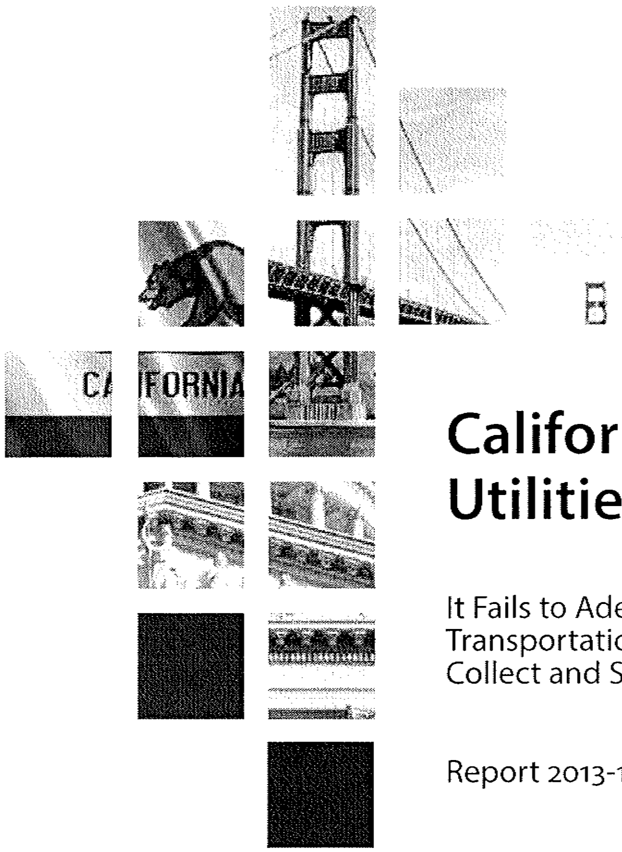
ATTACHMENT A

State Auditor

June 2014



California Public Utilities Commission

It Fails to Adequately Ensure Consumers' Transportation Safety and Does Not Appropriately Collect and Spend Fees From Passenger Carriers

Report 2013-130

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State Auditor

Elaine M. Howle State Auditor
Doug Cordiner Chief Deputy

June 17, 2014 2013-130

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor (state auditor) presents this audit report concerning the California Public Utilities Commission's (commission) Transportation Enforcement Branch's (branch) efforts to regulate passenger carriers, as well as its use of fees it collects from these carriers.

This report concludes that the branch does not adequately ensure that passenger carriers comply with state law. Specifically, we found that the branch has not established formal policies and procedures for staff to follow when addressing complaints against passenger carriers, and it does not ensure that staff resolve these complaints in a timely or adequate manner. Without formal guidance, investigators have not always ensured that passenger carriers comply with critical safety requirements. In addition, when the branch's investigators have issued citations to passenger carriers, the citations have been for amounts much lower than state law allows.

We also determined that the commission fails to perform periodic reviews of passenger carrier fee payments, which are based on a percentage of revenues, to ensure that the State receives the appropriate amount of fees. Further, because the commission's accounting staff do not compare the amount it collects from passenger carriers to the amount spent regulating those carriers, the commission cannot ensure that it spends passenger carrier fees only on regulating those carriers, and risks being unable to support the validity of its fees if payers challenge them. Additionally, although the fiscal year 2007–08 budget authorized the commission to hire five additional investigators to enforce statutes concerning passenger carriers operating at the State's airports, the branch is not using those staff for airport enforcement.

The main reason for the deficiencies we found is a lack of effective program leadership. Specifically, branch management has not established program goals or performance measures to guide its oversight efforts. In addition, the branch does not ensure investigators receive adequate training related to their duties. One of the key reasons for the lack of program oversight and training is turnover and vacancies in key branch management positions. Without major improvements to its management processes, we question the branch's ability to resolve its current deficiencies and to implement the expanded oversight required by recent legislation, as well as a recent initiative requiring the branch to regulate other types of passenger carriers.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

The Transportation Enforcement Branch (branch) of the California Public Utilities Commission (commission) does not provide sufficient oversight of charter-party carriers and passenger stage corporations (passenger carriers) to ensure consumer safety. Because of this insufficient oversight, the commission is also failing to collect the proper amount of fee revenue from these carriers and to spend it appropriately. Through the efforts of the branch, the commission is responsible for ensuring that passenger carriers—for-hire limousines, for example—comply with requirements to have branch-issued permits, which include regular inspections by the California Highway Patrol, applicable insurance, and participation in driver safety programs. However, the branch does not adequately ensure that such passenger carriers comply with state law. Specifically, it has not established formal policies and procedures for staff to follow when addressing complaints against passenger carriers, and it does not ensure that staff resolve these complaints in a timely or adequate manner. Because they do not have formal guidance, investigators have not always ensured that passenger carriers are complying with critical safety requirements. In addition, when the branch's investigators have issued citations to passenger carriers, the citations have been for amounts much lower than state law allows and often for amounts below an internal threshold that requires manager review, a process that investigators appear to avoid because of reported long delays in receiving manager approval.

In addition to consistently low citations, the branch has failed to ensure that the State receives the appropriate amount of fees from passenger carriers. In general, state law requires passenger carriers to submit fees based on a percentage of their revenue, which they self-report. However, commission staff do not perform periodic reviews of these revenues to verify that the carriers calculate the fees correctly. Although state law allows the commission to inspect carriers' financial records, its staff do not exercise this authority. As a result, the commission may not be collecting all the revenue it is entitled to collect, revenue that could be used to oversee more effectively the safety and service standards of passenger carriers.

Moreover, the branch has not taken the steps necessary to ensure that it appropriately spends funds from the Public Utilities Commission Transportation Reimbursement Account (transportation account). State law requires the commission to spend fees received from each class of common carrier, including passenger carriers, for the regulatory activities related to those carriers. However, the commission does not track how it spends

Audit Highlights...

Our audit of the California Public Utilities Commission's (commission) efforts to regulate passenger carriers, revealed the following:

» The commission's oversight of passenger carriers is insufficient to ensure consumer safety.
  - It does not have formal policies and procedures to address complaints against passenger carriers.
  - It does not ensure complaints are resolved timely or adequately.
  - When it issues citations to passenger carriers, the citations have been for amounts much lower than what state law allows.

» It does not perform periodic reviews of passenger carrier fee payments to ensure the State received the proper amount of fee revenue.

» The commission does not track—by class of carrier—how it spends fees received from each class of common carrier.

» The commission is not using some of its staff for airport enforcement although it received funding for this purpose.

» The commission lacks effective program leadership.
  - It has not established program goals, strategies, or performance measures to guide its efforts.
  - It has high turnover and vacancies in key management positions.

these fees by each class of carrier, which hinders its ability to ensure that it spends passenger carrier fees only on regulating passenger carriers. Additionally, although the fiscal year 2007–08 budget authorized the commission to hire five new investigators to enforce statutes concerning passenger carriers operating at the State's major airports, it is not using those staff for airport enforcement. By not using all of the new positions for the authorized purpose, the commission fails to meet budget requirements and risks not having sufficient resources to enforce passenger carrier requirements at major airports.

The core reason for the deficiencies we found is a lack of effective program leadership. Specifically, branch management has not adequately established program goals, strategies, or performance measures to guide its oversight efforts. Additionally, it does not consistently provide training to investigators that would equip them with the knowledge and skills necessary to investigate complaints against passenger carriers. One of the key reasons for the lack of program oversight and training is turnover and vacancies in key branch management positions. Because the commission has a large and growing balance in its transportation account, the branch appears to have the resources to resolve these program deficiencies. However, without major improvements to its management processes, we question the branch's ability to resolve its current issues and to implement the expanded oversight required by recent legislation as well as by a recent initiative requiring the branch to regulate other types of passenger carriers.

Recommendations

To ensure carrier and public safety, the branch should develop policies and procedures for receiving complaints and investigating passenger carriers by December 31, 2014.

To ensure that it resolves complaints against passenger carriers in a timely manner, the commission should establish a method for prioritizing complaints and it should implement a policy specifying the maximum amount of time allowed between receipt of a complaint and completion of any subsequent investigation. Further, the commission should require branch management to monitor and report regularly on its performance in meeting that policy.

To ensure that the branch conducts thorough investigations of passenger carriers, the commission should require investigators to review passenger carriers for compliance with each state law relating to passenger carrier requirements, and it should implement a formal training program to ensure that all investigators have adequate knowledge and skills related to regulating passenger carriers.

To better ensure passenger carrier and public safety, the commission should create a system to determine when a carrier merits a penalty and what the magnitude of the penalty should be. In addition, to be an effective deterrent, the amount of such penalties should be more consistent with what state law permits.

To ensure that passenger carriers submit accurate fee payments, the commission should require its fiscal staff to implement a process to verify passenger carrier fee payments and associated revenue.

To ensure that it complies with state law and uses passenger carrier fees appropriately, the commission should implement a process to ensure that passenger carrier fee revenues more closely match related enforcement costs.

To detect and deter carriers from operating illegally at airports, the branch should use as intended the five positions added for passenger carrier enforcement at airports. If the branch chooses not to designate five positions solely for this purpose, then it must be prepared to demonstrate regularly that an equivalent number of full-time positions are working on this activity.

To strengthen its leadership and ensure carrier and public safety, the branch should produce a draft strategic plan by December 31, 2014, with a final strategic plan completed as the commission specifies. The strategic plan should include goals for the program; strategies for achieving those goals, including strategies for staff development and training; and performance measures to assess goal achievement.

Agency Comments

The commission agreed with all of our findings and recommendations and indicated that it plans to make all necessary changes to address them.

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Introduction

Background

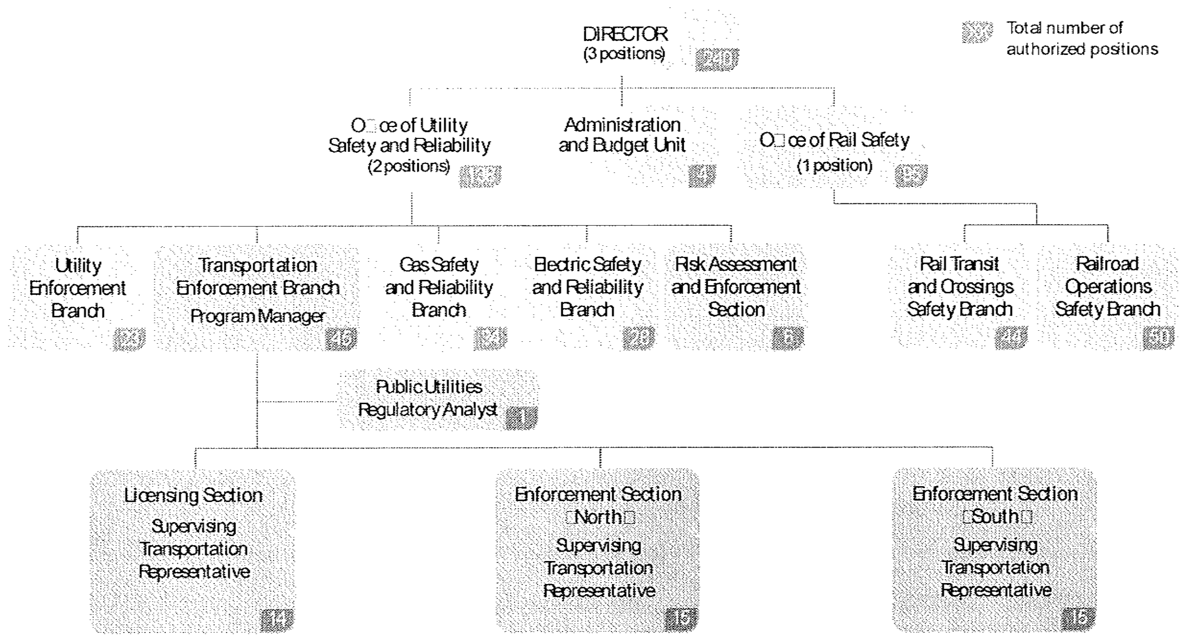
The California Public Utilities Commission (commission) is responsible for promoting the health of California's environment and economy by ensuring that California utility customers have safe, reliable utility service at reasonable rates. Consequently, the commission has broad constitutional and statutory powers to regulate investor-owned electric, natural gas, telecommunications, and water utilities. In addition, the commission has the authority to regulate parts of the transportation sector. Specifically, it conducts safety oversight in a number of industries, including railroads, limousines, charter buses, and household goods carriers.

