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1. **SCOPE**

1.1 **Purpose of Document**

NYSDOT envisions the Regulatory Compliance capability to automate the current manual processing involved in the generation of violation warnings and Notices of Violation (NOV) in support of the NYS program of commercial vehicle Oversize/Overweight (OS/OW) enforcement. This includes recording the NOVs, tracking violation resolution, recording carrier information, and performing document retention. It also includes the analysis of potential violations and determination of what action to take based on business rules, in addition to enabling tracking status information and correspondence exchanged related to NOVs.

This document describes the current manual processing that the envisioned Regulatory Compliance capability will replace. It is a vehicle for stakeholder discussion and consensus to ensure that the solution is feasible. This document contains the following major sections.

**Section 1, Scope** – Provides an overview of this document as well as background information about the project and the project objectives.

**Section 2, Reference Documents** – Provides an identification of supporting documentation useful in understanding the operations of the current system.

**Section 3, Regulatory Compliance** – Provides further detail on the current violations notice and tracking systems.

**Section 4, Glossary** – Provides definitions for a list of terms used in this document.

2. **REFERENCES**

2.1 **Documents**

The following documents provide further detail on the current Regulatory Compliance processes and are included, in pdf format, as Attachment 14-B, Violation Tracking Information.

- NYSDOT OS/OW Permits Civil Enforcement Process Manual (updated May 17, 2011)
- Violation Matrix – Penalty Assessment Rules
3. **CURRENT REGULATORY COMPLIANCE SYSTEM**

3.1 **Background**

The Regulatory Compliance Program supports public safety, protection of the NYS transportation infrastructure, and economic development by monitoring and enforcing permit requirements as part of NYS’s commercial vehicle size and weight enforcement activities. NYSDOT is the lead commercial vehicle enforcement agency and receives funding from US DOT for commercial vehicle enforcement. The NYSDOT based regulatory compliance process supports these federally funded enforcement operations. NYS Transportation Law allows NYSDOT to take action against motor carriers utilizing its administrative law process for not complying with NYSDOT rules and regulations. Violation of permitted weights and dimension regulations are punishable by civil penalties under Transportation Law Section 145. The Central Permits Bureau under the Office of Modal Safety and Security, and the Division of Legal Affairs (DLA), manage and support this regulatory compliance program. NYSDOT reviews size and weight violations and may issue a Notice of Violation (NOV) dependent on the severity of the violation. Each NOV requires disposition of action and results in multiple follow-up correspondence, tracking of due dates and status, and tracking and linking scanned documents.

3.1.1 **Business Need**

The Regulatory Compliance Program is built off the Driver/Vehicle Examination Reports (DVER) provided to NYSDOT as a normal part of its business. The OS/OW regulatory violations identified result in the carrier being notified of follow-up actions based on the severity of the violations. Severe violations result in a NOV, including any penalties, and an opportunity for the carrier to plea before an Administrative Law Judge. The current effort involves the use of an Excel database for tracking purposes. All entries are manual.

- The program currently results in the collection of approximately $500K-$600K per year by NYSDOT.
- The current administration of the program requires an inordinate amount of staff hours to generate, scan, and store documents.
- In 3 years, more than 3,300 NOVs have been issued. The capacity of the Excel program to support violation tracking could be limited.
- Approximately 7,000 company records and 13,400 reports have been entered into the Violation Tracker Access database.
- Violations consist of unpermitted OS/OW loads, as well as permitted OS/OW loads that are larger or heavier than the permitted load.
- Many violations are resolved with a provision for permit purchase.
- Repeat violators and patterns of violations are identified based on a percentage or ratio, not on the number of violators or patterns of violations.

NYSDOT needs to automate the current manual processing of the NOVs to meet the following goals:
- Increase compliance with the Laws and regulations governing OS/OW operation
- Promote a cooperative effort to ensure the safety of the motoring public, protect the State's infrastructure for all to use, and support the economic needs of carriers and businesses operating in the State
- Identify areas of improvement to ensure safe OS/OW operation through the issuance of the appropriate OS/OW permit

3.2 Process for Issuing and Tracking NOVs

Figure 1 shows the systems and information exchanged with the violation tracking process in support of issuing and tracking NOVs for the NYS program of commercial vehicle OS/OW enforcement.

