2016 backlog, beginning by accessing materials stored in RMV archives.
- This review will also address the process for “outgoing” notifications by Massachusetts to other states about triggering events that occur here for which other states need to be notified. This review will encompass both the paper process for notifying other states and Massachusetts’ use of AAMVA’s State-to-State system since joining that system in March 2018 and ensure that the RMV complies with all state and federal notification requirements in a timely manner.

Conclusions

The Massachusetts RMV -- which licenses 5.2 million operators and suspends roughly 250,000 each year -- has a responsibility to enforce the laws governing safe operation of vehicles. We now know that the registry has not been acting on information communicated by other states that in some circumstances should have triggered the suspension of a driver’s license. Actions are already underway to correct these lapses and 630 operators have been suspended to date. In addition, new processes are in place to ensure real-time processing of notifications regarding both Commercial Drivers Licenses and out-of-state notifications regarding all licenses, ensuring that the backlog issues that have plagued the Registry for years will not recur.

We emphasize that this review, and the actions being taken to ensure that the Registry’s processes and systems for keeping unsafe drivers off of our roadways, are still in the very early stages. As explained above, the RMV has begun the process of engaging our state and federal partners, as well as an outside firm, to review and recommend changes to our processes and protocols for dealing with both electronic and paper out-of-state notifications. And in a massive effort that may be unprecedented, over the next six weeks, the RMV will out of an abundance of caution conduct an electronic review of all 5.2 million of its driver records against the National Driver Registry in order to ensure that the driving records of all Massachusetts drivers are current with respect to incidents that occurred in other states and were entered in the NDR.

Finally, we will continue to provide interim progress reports as this critically important review process proceeds.