The commission is composed of five commissioners whom the governor appoints, with consent from the Senate, to serve staggered six-year terms. The commissioners appoint an executive director, who carries out the commission's decisions and policies. The executive director and executive officers lead the commission's staff and also work with other state agencies, the Legislature, the governor's office, and external stakeholders to anticipate regulatory and agency needs as well as to develop and implement strategies to meet those needs.

The Commission's Safety and Enforcement Division

The mission of the commission's Safety and Enforcement Division (division) is to ensure that regulated services are delivered in a safe, reliable manner. The division is responsible for safety oversight in a number of industries, including electric, natural gas, and telecommunications infrastructure; railroads, rail crossings, and light rail transit systems; passenger carriers, such as limousines and charter buses; ferries; and household goods carriers. The division has several branches, including the Transportation Enforcement Branch (branch). The branch is split into three sections: a Northern California enforcement section, based in San Francisco; a Southern California enforcement section, based in Los Angeles; and a licensing section, also based in San Francisco. The enforcement sections enforce state law and manage consumer complaints for all passenger and household goods carriers. The licensing section administers all licensing components for these entities. Figure 1 on the following page illustrates the structure of the division and branch.

Figure 1
Organization Chart for the California Public Utilities Commission's Safety and Enforcement Division (January 1, 2014)



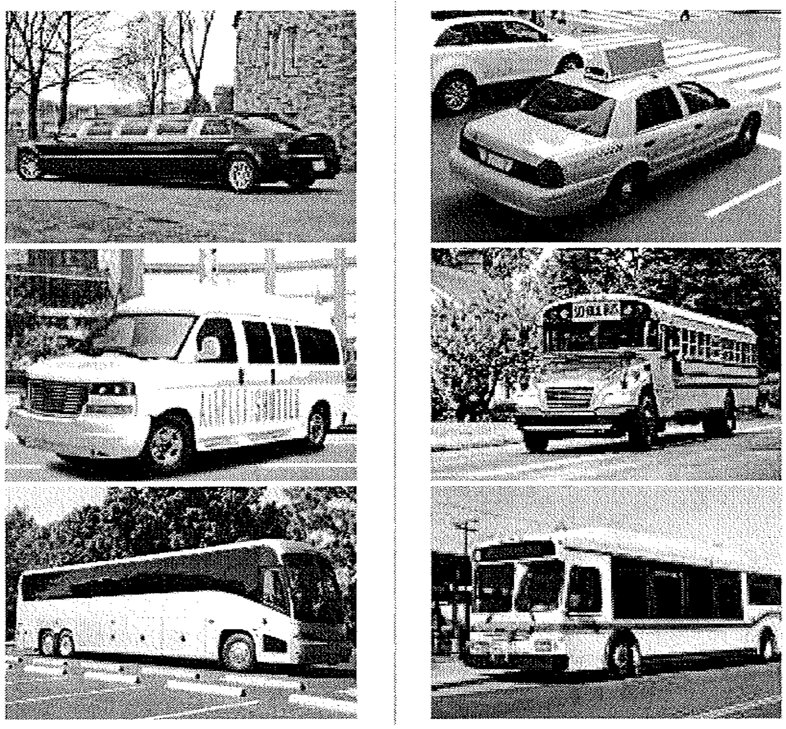
Source: California Public Utilities Commission's organization chart.

Types of Passenger Carriers

The branch regulates two types of transportation providers, collectively referred to as passenger carriers, in addition to household goods carriers. A charter-party carrier (charter carrier) operates a motor vehicle on a prearranged basis for the exclusive use of an individual or group. Falling under this business category are round-trip sightseeing services and certain specialized services not offered to the general public, such as transportation incidental to another business and transportation under contract to a governmental agency, to an industrial or business firm, or to a private school. Charges for the individual or group generally cannot be made on an individual fare basis for these types of carriers and instead must be based on mileage or time of use, or a combination of both. As depicted in Figure 2, examples of passenger carriers include limousines and charter (or party) buses. As of January 2014 there were close to 8,500 active charter carrier licenses in California, according to the commission's records. School buses and other vehicles used to transport developmentally disabled persons to regional care centers, among other modes of transportation, are exempt from commission regulation of charter carriers.

Figure 2
Examples of Passenger Carriers

Examples of Passenger Carriers Regulated by the California Public Utilities Commission (commission)	Examples of Passenger Carriers NOT Regulated by the commission



Source: California Public Utilities Code, sections 5353, 5384, and 5386, and the commission's Web site.

The commission also regulates passenger stage corporations (passenger corporations). Passenger corporations differ from charter carriers in that they provide transportation service between fixed locations or over a regular route and charge passengers an individual fare. Passenger corporations operate a fixed route, scheduled service, or an on-call, door-to-door shuttle-type service. Examples of passenger corporations include door-to-door airport shuttles and fixed-route bus services. As of January 2014 there were more than 260 active passenger corporation licenses in California, according to the commission's records. State law exempts public transportation systems and taxis from commission regulation. Passenger corporations and charter carriers differ from taxis because their passengers must pre-arrange their travel with their carrier before its occurrence.

Revenue Sources for the California Public Utilities Commission's Transportation Reimbursement Account

Passenger stage corporations

Charter-party carriers

Railroad corporations

Commercial air operators

Pipeline corporations

Vessel (ferry) operators

Sources: California Public Utilities Code and the California Public Utilities Commission's Web site.

The Commission's Transportation Reimbursement Account

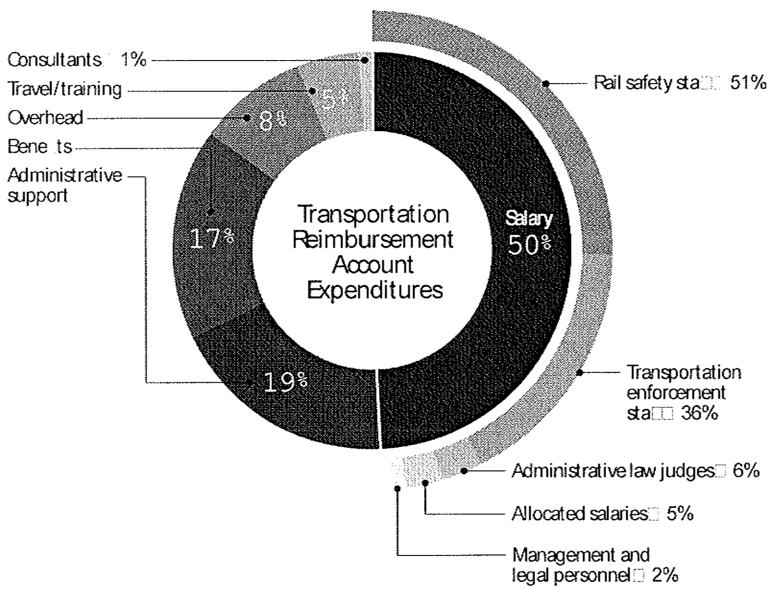
The commission's Transportation Reimbursement Account (transportation account) receives fees from various types of state-regulated vehicles, including passenger carriers. As shown in the text box, the transportation account also receives fees from other state-regulated vehicle companies, including railroad corporations, commercial air operators, and pipeline corporations. State law defines commercial air operators as any persons owning, controlling, operating, renting, or managing aircraft for any commercial purpose for compensation, while state law defines pipeline corporations as any corporation or persons owning, controlling, operating, or managing any pipeline delivering crude oil or other fluid substances except water. The commission collects the fees from these operators annually or quarterly and deposits them in the transportation account. The commission has set the fees for passenger carriers with vehicles seating no more than 15 persons at one-third of 1 percent of their annual gross revenue, plus a $10 quarterly fee or a $25 annual fee. Between fiscal years 2005–06 through 2012–13, passenger carriers provided 46 percent of the revenue in the transportation account while railroads provided 51 percent of revenues. The remaining revenues came from the other regulated businesses indicated in the text box. The commission administers the transportation account, which state law designates to fund operations that regulate railroads, passenger carriers, and related businesses. State law also provides that the commission can maintain an appropriate reserve in the transportation account. The law requires the commission to determine this appropriate reserve based on its past and projected operating experience.

As indicated in Figure 3, the transportation account funds a variety of activities, such as travel, training, salaries, benefits, and administration. Salaries comprise half of the expenditures from the transportation account. In fiscal year 2012–13, the transportation account funded positions in the rail safety branch, transportation enforcement branch, and administrative law judges division,[1] among other areas. The branch oversees licensing and investigations of passenger carriers and accounted

[1] The administrative law judges division processes formal filings, facilitates alternative dispute resolution, conducts hearings, develops an administrative record, and prepares and coordinates the commission's business meetings.

for 36 percent of salary expenditures in that fiscal year. In contrast, the rail safety program was much larger and accounted for 51 percent of salary expenditures that year.

Figure 3
Components of the California Public Utilities Commission's Transportation Reimbursement Account Expenditures
Fiscal Years 2005–06 Through 2012–13



Source: California State Accounting and Reporting System.
Note: The further breakout of salary information is for fiscal year 2012–13 only.

Regulations Governing Passenger Carriers

The Legislature first passed the Passenger Charter-Party Carriers Act (act) in 1961. The intent of the act is to ensure adequate and dependable transportation by carriers operating on public highways and to promote public safety through safety enforcement regulations. The act prohibits passenger carriers from operating without a permit and requires the commission to investigate passenger carriers to determine compliance with permit requirements. As a condition of obtaining and maintaining an operating permit from the commission, passenger carriers must, among other things, do the following:

- Document public liability and workers' compensation insurance coverage.