Figure 1, Regulatory Compliance Context Diagram

- SafetyNet serves as a state’s repository for inspection reports, accident reports, compliance reviews, and enforcement records. The ASPEN system sends inspection reports via SAFER Web Services to SafetyNet by way of an FTP site, where they are accumulated. The SafetyNet operator can edit any of the reports and then send them to the Motor Carrier Management Information System (MCMIS) system, employing the FTP SafetyNet data mailbox. Inspection reports that were completed on paper, rather than electronically through ASPEN, can also be entered manually into SafetyNet. In addition to sending inspection reports to the MCMIS system, SafetyNet can also send them to the SAFER 360-day inspection report repository. They may then be utilized by roadside inspectors through Query Central. SafetyNet is the source of the Driver/Vehicle Examination Reports (DVERs) used by the Regulatory Compliance process.

- Permit Automation System is the legacy permitting system for the OS/OW Special Hauling permitting program that is used to manage submitted permit applications, track
financial data, and provide information regarding the customer and the service company information.

- DivLoad System is the legacy permitting system for Divisible Load permits, including management of divisible load tokens, divisible load weight banks, lotteries for available divisible load tokens, and Grandfather Rights certificates.
- The Carrier is the OS/OW Permit Customer and can be an individual motor carrier or a permit service company acting on behalf of a motor carrier.

3.2.1 Analyze Potential Violation

Support personnel from the NYSDOT Office of Modal Safety and Security analyze and determine what action to take on potential violations. Their process steps are documented in the NYSDOT OS/OW Permits Civil Enforcement Process Manual. An overview of the current process is depicted in Figure 2, and a descriptive summary follows.

**Figure 2, Data Flow Diagram – Analyze & Determine Action on Potential Violations**

- Query Safetynet for potential OS/OW violations (federal violations with code 392.2) within a specified date range, specific Federal State Violation Codes, and Violation Descriptions.
- For each potential OS/OW violation, query the permit system for the permit (query the permits automation system for special hauling permit by customer number or query the divload system for divisible load permits by VIN number).
- Compare the carrier information between the information pulled from the permit system and the Driver Vehicle Examination Report (DVER) from Safetynet.
- Analyze the DVER.
  - Verify the carrier’s account, permit number, and status.
  - Calculate the percentage over permitted or legal weight.
  - Determine whether to issue a warning, NOV or neither.
- If unpermitted and in violation of weight and/or dimension, and within allowed tolerance ranges, do not issue a NOV.
- If unpermitted and in violation of weight and/or dimension, and outside of the allowed tolerance range, issue a NOV.
- If permitted and in violation of weight and/or dimension outside the tolerance range specified in business rules, issue a NOV.
- Other considerations are examined in accordance with business rules. (The Violations Matrix for Divisible Load and Violations Matrix for Special Hauling has specific criteria for the level of penalty sought.)
- Direct the NOVs to the Compliance Manager for further review and assessment of fine or suspension.

- Enter a record for each potential OS/OW violation into the violation tracking system.
- Generate Warning and/or NOV letters. For NOVs, a hearing date (also referred to as the return date) is selected from the Hearing schedule. A NOV must be mailed at least 20 days prior to the return date (response due date). A limit of 100 NOVs can be assigned to a Hearing date. When the limit of NOVs is reached for a Hearing date, the next available Hearing date is used.

3.2.2 Track Status of NOV

Once a NOV is issued, NOV information is entered on the appropriate Return Date worksheet within the OS/OW Compliance Excel file. The Division of Legal Affairs (DLA) maintains the NOV record with status update information, including links to correspondence exchanged, and tracks the NOV status until closure. A description of the data included in the compliance spreadsheet is provided in Table 1.

