§720.32 Suspension and revocation of operating authority.

(a) Notwithstanding any regulation of the department to the contrary, pursuant to section 145 and section 156(2) of the Transportation Law, the commissioner may suspend or revoke the operating authority of any motor carrier of passengers by certificate or permit for the following safety reasons:

1. The nature and frequency of out-of-service violations found in the course of roadside safety inspections leads the commissioner to conclude that the continued operation of the motor carrier of passengers poses a threat to public safety. The incidence of out-of-service violations that may result in action to suspend and/or revoke operating authority shall be as follows:
   (i) At least ten (10) driver roadside safety inspections within the preceding six-month period that resulted in a driver out-of-service rate of 20% or more; or
   (ii) At least ten (10) vehicle roadside safety inspections within the preceding six-month period that resulted in a vehicle out-of-service rate of 40% or more.

2. For any motor carrier of passengers that has been the subject of at least ten department vehicle inspections conducted in the preceding state fiscal year pursuant to section 140 (3) of the Transportation Law, a vehicle out-of-service rate of 25% or more.

3. An employee or agent operates a bus controlled by the motor carrier while intoxicated in violation of the vehicle and traffic law;

4. An employee or agent operates a bus controlled by the motor carrier while using or in possession of drugs in violation of the vehicle and traffic law;

5. The motor carrier directs or allows an employee or agent to operate a bus after such operator has been placed out of service in violation of the transportation law, vehicle and traffic law or regulations adopted thereunder;

6. The motor carrier directs or allows an employee or agent to operate a bus that has been placed out of service in violation of the transportation law, vehicle and traffic law or regulations adopted thereunder; or

7. The motor carrier directs or allows an employee or agent to operate a bus without a required license in violation of the vehicle and traffic law.

(b) Notwithstanding any regulation of the department to the contrary, the commissioner may immediately suspend or revoke the authority of any motor carrier of passengers operating pursuant to a certificate or permit issued by the commissioner pursuant to Article 6 or Article 7 of the Transportation Law if such motor carrier of passengers operates concurrently under any authority issued by the United States Department of Transportation, Federal Motor Carrier Safety Administration, and such federal operating authority has been revoked or a federal out-of-service order is in effect, or if such motor carrier of passengers operates concurrently in interstate commerce without the requisite operating authority.
(c) The suspension of operating authority as provided in subsections (a) or (b) shall be effective ten business days after the date of issuance of the notice of suspension. Pending the effective date of such suspension, any motor carrier of passengers subject to this section may be heard to present proof as to why such suspension should not occur or be continued. The commissioner shall make a determination based upon a hearing of the proof whether such suspension shall become effective or continue and a hearing regarding permanent revocation shall be scheduled. For the purpose of making a determination as to whether the operating authority of a motor carrier should be suspended or revoked, or that some other action should be taken, any out-of-service violation occurring within the relevant period described in subsection (a) shall be considered, provided that the motor carrier did not obtain a favorable determination for such violation. For the purposes of this section, a favorable determination means that the out-of-service violation was contested by such motor carrier and an administrative law judge of the department determined that the motor carrier was not guilty of the violation charged. In addition to or in lieu of any suspension or revocation, the commissioner may, after a hearing, impose a civil penalty upon such motor carrier of passengers and notify the Commissioner of Motor Vehicles to suspend the vehicle registrations in accordance with the provisions of Article 6 of the Transportation Law.

(d) Whenever the commissioner determines that the operations of a motor carrier of passengers pose a danger to public safety or the welfare of the people of the state of New York, the commissioner may serve such motor carrier with a notice or order requiring certain action or the cessation of certain activities immediately or within a specified period, and the commissioner shall provide such motor carrier with an opportunity to be heard within a period specified in such notice or order.

(e) Service may be made personally or by certified mail, return receipt requested, and a hearing shall be conducted pursuant to the provisions of section 503.2 of this title, except that notice shall be provided in accordance with the provisions of this section.

Adopted, May 14, 2012