- Provide the commission with evidence that it has enrolled all of its drivers in California Department of Motor Vehicles' program that provides employers and regulatory agencies with ongoing reports of driver records.

- Participate in a drug and alcohol testing program for carrier drivers.

- Undergo an annual California Highway Patrol (CHP) safety inspection for vehicles seating more than 10 passengers.[2]

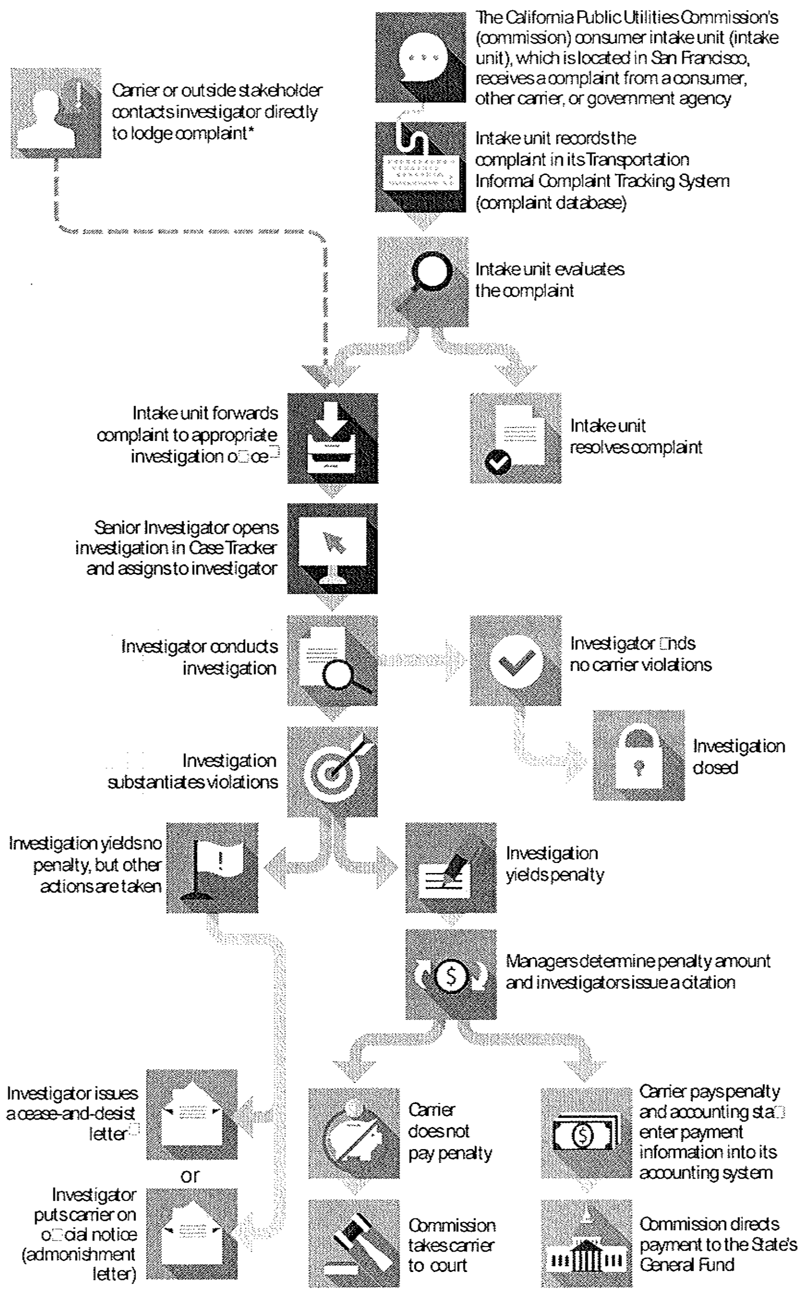
In addition to the permit process, the commission oversees passenger carriers through investigations, which result from complaints made by the public, other carriers, or government agencies. Investigations generally deal with issues such as operating without a permit, operating without liability or workers' compensation insurance, and not enrolling drivers in a drug and alcohol testing program. As shown in Figure 4, investigations can lead to citations of operators. The commission deposits the proceeds from citations into the State's General Fund.

Positions to Conduct Investigations at Major Airports

In fiscal year 2007–08, the Legislature authorized an additional five positions in passenger carrier enforcement staff at major airports. To fund these new positions, the commission increased the fees charged to passenger carriers. According to commission documents, the Legislature intended the commission to use these positions to enforce permit requirements for passenger carriers operating at major airports in the State. The Greater California Livery Association, the trade organization for limousine operators, apparently supported the commission's request for the new positions to help eliminate unlicensed limousine and small vehicle operators at major airports, and it recognized that its members would have to pay higher fees to support these positions. The fee for vehicles that hold 15 passengers or fewer increased from one-quarter of 1 percent of the passenger carrier's annual gross revenue to the current one-third of 1 percent. This fee increase took effect January 1, 2009. As shown in Table 1 on page 12, revenue from the quarterly and annual passenger carrier fees has increased since fiscal year 2009–10.

[2] State law does not require a CHP safety inspection for passenger carrier vehicles seating 10 or fewer passengers. However, these carriers must meet all of the other above listed criteria.

Figure 4
The Investigation Process of the California Public Utilities Commission's Transportation Enforcement Branch



Source: Auditor-generated based on interviews with key transportation enforcement branch (branch) staff, investigation files, and accounting records.

* A senior transportation representative in the branch estimated these complaints make up approximately 10 percent of all complaints. These complaints are not logged in the commission's complaint database.

† The branch has four territories: Sacramento, Los Angeles, San Diego, and San Francisco.

‡ Cease-and-desist letters require carriers to end immediately all advertisements and operations as a charter-party carrier without valid commission authority.

Table 1
Fee Revenue From Passenger Carriers
Fiscal Years 2008–09 Through 2012–13

	FISCAL YEARS				
	2008–09	2009–10	2010–11	2011–12	2012–13
Fee revenue	$3,107,450	$2,936,737	$3,301,323	$3,674,405	$4,023,030
Difference from prior year	12,486	(170,713)	364,586	373,082	348,625

Source: The California Public Utilities Commission's Transportation Management Information System.

Increased Commission Oversight of Passenger Carriers

In May 2013 in the San Francisco Bay Area, a fire killed five women in a limousine, which was a charter carrier regulated by the commission. This event called into question the State's oversight of passenger carriers. Four women who escaped the fire apparently climbed through the limousine's divider window and out the driver's section of the vehicle because the rear passenger doors were blocked by smoke. Investigations into the fire yielded no criminal charges. Although the commission regulates passenger carriers, state law only requires annual safety inspections for passenger carrier vehicles that transport more than 10 passengers.[3] For these vehicles, the CHP, not the commission, is responsible for conducting the mandated annual safety inspections. The commission does review whether carriers obtained a CHP inspection as required. However, the commission does not directly oversee this aspect of vehicle safety.

Subsequent to the May 2013 limousine fire, the Legislature considered several bills to increase oversight and mitigate safety concerns. For example, Senate Bill 109 (Chapter 752, Statutes of 2013), which became law in January 2014, requires certain modified limousines to have additional window and door emergency exits that passengers can open from the inside beginning in July 2015. It also requires the CHP to establish and enforce standards associated with these new requirements. Further, limousine operators must now provide various safety instructions to passengers, inform them whether the limousine meets safety requirements, and unlock the vehicle's rear doors in cases of emergency. Similarly, Senate Bill 338 (SB 338), which the Legislature passed and the governor vetoed in 2013, proposed several requirements for vehicles that carry 10 or fewer passengers

3 The limousine in the May 2013 fire seated fewer than 10 passengers and was therefore not required by state law to have an annual safety inspection.

and that have been modified or extended for purposes of increasing vehicle length and passenger capacity. SB 338 would have required vehicle operators to install two fire extinguishers and to notify passengers of their location, and it would have required CHP to conduct periodic safety inspections of these vehicles and transmit the inspection data to the commission. SB 338 also included language setting minimum and maximum fees for these inspections. The governor vetoed SB 338 in October 2013 on the grounds that the fee was insufficient to cover the actual cost of the CHP inspections. In response, the Legislature is considering new legislation, Senate Bill 611, which contains the same substantive requirements as SB 338 but allows the CHP inspection fee to be set based on the actual costs of that program. This legislation was in the Assembly Utilities and Commerce Committee as of June 2014.

In addition to the safety requirements passed and under consideration by the Legislature, the commission has also passed a resolution increasing the branch's responsibilities. In September 2013 the commission passed a resolution that defines a transportation network company (network carrier) as an organization operating in California that provides prearranged transportation services for compensation using an online-enabled application to connect passengers with drivers using their personal vehicles. The commission determined that network carriers are a type of charter carrier because these carriers transport persons by motor vehicle for compensation on state highways. The decision requires network carriers to do the following:

- Obtain a permit from the commission.
- Perform criminal background checks for each driver.
- Establish a driver training program.
- Implement a zero-tolerance policy on drugs and alcohol.
- Maintain certain insurance coverage.

The commission's decision places responsibility on the branch to process permit applications, receive reports from network carriers, and enforce requirements.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor to review the commission's transportation account. We list the objectives that the audit committee approved and the methods we used to address them in Table 2 on the following page.

Table 2
Audit Objectives and the Methods Used to Address Them

	Audit Objective	Method
1	Review and evaluate the laws, rules, and regulations significant to the audit objectives.	We reviewed relevant laws, regulations, policies, and other background materials pertaining to the California Public Utilities Commission's (commission) Transportation Reimbursement Account (transportation account).
2	Determine the transportation account's total revenues and expenditures over the last eight years. In addition, identify the fees obtained from passenger stage corporations and charter-party carriers (charter carriers) during the same period.	To determine total revenues and expenditures over the last eight years, we reviewed financial reports from the California State Accounting and Reporting System. To determine the fees obtained from passenger carriers, we reviewed revenue information from the commission's Transportation Management Information System.
3	For the period between fiscal years 2009–10 through 2012–13, determine how the commission is spending fees collected from charter carriers. Specifically, whether and to what extent the commission is using these fees for enforcement activities, including actions taken in response to violations, as appropriate.	To determine how the commission spends passenger carrier fees, we reviewed the expenditure information from audit objective 2 and estimated the expenditure amounts associated with passenger carriers. We also reviewed time sheets for a selection of 40 Transportation Enforcement Branch (branch) staff members. To determine the extent to which the commission uses carrier fees for enforcement activities, we compared the fee revenues identified in audit objective 2 to the estimated expenditure amounts.
4	Determine how the commission is using the positions authorized in the fiscal year 2007–08 state budget. In addition, determine whether the charter carrier fee increase, effective January 1, 2009, is being used to fund these positions.	To determine how the commission used the authorized positions, we interviewed key commission staff and obtained documents from the commission's human resources director. We also reviewed the relevant budget authorization to assess whether the commission's use of the positions is appropriate. To determine if the commission used the fee increase to fund the positions, we analyzed the fee revenue for fiscal years 2008–09 through 2012–13 and compared it to the pay and benefits these positions received from the commission.
5	For the period between fiscal years 2009–10 through 2012–13, determine whether and to what extent the commission is ensuring that charter carriers are complying with the Passenger Charter-Party Carriers Act and how transportation account funds are used to ensure that carriers meet these requirements.	To determine the extent to which the commission ensures that carriers comply with state law, we interviewed managers and staff within its branch and reviewed 40 investigation case files. We also obtained the total number of complaints and investigations opened and closed for fiscal years 2009–10 through 2012–13. To determine how the commission uses funds to regulate carriers, we reviewed the expenditure and time sheet information obtained for audit objectives 2 and 3.
6	Review and assess any other issues that are significant to the audit.	To assess internal controls significant to the audit objectives, we searched for audits by other state entities that reviewed the commission's operations to identify any that relate to these objectives. We identified two California Department of Finance audits that identified shortcomings in the commission's accounting and budget processes. We noted these shortcomings as a potential cause for some of the issues we found and discussed in the audit results. We also identified a 2013 audit conducted by the California State Controller (controller) that reviewed the commission's internal accounting and administrative controls, and identified weaknesses in its collection of outstanding fines and fees. Therefore, we reviewed the commission's response to the controller's audit, as well as its current outstanding fines and fees related to passenger carriers. Additionally, to assess whether high turnover within the branch is a potential cause of the issues we identify in the audit results, we obtained turnover and vacancy information from the commission's assistant human resources director.