<table>
<thead>
<tr>
<th>Column Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>Company Name of Carrier</td>
</tr>
<tr>
<td>Report #</td>
<td>Driver/Vehicle Examination Report (DVER) Number</td>
</tr>
<tr>
<td>USDOT #</td>
<td>Companies that operate commercial vehicles transporting passengers or hauling cargo in interstate commerce must be registered with the Federal Motor Carrier Safety Administration (FMCSA) and must have a USDOT Number. The USDOT Number serves as a unique identifier when collecting and monitoring a company's safety information acquired during audits, compliance reviews, crash investigations, and inspections.</td>
</tr>
<tr>
<td>Acct #</td>
<td>NYSDOT Account Number</td>
</tr>
<tr>
<td>NOV</td>
<td>Notice of Violation Number with a link to the pdf</td>
</tr>
<tr>
<td>Penalty</td>
<td>Dollar amount of penalty and link to Civil Penalty Letter (Order after Hearing)</td>
</tr>
<tr>
<td>Contact Name</td>
<td>Name of contact person at Carrier's business</td>
</tr>
<tr>
<td>Contact Number</td>
<td>Telephone number of contact person</td>
</tr>
<tr>
<td>Settlement Terms</td>
<td>Textual description of the settlement terms</td>
</tr>
<tr>
<td>Settlement Letter Sent</td>
<td>Date the settlement letter was sent to carrier with a link to a pdf of the letter</td>
</tr>
<tr>
<td>Signed</td>
<td>Date the settlement letter was signed by carrier</td>
</tr>
<tr>
<td>Column Name</td>
<td>Description</td>
</tr>
<tr>
<td>------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Complied</td>
<td>Textual description of compliance actions and dates</td>
</tr>
<tr>
<td>Obtained Permit</td>
<td>Number of permits obtained</td>
</tr>
<tr>
<td>Hearing Date</td>
<td>Date of scheduled hearing</td>
</tr>
<tr>
<td>Disposition</td>
<td>Guilty/Not Guilty/Withdrawn</td>
</tr>
<tr>
<td>Penalty</td>
<td>Dollar amount of penalty imposed</td>
</tr>
<tr>
<td>Status</td>
<td>Description of status (such as: installment</td>
</tr>
<tr>
<td>Check Amt</td>
<td>Dollar amount of payment and link to pdf of the DOT Log of Cash Receipts</td>
</tr>
<tr>
<td>Check #</td>
<td>Check number</td>
</tr>
<tr>
<td>Comments</td>
<td>Textual description of notes and/or comments</td>
</tr>
</tbody>
</table>

When a NOV is issued, the carrier may respond in one of the following manners:

1) Plead guilty and pay the civil penalty stated on the NOV.

2) Go to hearing, at which the carrier can plead its case. The hearing may result in the carrier paying the original civil penalty amount, or the Administrative Law Judge (ALJ) may decide to decrease the civil penalty amount, withdraw the NOV, or settle after order.

3) Plead “not guilty” by indicating so on the backside of the NOV and returning the appropriate paperwork. In this case, the DLA contacts the carrier with settlement offer terms or withdraws the NOV.

4) Call NYSDOT and try to get the NOV withdrawn. At the hearing, the ALJ decides whether the carrier is guilty.

5) Call and try to settle. If agreement on how to resolve the NOV is reached, the DOT sends a tentative settlement agreement letter to the carrier for signature.

6) Do nothing. When a carrier fails to respond to or contest the allegations of an NOV, or to appear for hearing, the carrier is considered to be in default.

The majority of issued NOVs are settled, approximately 3% are withdrawn, and approximately 10%-15% go all the way through the default process.

Process flow diagrams for tracking the status of a NOV are depicted in Figure 3 through Figure 7. Figure 8 illustrates the choices available and the paths a carrier can take throughout the NOV lifecycle.
Once a NOV is issued and received by the Carrier, the Carrier can respond in one of 6 possible manners.

**NOV Tracking Process Flow - Possible Carrier Responses**

**Carrier Responses**

1. **Plead guilty and Pay $**
2. **Go To Hearing**
   - **Plead “Not Guilty”**
   - **Call and try to get NOV Withdrawn**
   - **Call and try to Settle**
   - **Default (do nothing)**

3. **Get Withdrawn**
4. **Settle Prior to Order**
5. **Settle After Order**
6. **Found Guilty**

**NYSOT**

- **Issue Notice of Violation**
- **Closeout NOV**
- **Withdraw NOV and Send Withdrawal Letter**
- **Send Thankyou Letter**
- **End**