Sources: California State Auditor's analysis of the Joint Legislative Audit Committee's audit request number 2013-130, planning documents, and analysis of information and documentation identified in the column titled Method.

Assessment of Data Reliability

In performing this audit, we obtained electronic data files extracted from the information systems listed in Table 3. The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support findings, conclusions, or recommendations. Table 3 shows the results of our assessments for the information systems we analyzed in this report.

Table 3
Methods Used to Assess Data Reliability

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
Case Tracker Data related to investigation cases for the period of July 1, 2009, through June 30, 2013	• To identify the total number of investigations opened and closed by the California Public Utilities Commission's (commission) Transportation Enforcement Branch (branch). • To identify the length of time the branch took to begin and complete investigations. • To assess the adequacy of actions taken by the branch during the course of investigations.	We did not perform data reliability testing of the Case Tracker system because the branch maintains the source documents, or case files, in several of its locations across California, making such testing cost prohibitive.	Undetermined reliability for the purposes of this audit.
California State Accounting and Reporting System (CalSTARS) Data related to the commission's Transportation Reimbursement Account (transportation account) activity for the period of July 1, 2005, through June 30, 2013	• To identify the activity, including revenues, expenditures, and fund balance, within the commission's transportation account. • To estimate expenditures associated with passenger carriers. • To document the categories of expenditures from the transportation account. • To document salary information related to selected branch staff we reviewed. • To document passenger carrier fine payments and unpaid, or outstanding, fines the branch issued.	• To test completeness, we verified that the transportation account balances reported by the commission agreed with corresponding California State Controller's Office reports. Because of substantial agreement between the system and the reports, we omitted further accuracy testing of CalSTARS. • We also performed data-set verification procedures and did not identify any significant issues.	Undetermined reliability for the purposes of this audit.
Work Tracking System Data related to branch time charges for the period of July 1, 2009, through June 30, 2013	• To document time charges related to selected branch staff we reviewed. • To compare funding percentage with actual work activities. • To estimate incorrect transportation account salary and benefit expenditures. • To determine the extent to which staff charged time to activities related to regulating passenger carriers.	We did not perform data reliability testing of the Work Tracking System because it is an all-digital timekeeping system without physical documents supporting staff data entries. Without this supporting documentation, we could not perform data reliability testing.	Undetermined reliability for the purposes of this audit.

continued on next page . . .

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
Transportation Management Information System Data related to passenger carrier fee revenues for the period of July 1, 2005, through June 30, 2013	To document revenues associated with passenger carriers, including fees.	• To verify the accuracy and completeness of the Transportation Management Information System, we reconciled its revenue information with the revenue information contained in CalSTARS. • We also performed data-set verification procedures and did not identify any significant issues.	Undetermined reliability for the purposes of this audit.

Sources: California State Auditor's review of various documents, interviews conducted, and analyses of data obtained from the commission.

Audit Results

The Transportation Enforcement Branch Does Not Adequately Ensure Public Safety

The California Public Utilities Commission's (commission) Transportation Enforcement Branch (branch) does not adequately ensure that passenger carriers, which include charter-party carriers (charter carriers) and passenger stage corporations, operate safely by complying with state law. State law requires the commission to promote passenger carrier and public safety through its safety enforcement regulations. Other than certain proactive efforts described below, most of the branch's work ensuring that passenger carriers comply with state law is prompted when the branch receives a complaint. Even so, the branch has not carefully defined its complaint-receipt process and does not ensure that it resolves complaints about passenger carriers in a timely or complete manner. The branch's inadequate investigation efforts stem from a lack of written guidance for staff to follow when receiving or investigating complaints.

The Branch Lacks Procedures for Processing Complaints

The branch has not established policies and procedures for its consumer intake unit (intake unit) to follow when processing consumer complaints. One of the ways the branch helps ensure public safety is by addressing complaints regarding passenger carriers. According to the complaint intake specialist who is responsible for processing these complaints, she does not have any written procedures to follow. Instead, she learned how to handle carrier-related complaints from verbal instructions and previous experience. She enters all complaints she receives into the branch's complaint database. However, she explained that the branch receives some complaints that do not flow through this regular complaint intake process, and they are not included in the complaint database. She stated that sometimes investigators receive complaints directly and do not enter them into the complaint database or otherwise notify the intake unit. According to the Northern California enforcement section (northern section) supervisor, the complaint database is designed to document consumer complaints, and the complaints the investigators handle directly are not logged into the database because they are from nonconsumers such as airport inspections. However, we found instances where consumer complaints were not logged into the database even though investigators opened an investigation based on the consumer complaint. The branch estimates that these complaints represent about 10 percent of the total complaints received. The complaint intake specialist also acknowledged that there is no established oversight of her work. The branch's lack of policies and procedures for the intake unit creates risks that complaints may not be handled consistently or if the current complaint intake specialist leaves her position, that key processes will not get communicated to future staff.

The intake unit processes an average of 236 complaints[4] per year. These complaints come from consumers, other carriers, and government agencies. For fiscal years 2009–10 through 2012–13, 27 percent of the allegations that the intake unit handled involved carriers operating without a permit, 22 percent were related in some manner to the service of the passenger carriers, and the remaining complaints involved other potential violations. As indicated in Figure 4 on page 11, the complaint intake specialist can resolve some complaints without forwarding them to an investigator. She reported that this resolution process is often used with service-related complaints, and it involves communication and some level of negotiation with the offending carrier and the complainant. Although our audit procedures did not examine complaints closed or resolved at intake, we noted a lack of instructions and oversight related to these resolutions. With one person making the great majority of these determinations without written instruction or oversight, the branch risks handling these complaints inappropriately.

The Branch Fails to Ensure That It Completes Investigations and Issues Corresponding Citations in a Timely Way

The branch took an average of [illegible] days to begin an investigation after receiving a complaint and then took an average of [illegible] days to complete the corresponding investigation.

The branch does not ensure that it investigates consumer complaints and that it issues citations in a timely manner. We observed lengthy delays in the branch's resolution of the 40 investigations we reviewed. Specifically, the branch took an average of 46 days to begin an investigation after receiving a complaint and then took an average of 238 days to complete the corresponding investigation. For eight of these cases, the branch took at least one year to close the case. Included within these delays, we found that the branch failed to cite illegal and noncompliant carriers in a timely manner. On average, the branch cited carriers more than five months after substantiating violations resulting in the 13 citations that were among our selection of 40 cases.

For example, for one investigation we selected, the investigator did not issue the citation until nearly eight months after substantiating violations in which the carrier failed to adhere to several

4 We used the complaint data to provide context for the number and type of complaints the branch receives. These data do not support findings, recommendations, or conclusions. Therefore, we did not assess the reliability of these data.

safety requirements. Specifically, in early June 2012, the investigator concluded that the carrier did not enroll four drivers in a drug and alcohol testing program as required and did not enroll five drivers in a California Department of Motor Vehicles (DMV) program that monitors carrier drivers' records. These two programs were specifically implemented to increase public and carrier safety. However, neither staff nor management within the branch tried to stop the carrier from operating illegally until finally citing the carrier on the last day of January 2013. Consequently, the carrier continued to advertise and operate his vehicles after the investigator had found evidence that he was illegally employing drivers. By not issuing a citation in a timely manner, the branch failed to pressure the carrier to comply with state law. When the commission fails to take all necessary actions to enforce passenger carrier regulations, as state law requires, it puts passengers and the public at risk.

The branch has not established how quickly investigating activities and supervisory review should occur.

We attribute the delays to a lack of policies and procedures that would establish how quickly investigatory activities and supervisory review should occur and to a lack of investigation performance measures and subsequent supervision. The branch last published a policies and procedures manual to guide its activities in 1992, but many of the branch's investigators did not know this document existed and branch supervisors stated they do not use this manual. Although some investigators identified a 2005 PowerPoint as policies and procedures for their investigations, we found that this document only identifies the state laws that carriers must follow, the evidence needed to investigate carriers for each of these laws, and how to calculate the number of violations. The document does not provide any further information on how to prioritize, conduct, and resolve investigations. Without requirements regarding how quickly staff should complete investigations, cases have sat for long periods of time with no action taken.

For example, in one case we reviewed, a senior investigator waited six months to close an investigation into a carrier operating without a license. The Southern California enforcement section (southern section) supervisor said that the investigator determined that the carrier was no longer in business, and sometimes investigators keep cases like this open to see if the carrier resurfaces. While this might be true, the investigator determined that the carrier stopped operating because it changed its plates and removed its operating number from the vehicle. Further, at no point did the investigator indicate he had spoken to the carrier or made a follow-up visit to ensure that the carrier was not continuing to break the law, even though the investigation stemmed from an airport citation for operating illegally. When the commission does not ensure that carriers like this one are operating legally, it endangers both consumers and citizens who share the road with these unlicensed carriers.

Although we were able to assess the timeliness of a selection of cases, the branch does not track this in aggregate because its enforcement database does not have the ability to generate reports that would help the branch manage its enforcement efforts. For example, the database does not allow branch staff and supervisors to track the status and progress of investigations nor can it provide reports of consumer complaints resolved through completed investigations, repeat offenders, or other performance metrics the branch could be tracking. These limitations exist because the branch only designed the system to allow investigators to enter case notes; consequently, the system does not allow for performance measures or monitoring of ongoing investigation status, or the ability to store critical evidence such as signed citations by the carrier or pictures of illegal carrier activity. Without manually looking at each case file or requesting that investigators create a summary of the cases they are working on, branch managers cannot hold staff accountable for timely and effective performance of their duties.

The Branch Does Not Always Conduct Adequate Investigations

Because the branch lacks established policies and procedures, branch investigators do not consistently conduct adequate investigations. State law requires the commission, through its regulatory efforts, to ensure that carriers comply with state laws. This includes ensuring that carriers have a permit to operate, maintain certain insurance, obtain an annual California Highway Patrol (CHP) safety inspection for vehicles seating more than 10 passengers, enroll in a DMV notification program for driver violations, participate in an alcohol and drug testing program, and maintain records for each trip taken. As Table 4 indicates, in our review of 40 cases closed between fiscal years 2009–10 through 2012–13, we found that only 23 cases demonstrated that the investigator ensured compliance with carrier permitting requirements and also used sound investigative approaches. For the remaining 17 cases, we found that investigators did not examine carriers for required permitting compliance or they used flawed investigative approaches.

In only [illegible] of the [illegible] cases we reviewed did the investigator demonstrate a thorough review and a sound investigative approach.

As indicated in Table 4, we found three investigations in our selection of 40 cases in which the investigator, despite conducting an otherwise adequate investigation, did not demonstrate that the carrier complied with the permitting requirements even though this verification of compliance is not particularly labor-intensive. To verify compliance, investigators simply rely on branch licensing files, DMV records, and CHP records; in some cases, they call insurance and drug testing companies. Nevertheless, investigators in these three cases, as well as eight other cases that involved further investigative deficiencies, did not demonstrate through investigation files or case notes that they verified compliance with the requirements for carriers that have a branch-issued permit.

Table 4
Transportation Enforcement Branch Investigative E orts for 40 Cases We Reviewed Were Not Consistent

INVESTIGATOR LEVEL OF EFFORT	NUMBER OF INSTANCES
Investigator ensured compliance with permitting requirements and used sound investigative approaches	23
Investigator did not examine carrier for compliance with all critical requirements	3
Investigator did not use sound investigative approaches	6
Investigator neither checked for complete compliance nor used sound approaches	8
Total investigations reviewed	40

Sources: Transportation Enforcement Branch investigation files.

Additionally, we found a total of 14 instances in which investigators did not use sound investigative approaches that demonstrated due diligence. For example, an investigator in the northern section called a carrier to determine whether he was operating after the revocation of his permit and, despite confirming earlier that the carrier was still advertising on the Internet, essentially took the carrier at his word that he was not operating illegally. Although the investigator confirmed with the DMV that the registration of the carrier's vehicles was in someone else's name, the investigator never conducted a site visit to examine records and confirm that the carrier was not operating illegally. In another example, the investigator—at the direction of a supervisor—abruptly closed a case without further investigation or without issuing a citation, after the complainant informed him, subsequent to the original allegation, that the carrier had displayed a weapon in an aggressive manner. Instead of closing the case, the investigator should have involved law enforcement if necessary to complete the investigation and cite the carrier if appropriate.

In another instance, an investigator in the northern section—after receiving a complaint—called a carrier to inquire if he was operating illegally and the carrier initially denied operating a limousine company without a permit. Instead of attempting to gather additional evidence, such as checking for online advertising, the investigator called the complainant and asked for the carrier's license plate number. The investigator took no further action for two months while waiting for the license plate number and, according to case notes, was told during a case review to close the case if the complainant did not provide the information by a specified date. Only after the complainant retrieved the license plate number did the investigator perform a basic Internet search to check whether the carrier was advertising to provide passenger carrier services; such advertising requires a permit the carrier did not have. Using information that would have been available months earlier at the very beginning of the investigation, such as the company name, the investigator found instances of the carrier advertising illegally. The investigator then made a visit to the carrier's business to determine if he was operating illegally and issued the carrier a cease-and-desist order. Despite earlier denials that he was operating illegally, the carrier told the investigator he would apply for a permit. Although the carrier filed an application directly with the investigator, the carrier struggled over the next six months to demonstrate that he met all requirements for permit approval. During this time the investigator continued to follow up with the carrier on required paperwork but did not take any enforcement action, even though the complainant called the investigator three months after the cease-and-desist order to provide specific details about the carrier's continued illegal activities. This case remained open for an additional four months, ending with a warning letter; no citation or further action was taken to stop the carrier from operating illegally. In fact, during the year that this investigation remained open, the only factor that appeared to stop the carrier from continuing to disobey the law was his decision to sell his vehicle.

In one instance the investigator watched an illegal carrier load 13 passengers, including two children, into an 11-person capacity van, and the investigator took no action against the carrier.

When asked about the 17 instances in Table 4 where we noted deficiencies, the supervisors for both enforcement sections could not comment on six of the cases, stating that they were not involved in those cases, that the assigned investigators had left the branch, and that they could offer no explanation. For the remaining 11 instances, the supervisors' explanations were insufficient. For example, in one instance the investigator watched an illegal carrier load 13 passengers, including two children, into an 11-person capacity van, and the investigator took no action against the carrier. When asked why the investigator did nothing to stop or otherwise penalize this carrier, the supervisor stated that through the investigator's efforts, the insurance policies issued by the carrier's company were revealed to be unlawful and as a result, the California Department of Insurance filed criminal charges against the insurance company and the carrier went out of business. While this case may have ultimately resulted in the desired outcome, the supervisor's explanation does not answer why the investigator did not immediately cite a known illegal carrier for operating in her presence, especially when the carrier overcrowded a vehicle by allowing two children to sit on the laps of other passengers.

In another case, the carrier in question began advertising before the commission had approved him to operate, and his Web site advertised vehicle options that were not on his application and that required a CHP safety inspection. The investigator in this case called the carrier to ask if he was operating before he was allowed to and whether he was using the vehicles he was advertising on his Web site. The carrier stated he had not operated illegally and did not know he could not advertise vehicles he did not have. The investigator then issued an admonishment letter based on the phone call and closed the case without further investigation. The supervisor for this section stated that the enforcement effort was sufficient because the investigator issued the admonishment letter. But this does not address why the investigator only made one phone call and did no investigative work to ensure that this carrier was telling the truth on the phone. When the commission fails to stop carriers from operating illegally and does not actively investigate carriers when there is evidence to warrant more investigative scrutiny or does not issue a citation when called for, it allows carriers to continue to defy state law, putting the public in danger.

The Branch Imposes Penalties for Consistently Lower Amounts Than State Law Allows

The branch has failed to issue citations for all investigations in which it substantiated violations, and when it did issue a citation, the financial penalty was for an amount significantly lower than state law allows. Generally, state law allows commission staff to impose a penalty of up to $2,000 per offense on noncompliant passenger carriers.[5] In addition, because state law clarifies that each day of continued noncompliance is a separate offense, potential cumulative penalties can be quite high. In lieu of revoking a passenger carrier's permit, the commission may also levy an additional civil penalty of up to $7,500. However, before branch staff can issue citations exceeding $5,000, branch management requires them to obtain approval from the deputy director. Further, the commission passed a resolution in 1992 that prevents commission staff from citing carriers more than $20,000 in total without a formal hearing.

Although the branch substantiated violations for 25 of the 40 investigations we examined, it issued financial penalties in only 13 of these cases, and the penalty amounts were significantly lower than the potential maximum penalties. In fact, the branch only cited these carriers 2 percent of the amount state law would potentially allow. As shown in Table 5 on the following page, had it chosen to issue citations for these substantiated violations for the maximum amounts permitted by law, the branch could have cited these 25 carriers a total of $1.5 million. However, the branch only imposed penalties totaling $30,550.

Although the branch substantiated violations for [illegible] of the [illegible] investigations we examined, it issued [illegible]nancial penalties in only [illegible] of these cases. The branch could have cited these [illegible] carriers a total of [illegible] million, but it only imposed penalties totaling [illegible].

[5] Prior to January 1, 2010, the penalty was not more than $1,000. State law also allows the commission—after a hearing—to impose penalties of up to $7,500 for certain offenses.

Table 5
Citation Amounts Imposed by the California Public Utilities Commission's Transportation Enforcement Branch Are Significantly Less Than State Law Allows

LOCATION	MONTH ISSUED	VIOLATION COUNTS	MAXIMUM PENALTY	PENALTY IMPOSED*	DIFFERENCE
San Francisco	September 2008	4	$4,000	$750	$3,250
	June 2009	20	20,000	750	19,250
	September 2010	4	8,000	–	8,000
	March 2011	50	100,000	1,000	99,000
	February 2012	297	599,500	12,000	587,500
	May 2012	1	2,000	–	2,000
	October 2012	7	19,500	1,000	18,500
	January 2013	77	159,500	1,300	158,200
Sacramento	November 2009	37	37,000	3,000	34,000
	April 2010	100	200,000	3,000	197,000
	September 2011	2	4,000	–	4,000
	February 2012	108	216,000	1,500	214,500
	February 2012	26	52,000	1,000	51,000
San Diego	October 2008	1	1,000	–	1,000
	February 2009	1	1,000	–	1,000
	March 2009	6	6,000	1,250	4,750
	March 2010	3	6,000	–	6,000
	March 2010	5	10,000	–	10,000
	September 2011	1	2,000	–	2,000
	October 2012	2	4,000	1,000	3,000
Los Angeles	September 2009	1	1,000	–	1,000
	October 2009	45	45,000	3,000	42,000
	April 2010	1	2,000	–	2,000
	January 2011	1	2,000	–	2,000
	December 2012	1	2,000	–	2,000
Totals		801	$1,503,500	$30,550	$1,472,950

Sources: California Public Utilities Code, sections 5378 and 5413, and California Public Utilities Commission (commission) citation records and investigation files for 25 investigations we reviewed that had substantiated violations.

* For substantiated violations with no financial penalty, commission staff sent the carriers official notices of violations or cease-and-desist letters; in one instance, the carrier agreed to a voluntary permit suspension.

Although the collection history within the branch strongly suggests that not all of the $1.5 million shown in Table 5 would be collectible, the potential amount is so much higher than the amount actually imposed that we question why the branch would cite, at such consistently low levels, carriers who have violated state law and, at times, put people's lives at risk. For example, in February 2012 the northern section cited one of the 13 carriers in our review a total of $12,000 for multiple violations. A CHP report stated that this carrier was involved in a traffic accident in November 2010 during which three of the nine passengers were ejected from the van, resulting in one fatality. Investigative records confirmed that the carrier was operating with an expired permit, among other violations, and did not possess the required damage and liability insurance. Although the driver was prosecuted and reportedly pleaded guilty to manslaughter, the branch imposed penalties of only $12,000, which is roughly 2 percent of what state law authorizes for these violations and just 60 percent of the commission's $20,000 limit for its informal citation process. When carriers face limited consequences for operating outside of the law, such as receiving small fines from the branch, they have little incentive to cease illegal operations. This increases the likelihood that they will employ drivers without drug testing, operate without liability insurance, and ignore vehicle safety inspections, leaving their passengers and the public at greater risk.