**Figure 3, Possible Carrier Responses Process Flow**
Figure 4, Not Guilty Plea Process Flow
Figure 5, Settle Prior to Order Process Flow
Figure 6, Settle After Order Process Flow
Figure 7, Found Guilty Process Flow
Figure 8, Decision Tree - Settlement Agreement Prior to Order
Figure 9, Decision Tree – Settlement Agreement After Order
3.3 System Users

The Regulatory Compliance system is used by approximately ten internal users from the below NYSDOT organizations as follows:

- The Office of Modal Safety and Security staff supports the NYS program of commercial vehicle OS/OW enforcement by analyzing potential violations and issuing warnings and/or NOVs as appropriate.
- The DLA staff supports the tracking of NOVs issued. Each NOV requires disposition of action and results in multiple follow-up correspondence, tracking of due dates and status, and tracking and linking scanned documents.
4. GLOSSARY

Administrative Hearing

Type of Hearing held based on the Return Date and matters on the calendar decided by the Administrative Law Judge (ALJ), whereby Order after Hearing is issued.

ALJ
Administrative Law Judge

Certificate of Disposition

Document received from Albany County verifying to NYSDOT that Carrier has satisfied a judgment that was previously filed. This paperwork is then transcribed and forwarded to the County where the Carrier does business as proof of satisfaction of the judgment.

Civil Penalty

A fixed amount of money that a motor carrier is ordered to pay by a NYSDOT Administrative Law Judge based upon evidence, custom, and practice that generally varies with the magnitude of the violation. The penalty being sought by NYSDOT is usually expressed on the NOV.

Default

When carrier fails to respond or contest the allegations of a NOV, or appear for hearing, the usual result is the issuance of an Order after Hearing imposing against the Carrier the sought-after penalty expressed on the NOV.

Index No.

This number is assigned by the Albany County Clerk and is the reference number to the Judgment Filed against the Judgment Debtor (Carrier).

Judgment

A judgment is a determination of a court of competent jurisdiction requiring the payment of money damages. Pursuant to Transportation Law Section 145 a judgment may be filed in Albany County Supreme Court based upon an order issued by the ALJ at NYSDOT after the amount payable under such order has not been paid for a period of 120 days following its issuance. The DOT Division of Legal Affairs files a judgment with Albany County and later, a transcript of that judgment is filed with the County where the carrier’s business is located. Once filed, it is possible to execute upon the judgment by asserting liens or executing on assets or wages.

Judgment Debtor

Once a judgment has been filed against it, the Carrier becomes the Judgment Debtor until the judgment is satisfied.
Judgment Creditor
NYSDOT is the Judgment Creditor for any judgment that has been filed and remains unsatisfied.

Notice to Appear
A written instrument issued by Division/Office of Legal Affairs (DLA/OLA) directing the Carrier and/or their Attorney to appear at a Hearing on a specific Date/Time and in a specific Location. A Notice to Appear is used in cases where the Carrier pleads not guilty or defaults on settlement terms.

NOV
Notice of Violation

Order after Hearing Civil Penalty (A/K/A: ORDER)
An order is a written direction issued by an Administrative Law Judge (ALJ) to a motor carrier that directs the Carrier to pay a Civil Penalty pursuant to Transportation Law Section 145.

Order for Entry of Determination of Commissioner of Transportation into the Judgment Rolls
Paperwork that is prepared and forwarded to Albany County in order for the Judgment to be filed and a copy returned to NYSDOT so as to form a basis for the Transcript of Judgment.

Return Date
Date and Time on page 2, section 3 of the NOV, by which the carrier is required to either plead (guilty or not guilty), or appear before the ALJ. A Carrier’s failure to respond or appear is considered a default.

Satisfaction of Judgment issued by New York State Commissioner of Transportation
Documentation prepared and sent to Albany County when a carrier fulfills its obligations under a judgment. The satisfaction documents that said judgment has been wholly paid.

Settlement
A settlement is the result of an agreement between disputing parties (NYSDOT and a carrier) as to how a NOV is to be resolved, reached at any time after the NOV has been issued.

Transcript of Judgment
A transcript of judgment is legal documentation evidencing to another county that a judgment has been filed in Albany County against a motor carrier.