According to unaudited branch data, the branch issued 256 citations with penalties totaling $597,750 for the 1,220 passenger carrier investigations it closed between fiscal years 2009–10 through 2012–13. Only 19, or 7 percent, of these citations had penalties that exceeded the branch's $5,000 threshold requiring deputy director approval. Moreover, none of those 19 citations had penalties that exceeded the commission's $20,000 limit for its informal citation process. As mentioned earlier, the branch informed us that its practice is to require any citation with penalties over $5,000 to receive approval from the deputy director. One reason for the seemingly low penalties might be the length of time it takes to receive approval for higher penalty amounts. An investigator showed us a few instances in the last year when management took months to approve citations with penalties over $5,000. In one example, the investigator submitted a final investigative report with a recommended citation of $6,000 in penalties for a carrier found to be in violation in August 2013, and management was still discussing the citation and the report five months later. When management does not promptly approve citations over $5,000, it sends the message to investigators that it is easier and more desirable to issue citations under the $5,000 threshold. When we discussed this issue with the program manager who was to approve these larger citation amounts in the absence of the deputy director, he noted that there has been a discrepancy in the level of authority needed to approve these citations. He also stated that there is no guidance as to citation amounts in relation to carrier violations that will ensure that the amounts he considers for approval are reasonable. We believe that without this type of framework, the citation approval process stagnates, potentially causing citations to be issued at significantly lower amounts than state law allows and thus limiting the branch's ability to protect consumers.

Only [illegible] of the [illegible] citations the branch issued between [illegible]scal years [illegible] through [illegible] exceeded the branch's [illegible],[illegible] threshold requiring deputy director approval.

The Branch Does Not Consistently Collect Money From Passenger Carriers Related to Citations

Based on the results of our review, we found that the branch has not made consistent efforts to collect on citation penalties issued to noncompliant passenger carriers. According to previous audit findings, the branch has a history of not collecting outstanding penalties. As of March 2014 the commission had $135,000 in outstanding penalties assessed against passenger carriers. We believe the branch should explore options for increasing its ability to require passenger carriers to pay penalties and otherwise comply with its orders. When the branch fails to collect on citations issued to passenger carriers, especially those operating without authority, it is not adequately deterring passenger carriers from operating outside of state law and this ultimately puts consumers at risk.

The branch did not exercise due diligence in collecting penalties associated with two of the 13 citations we reviewed. For one of the two citations, the branch could not determine why it did not collect $1,200 in remaining penalties after the carrier paid only $50 because the senior investigator retired. In the second instance, the commission's fiscal office could not provide us with information because the investigator never officially delivered the citation to the unlawful carrier. The carrier, who was found to be operating after license revocation, was not present when the investigator visited the carrier's office in August 2008 and again in September 2008 to issue the citation. Instead of tracking down the carrier to deliver this $750 citation in person, the investigator sent the citation by mail in late September 2008. A month later, the citation was returned to the investigator as undeliverable. Neither the investigator nor any other branch employee took action to prevent the carrier from continuing to operate by locating the carrier and issuing the citation, and the branch supervisors never logged the citation with the commission's fiscal office. Moreover, the investigation remained open for another two and a half years. When another supervisor finally closed the investigation, he found that a consumer review Web site listed the carrier as closed. A senior investigator explained that retirements of both the investigator and the supervisor involved in this case factored into the delays we observed.

Not collecting monetary penalties has been a longstanding problem for the commission.

Not collecting monetary penalties has been a longstanding problem for the commission. A 2007 California State Controller's Office audit revealed that the commission had $20.3 million in outstanding fines and fees owed to the State, the vast majority of which were related to million-dollar fines against telecommunications companies. In 2008 changes to state law (Chapter 552, Statutes of 2008) gave the commission the authority to pursue collections as though it had already obtained a court judgment for the amount owed to more effectively collect outstanding fines and fees; but this authority expired in January 2014. According to a December 2012 report from the commission to the Legislature, the commission contracted with a third-party collections agency in 2008 to pursue collections on these cases, but the agency was unsuccessful in collecting the outstanding fines and fees because the companies had gone out of business, were insolvent, in bankruptcy, or were otherwise defunct. The commission noted that since the agency's efforts to locate and collect payments were largely unsuccessful, the commission concluded that the expiration of its additional authority would probably not make a substantial difference in its ability to collect past-due penalties.

The commission's fiscal office provided documentation showing that as of March 2014, there were $135,000 in outstanding fines related to passenger carriers, $15,000 of which related to fines issued before 2011.[6] The documentation also showed that the branch issued $486,000 in fines from January 2011 through March 2014, demonstrating that the commission had a collection rate of approximately 75 percent for passenger carriers. However, as we previously described, the amounts the branch cited passenger carriers were significantly less than what state law allows.

According to the northern section supervisor, collections are treated differently depending on a carrier's license status. For example, he stated that a carrier's authority is suspended if the carrier fails to pay a citation. However, the supervisor also stated that if the carrier is not licensed, the branch does not have the leverage of license suspension as a means to get the carrier to pay. According to this supervisor, the fiscal office will send delinquency letters to the carriers, and recently, the commission's legal division has started taking carriers with overdue citations to small claims court but often the carrier will disappear.

According to a section supervisor, the commission's legal division has recently started taking carriers with overdue citations to small claims court but often the carrier will disappear.

State law allows peace officers to impound vehicles when making arrests of passenger carriers operating illegally. However, this authority to impound vehicles does not clearly extend to the branch's investigators, who can—under state law—perform some peace officer activities. We believe the commission should explore revisions of state law to allow its investigators to impound vehicles when illegal carriers refuse to comply with commission orders or refuse to pay penalties for operating illegally. Additionally, the branch could use its authority to intercept certain payments carriers may receive from the State. When carriers fail to pay citations, the branch could participate in the Franchise Tax Board's (Tax Board) Interagency Intercept

[6] Of the $120,000 in outstanding fines since 2011, $60,000 relates to three citations that transportation network companies are contesting.

Collection Program (intercept program), which collects debts owed to state agencies by offsetting individual income tax refunds, lottery winnings, and unclaimed property payments.[7]

Impounding vehicles and intercepting state payments to carriers could be effective tools to encourage passenger carriers to comply with state law and pay their outstanding fines.

Impounding vehicles and intercepting state payments to carriers could be effective tools to encourage passenger carriers to comply with state law and pay their outstanding fines. When we discussed this possibility with a branch supervisor, he agreed that these actions could be useful tools but said there are practical barriers to implementing these ideas. Specifically, the branch does not have Social Security numbers for all carriers (see the footnote) and does not have space to store impounded vehicles. These concerns need to be addressed as the commission examines the feasibility of using these approaches to increase carrier compliance.

Commission Staff Are Not Effectively Overseeing Accounting Related to the Branch

Commission staff who are responsible for fiscal aspects of the branch have not performed their duties effectively. For example, they do not verify the fee payments that passenger carriers submit, which are based on self-reported revenue. Further, they do not regularly reconcile the fee revenue the commission receives from passenger carriers with its costs to regulate those carriers. As a result, we estimate that the commission collected $2.2 million more in fee revenues in fiscal year 2012–13 than it spent on regulating passenger carriers. This is problematic because state law generally requires the commission to align these revenues and expenditures annually. Finally, the branch overcharged the commission's Transportation Reimbursement Account (transportation account) by an estimated $817,000 from fiscal years 2009–10 through 2012–13 because it does not always fund its staff from the transportation account in accordance with the time they spent regulating passenger carriers.

Commission Staff Do Not Ensure That Passenger Carrier Fee Payments Are Accurate

Despite explicit authority in state law to do so, commission staff do not verify fee payments and associated revenue information that passenger carriers submit. As state law allows, the commission requires passenger carriers to pay a fee, calculated as a percentage

[7] The intercept program does not offset corporation, limited liability company, or partnership funds. Additionally, program materials indicate the program requires Social Security numbers for individual debtors; however, state law specifies that the Tax Board may not condition a request for a tax refund offset on the submission of the person's Social Security number. Consequently, it is not entirely clear that the commission would need this information in attempting to intercept funds for applicable passenger carriers.

of their gross revenues, to the commission to fund its regulatory activities related to those carriers. According to the commission's budget and fiscal services manager (manager), passenger carriers self-report their revenues as part of the fee payment process. State law allows employees of the commission to inspect and examine any books, accounts, records, and documents that passenger carriers keep. However, the manager acknowledged that accounting staff do not review and verify the revenue amounts and associated fees that passenger carriers self-report. Therefore, the commission does not know if fee payments are accurate.

Commission staff attribute their lack of verification of passenger carrier fee payments to limited staffing, but they indicate they are trying to find remedies for the problem. According to the manager, the commission does not have the staffing to review the revenues passenger carriers self-report, but she added that she has actively looked for solutions, including technological ones, which will allow the commission to perform the verifications without additional staff. Specifically, accounting managers are considering an interface with the Tax Board to verify the revenue information that passenger carriers submit. Passenger carriers also report revenue information to the Tax Board, so this interface would allow staff to compare the reported revenue of passenger carriers. However, passenger carriers could report false revenue information to the Tax Board; therefore, this interface may be helpful but it is not sufficient. As mentioned previously, staff have access to passenger carrier documents that would verify the revenue they report to the branch. Without some type of periodic review of passenger carrier documents, the commission cannot be sure it is receiving the correct quarterly fee payments that passenger carriers owe, potentially reducing the funds available for oversight.

Commission Staff Have Not Aligned Revenues and Expenditures Associated With Passenger Carriers As State Law Requires

Because its staff do not regularly reconcile passenger carrier revenues and expenditures, the commission is not meeting state requirements to ensure alignment between the passenger carrier fee revenue it collects and its costs to regulate those carriers. As a result, we estimate that it collected $2.2 million more from passenger carriers than it spent regulating them in fiscal year 2012–13, contributing to the $9.3 million fund balance in the transportation account that year. State law requires that each class of common carrier, including passenger carriers, pay fees sufficient to support the commission's regulatory activities for the class from which the fee is collected. This requirement echoes an established principle of California law: regulatory fees should not exceed, and must bear a reasonable relationship to, the payors' collective

We estimate that the commission collected $2.2 million more from passenger carriers than it spent regulating them in fiscal year 2012–13, contributing to the $9.3 million fund balance in the transportation account that year.

burdens on or benefits from the regulatory activity. The Legislature provided a framework in keeping with the commission's obligation to ensure that these standards are met, including annual review and setting of fees, and a requirement to account separately for the fees received from each class of carrier. In contrast to state law and regulations, we found that the passenger carrier fees exceeded the cost of the transportation enforcement activities in three of the four fiscal years we reviewed and that the commission has not made any corresponding adjustments to correct this problem.

We found that the passenger carrier fees exceeded the cost of the transportation enforcement activities in three of the four fiscal years we reviewed.

According to the manager, there is no one-to-one relationship between passenger carrier revenues and expenditures within the transportation account. Instead, she said the commission tracks expenditures by sections and indexes that identify the branch and location within the commission that spent funds from the account. An example of a section includes the division of administrative law judges, while indexes relate to specific branch locations, such as the Los Angeles Rail Transit and Crossings Safety Branch. In addition, certain commission costs are distributed to the commission's funding sources, including the transportation account. These costs include spending associated with commissioners and their meetings, building costs, and other overhead. However, these distributed costs are not explicitly associated with the different carrier classes within the account. Instead, the manager told us the staff actively review revenues and expenditures at the fund level and have not been actively monitoring and adjusting the user fees or revenue and expenditure projections by carrier class. She also noted that the commission is working to update its cost allocation plan, to be implemented by July 2014, which would allow it to associate allocated costs with carrier classes. Additionally, she confirmed that the budget control officer within the Safety and Enforcement Division performs expenditure tracking but is not typically involved with appropriations or fund monitoring. Instead, she noted that the commission's budget office should have performed those activities. Finally, she acknowledged that a recent audit by the California Department of Finance (Finance) identified a variety of weaknesses in the budget office, such as deficiencies in its fund monitoring, and that the commission has been working on corrective actions, such as increasing resources for the budget office to conduct oversight activities.

As a likely result of these budgetary weaknesses, the fund balance in the transportation account has continued to grow dramatically. As discussed in the Introduction, revenue flowing into the transportation account comes from passenger carriers as well as railroads and other transportation providers. Table 6 shows that the transportation account received $14.1 million in revenues for fiscal year 2012–13 and had only $10.9 million in expenditures, causing a significant increase in the fund balance, from $5.6 million in the prior year to $9.3 million. State law allows an appropriate reserve as the commission determines; however, the manager does not have written guidance from the commission on what the reserve should be for the transportation account. This rising fund balance indicates that the commission should reduce revenues by lowering fees on passenger carriers or it should increase its enforcement activities to raise expenditures to meet existing revenues.

Table 6
California Public Utilities Commission's Transportation Reimbursement Account
Revenues, Expenditures, and Fund Balances
Fiscal Years 2005–06 Through 2012–13
(In Thousands)

	FISCAL YEARS							
	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13
Beginning fund balance	$3,708	$5,209	$3,881	$2,933	$2,538	$2,011	$4,537	$5,649
Revenues	8,916	8,403	10,434	10,547	10,931	12,607	11,780	14,095
Expenditures	7,569	9,338	11,393	11,296	11,241	10,083	10,283	10,861
Ending fund balance	5,209	3,881	2,933	2,538	2,011	4,537	5,649	9,304

Source: Financial data obtained from the California State Accounting and Reporting System.

The largest part of the fund balance increase is from passenger carriers. We estimate that the commission is collecting substantially more in fees from passenger carriers than it spends on regulating them. For example, in fiscal year 2012–13, the commission collected $2.2 million more in fee revenues from passenger carriers than we estimate it spent on overseeing them, but the commission staff were unaware of this fact until we brought it to their attention. Table 7 shows that as passenger carrier revenue has increased, related expenditures have not kept pace.

Table 7
Passenger Carrier Fee Revenues and Estimated Passenger Carrier Enforcement Expenditures
Fiscal Years 2009–10 Through 2012–13
(Dollars in Thousands)

	FISCAL YEARS			
	2009–10	2010–11	2011–12	2012–13
Revenues	$4,507	$4,914	$5,501	$6,633
Estimated expenditures	4,886	4,276	4,266	4,427
Difference	(379)	638	1,235	2,206
Percentage difference	(8%)	13%	22%	33%

Sources: Financial data obtained from the California State Accounting and Reporting System and the California Public Utilities Commission's Transportation Management Information System.

Because the commission does not track expenditures by carrier class, we performed estimations to produce some of the information in Table 7. To do so, we examined more detailed expenditure data for fiscal year 2012–13. We used these data to calculate how much of allocated costs should be distributed to each class of carrier. After calculating the percentage of costs for each carrier class for that fiscal year, we used these percentages to estimate past fiscal years.

A Finance audit of the transportation account released in April 2014 found that the commission did not annually determine user fees as state law requires, nor did it justify why a fee adjustment was not necessary or maintain documentation related to how it determined the fee levels it instituted. Because the branch does not compare the amount it collects from passenger carriers to the amount spent regulating those carriers, the commission risks being unable to support the validity of its fees if payers challenge them. Also, the commission shortchanges public safety by not spending the fees it receives from passenger carriers to improve its enforcement program.

A Lack of Managerial Oversight Led to Incorrect Funding of Transportation Enforcement Positions

The branch does not always fund its staff from the transportation account in alignment with the time staff have spent regulating passenger carriers. The commission has established funding distributions for staff who perform work that relies on more than one funding source. For example, many staff in the branch spend their time regulating passenger carriers and household goods carriers. However, the household goods carriers pay fees into the Transportation Rate Fund rather than the transportation account, which receives passenger carrier fees. According to the branch's program manager, the branch bases the funding distributions for its staff on expected workloads, but it has not systematically reviewed those distributions in the last several years. As a result, only about half of the 40 branch staff whose time charges we reviewed from fiscal years 2009–10 through 2012–13 actually spent their time as indicated in their funding distributions.[8]

Only about half of the [illegible] branch sta[illegible] whose time charges we reviewed from [illegible] scal years [illegible] through [illegible] actually spent their time as indicated in their funding distributions.

In contrast, the other half of the staff members spent significantly different amounts of time regulating the two carrier types than was identified in their funding distributions. For example, in

[8] We considered any funding distributions that matched employee time charges within 10 percent to be accurate. For example, if a staff member charged 54 percent of his or her time to passenger carrier activities and the branch provided a funding distribution at 60 percent for passenger carriers, we considered the distribution rate accurate.

fiscal year 2011–12, one branch staff member's funding came entirely from the transportation account. However, that staff member only worked on passenger carrier activities for 40 percent of the time, causing the branch to overcharge the transportation account by more than $17,000 in that fiscal year. After reviewing staff time charges and pay information for 40 selected employees, we estimated the amount that the branch may have mischarged the transportation account by multiplying each fiscal year's salary expenses by the average error we identified in our review of staff time charges. We estimate that the branch overcharged the transportation account by $817,000 from fiscal years 2009–10 through 2012–13, which equated to an overall error rate of 5 percent of salary-related expenditures.

These overcharges to the transportation account occurred because branch managers infrequently and inconsistently monitor and adjust the funding distributions of their staff. Between fiscal years 2009–10 through 2012–13, branch managers did not perform a systematic review of the distribution of staff funding sources in comparison to time spent on the carrier types they regulated. In April 2014 the fiscal office staff performed such an analysis. Specifically, the manager provided an analysis of the branch's funding and time charges from fiscal year 2012–13, which showed that, as a whole, the transportation account provided 77 percent of the branch's funding, while the branch spent about 72 percent of its time on passenger carrier activities. This analysis confirmed the conclusion from our estimate that the transportation account is being overcharged by approximately 5 percent.

Overcharges to the transportation account occurred because branch managers infrequently and inconsistently monitor and adjust the funding distributions of their staff.

The branch's program manager, who started in his position in April 2013, noted that the branch does not have a formal process for reviewing staff time charges and adjusting the funding distributions accordingly. Even so, we identified some changes to staff funding distributions during this period but found a lack of support for these changes. For example, in 2010, the branch changed the funding distribution for one staff member so that instead of providing 60 percent of the position's funding from the transportation account, the staff member received 80 percent from that source. We were unable to determine why those changes were made because the form the branch used at that time to process changes to funding distributions did not include a reason. In March 2014 commission management implemented a new form to process these changes that requires the branch to provide a description of the position's duties and a justification of proposed funding distribution changes. Management also provided human resources staff with guidance on how to use the form and a flow chart of the approval process.

Finance noted that the commission's lack of budget control is a major reason the commission has pushed responsibility for many budget office tasks onto program managers. In a December 2012 report, Finance found the commission had ineffective assignment of budgeting responsibilities, ineffective communication and coordination, limited written policies and procedures, and insufficient staff training. That report recommended that the commission increase staffing in the budget office and establish and clearly define the roles, responsibilities, and authority of those staff performing budgeting tasks between program divisions, the fiscal and budget offices, and executive management. Without a review process to verify that staff funding sources match their workloads and that funding distribution changes are justified, the branch inappropriately uses the transportation account to compensate for work associated with other activities, such as regulating household goods carriers.

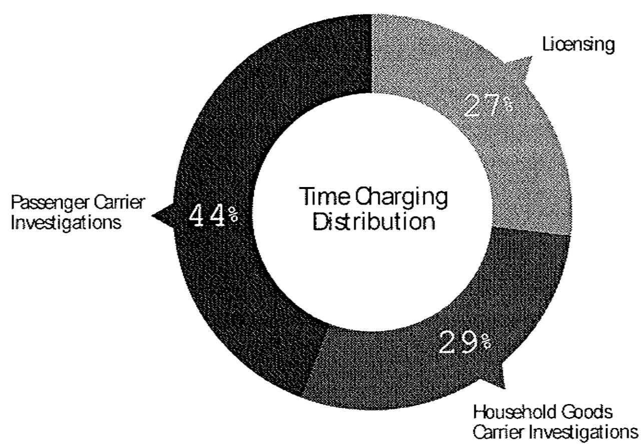
The Branch Incorrectly Funded and Used Positions Authorized in the State Budget for Enforcement of Passenger Carriers at Airports

Despite clear direction in the State's budget documents, the branch did not fund and use five new positions as the Legislature intended. Specifically, the Legislature authorized the commission to add five positions to conduct passenger carrier enforcement at major state airports. However, the branch has used the positions as general purpose employees and did not have them work on airport enforcement activities. The branch implemented an airport enforcement program with two staff members in Los Angeles, but it did not use any of the five positions authorized in the budget to augment the staff for this program. The branch also attempted to implement an unlicensed carrier towing program at other California airports but was unsuccessful in doing so.

The Branch Did Not Use the New Positions for Airport Enforcement As the Legislature Intended

After the commission received approval to hire five additional investigators to enforce regulatory requirements on passenger carriers at airports, the branch proceeded to use those staff members as general purpose employees who did not work on airport enforcement. Through the budget process, the Legislature agreed to fund five positions starting in fiscal year 2007–08. According to the budget documents, the positions were to provide passenger carrier enforcement at major California airports. However, in July 2009, the commission's executive management administratively transferred one of the five positions to the rail safety branch to preserve a position that was set to expire; later, in August 2009, the branch transferred that same position to the electric generation performance branch. As indicated by their names, neither of these branches performs activities related to passenger carriers or airports, so commission staff improperly redirected the position. Additionally, the branch established the remaining four positions as general purpose branch investigators, and the job descriptions of those positions do not specifically reference airport enforcement. Further, based on our review of time charges for staff who filled these positions, we found that they worked on household goods carrier investigations and licensing activities, both of which were outside the scope of their approved positions. Figure 5 shows that these four remaining branch staff spent only 44 percent of their time on passenger carrier investigations. Moreover, these investigations were not exclusively related to work at airports.

Figure 5
Time Charging Distribution for the Four Additional Investigator Positions
Fiscal Years 2009–10 Through 2012–13



Source: California Public Utilities Commission's Work Tracking Timekeeping System.

Notes: Time charged for passenger carrier investigations were not all exclusively conducted at airports.

One of the five additional investigator positions was transferred to another branch in July 2009 and did not spend any time on these activities. This chart does not include time charged for training, leave, or administration.

The branch did implement an airport enforcement program in Los Angeles, but it did not use the positions the Legislature added to do so. According to the southern section supervisor, two staff members in the southern section have worked on investigations at Los Angeles International Airport (LAX) since fiscal year 2009–10. Nevertheless, our review of the list of LAX enforcement staff the southern section supervisor provided confirmed that they were not the individuals hired into any of the five positions the commission established in response to the fiscal year 2007–08 budget. In addition, the southern section supervisor acknowledged that the staff members working at LAX also spent time performing household goods carrier investigations. Further, when we interviewed one of the investigators who was stationed at LAX, she noted that she performed occasional "ride-alongs" during which she worked with LAX police to issue citations directly to unlicensed carriers rather than enforcing the entire charter-party carrier act, such as by reviewing whether the carrier had received a required safety inspection. However, she stated that airport police issued most of the citations and then forwarded them to her for processing. Limitations to the scope of LAX work aside, branch management believes this targeted airport work has been effective in reducing unlicensed carriers operating at LAX.

The Branch Made Limited Efforts to Implement an Airport Enforcement Program at Other Major Airports

The branch made attempts to implement a program in Northern California similar to the LAX program described above but ultimately did not. The northern section supervisor provided e-mails demonstrating that commission staff attempted to meet with officials at San Francisco International Airport (SFO) to implement a program to tow unlicensed passenger carrier vehicles in 2009 and 2010. However, the branch never implemented such a program. According to the current program manager, his staff described subsequent efforts with SFO as unproductive because airport management balked at having branch staff stationed at SFO. Additionally, the northern section supervisor stated that Oakland International Airport (OAK) was also not interested in having branch staff stationed at its airport. He further stated that the branch was unable to implement a program at SFO and OAK because local law enforcement was not willing to work with the branch. Finally, the southern section supervisor noted that she reached out to other Southern California airports, but she could not provide documentation of that outreach.

While airports are not required to offer office space to branch staff to facilitate investigations of passenger carriers, nothing prevents the branch from initiating investigations or conducting enforcement activity on their properties. Specifically, state law allows commission staff to make arrests, serve search warrants, and perform other enforcement activities for violations of state law regulated by the commission. Therefore, branch staff could have issued citations to unlicensed passenger carriers operating at airports and initiated investigations based on unlicensed passenger carriers encountered at airports, among other enforcement actions. In fact, the northern section supervisor

While airports are not required to offer office space to branch staff to facilitate investigations of passenger carriers, nothing prevents the branch from initiating investigations or conducting enforcement activity on their properties.

provided documentation showing the branch performed limited enforcement activity at airports other than LAX. Specifically, branch staff conducted enforcement at airports as part of joint operations with airport police to cite unlicensed passenger carriers and with the CHP to conduct safety inspections. The northern section supervisor's documentation showed that they had conducted such joint operations at Bay Area airports, such as SFO and OAK, 10 times from fiscal year 2009–10 through 2011–12, three times at Sacramento International Airport during that period, and three times at Southern California airports other than LAX. According to the documentation the branch provided, these joint operations initiated investigations and produced enforcement actions, such as notices to correct documentation violations and misdemeanor warnings for operating without a permit or with a revoked permit. Consequently, we do not believe the branch needed office space at the airports to implement the more formal airport program originally intended by the Legislature's appropriation of the five positions.

Despite the possible effectiveness of the LAX and joint operations programs and some efforts to implement a towing program at SFO, the former branch program manager did not ensure during his tenure that the branch used the five authorized positions to conduct passenger carrier enforcement at California airports. According to key commission staff, such as the safety and enforcement division's assistant budget control officer and the assistant human resources director, it is the program manager's responsibility to ensure that positions are used as the Legislature has authorized. We could not determine why the former program manager did not direct the positions to conduct airport enforcement because he is no longer with the commission. We interviewed his replacement and key commission management and were still unable to determine why the branch did not follow the Legislature's authorized use of the positions. Because the branch does not use the positions as intended, it may not be catching and deterring unlicensed carriers at airports.

Because the branch does not use the positions as intended, it may not be catching and deterring unlicensed carriers at airports.

The Branch's Lack of Internal Control and High Turnover Have Led to Inadequate Enforcement Across the State

Because of high turnover and loss of institutional knowledge, branch management has not set goals or developed performance measures that would enable the branch to achieve long-term objectives related to public safety throughout California. Specifically, the branch had 14 different individuals filling seven key management positions over the last four years as well as significant periods of vacancy in these positions. As a result of this management turmoil, the branch has not developed written guidance for staff and managers or provided consistent training for its staff that could enhance their ability to conduct enforcement activities. Ultimately, the branch is not prepared for the additional responsibilities state law and the commission have recently imposed.

Leadership Within the Branch Has Been Lacking

Branch management has not set goals, developed performance measures to meet those goals, or produced any plans to achieve long-term objectives or guide its activities.

The branch has not developed a strategic plan for regulating passenger carriers and ensuring consumer transportation safety. Specifically, branch management has not set goals, developed performance measures to meet those goals, or produced any plans to achieve long-term objectives or guide its activities. State law requires agency managers to establish administrative controls and provide ongoing monitoring of those controls within their agencies. Tasked by state law to establish guidelines for agency management on how to implement effective controls, Finance notes in its guidance that the law provides a broad view of internal controls, recognizing that controls must safeguard assets, provide reliable financial information, promote operational efficiency, and encourage compliance with applicable laws, regulations, and office policies and procedures. The U.S. Government Accountability Office (GAO) identifies agency goals, performance measures, and strategic plans as key elements for developing successful internal controls.

The branch's program manager told us he was working on program goals and that they were in draft form as of February 2014.[9] This program manager, who had been in this position for roughly one year, stated he spent his first year primarily working on a backlog in the licensing section, delegating transportation enforcement strategy and decisions to recently appointed section supervisors. Delegating branch strategy and decisions related to transportation enforcement may be appropriate if the section supervisors have clear, written guidance upon which to base their decisions and strategies. Unfortunately, neither of the enforcement section supervisors could identify policies or procedures that previous managers used in their positions, and the program manager has also not provided this guidance. Without written guidance directing the branch's efforts and without mechanisms for receiving feedback on how the branch is performing, branch management cannot effectively lead the branch in accomplishing its mission to protect consumers.

[9] This program manager resigned his position in May 2014.

The Branch Experienced High Management Turnover for Several Years

The program management inadequacies we discussed previously were at least partly the result of high turnover in branch management. A number of branch staff told us that the branch leadership was nonexistent and unresponsive, and it lacked the training and experience needed to run the program effectively. The manager noted that there has been a lot of turnover in the branch, leading to a huge institutional knowledge drain. The branch had 14 different individuals in seven key management positions between fiscal years 2009–10 and 2012–13. We identified a drain of management experience within the branch as staff left these key management positions. Specifically, commission staff identified a total of more than 53 years of management experience that left these positions during this four-year period, although 20.5 years of this experience was retained within the branch as staff were promoted or became retired annuitants. Table 8 illustrates a summary of turnover in key positions for fiscal years 2009–10 through 2012–13. The table shows that these positions were vacant for 38 months before the commission filled them. These key positions are responsible for making important management decisions, such as directing the branch's operations and coordinating investigations in each of the two enforcement sections. Having frequent turnover, loss of expertise, and lengthy vacancies in these positions has left the branch without the ability to exert necessary leadership.

Table 8
Transportation Enforcement Branch Turnover
Fiscal Years 2009–10 Through 2012–13

POSITION	NUMBER OF STAFF IN POSITION	DURATION VACANT* (MONTHS)	YEARS OF EXPERIENCE LOST (YEARS)
Program Manager	2	4.5	15.0
Northern Section Supervisor	2	11.0	3.0
Southern Section Supervisor	2	2.0	11.0
Sacramento Office Senior Representative	3	8.0	11.0
Los Angeles Office Senior Representative	2	3.5	9.5
San Diego Office Senior Representative	2	9.0	4.0
San Francisco Office Senior Representative	1	0.0	0.0
Totals	14	38	53.5

Source: Information provided by the California Public Utilities Commission's assistant human resources director.

* This includes the time spent recruiting for the position.

The Branch Does Not Ensure That Sta Receive Adequate Training

The branch does not ensure adequate training and continuing education for its investigators. The GAO considers employee training an important part of internal controls, stating that agencies should provide continuing training and develop a mechanism to ensure that all employees actually receive that training. However, the branch has not created a training program and does not ensure that employees receive appropriate training. Nine investigators we spoke to told us that after their new employee training, they received no training specific to regulating passenger carriers. The investigators stated that as new employees, branch supervisors would have them review old investigation cases or sit with other investigators for a time to learn how to perform their jobs. Although this may be helpful, it is not a sufficient substitute for formal training. When branch staff members do not receive regular training related to their duties, they cannot maintain current knowledge of laws, regulations, and industry trends; therefore, they cannot respond to changes in the regulatory environment and passenger carrier tactics. This can produce opportunities for carriers to avoid regulation and it can endanger public safety.

The Branch Is Not Prepared to Handle Additional Responsibilities

As described in the Introduction, a new state law and a new initiative from the commission to have the branch regulate transportation network companies will place additional responsibilities on a program that is not currently well managed. For example, state law now requires additional safety measures for certain limousines and the branch must ensure that carriers comply with them when its investigators are conducting investigations. Similarly, the addition of transportation network companies to the commission's responsibilities increases the number of passenger carriers the branch must regulate. As discussed earlier, the branch has not effectively managed its current investigation and citation responsibilities. By failing to use the authority that state law grants it, including assessing higher penalties that deter illegal behavior, the branch is allowing passenger carriers to operate outside the framework of state law. If the branch continues to ignore its responsibilities to regulate these carriers effectively, it will continue to put the public at risk and will be unable to handle additional responsibilities effectively.

By failing to use the authority that state law grants it, including assessing higher penalties that deter illegal behavior, the branch is allowing passenger carriers to operate outside the framework of state law.

Recommendations

To ensure carrier and public safety, the commission should ensure that the branch develops policies and procedures for receiving complaints and investigating passenger carriers by December 31, 2014. These policies and procedures should ensure that all complaints are entered into the complaints database.

To ensure that it resolves complaints against passenger carriers in a timely manner, the commission should establish a method for prioritizing complaints and it should implement a policy specifying the maximum amount of time between the receipt of a complaint and the completion of the subsequent investigation. Further, the commission should require branch management to monitor and report regularly on its performance in meeting that policy.

To ensure that the branch conducts thorough investigations of passenger carriers, the commission should do the following:

- Establish standards specifying the types of evidence that it considers sufficient to determine whether a passenger carrier is operating illegally.

- Implement a policy that directs investigators to obtain sufficient evidence to justify determinations and to verify carrier claims that they are no longer operating or are not operating illegally.

- Require investigators to review passenger carriers for compliance with each state law relating to passenger carrier requirements.

- Implement a formal training program to ensure that all investigators have adequate knowledge and skills related to regulating passenger carriers.

To better ensure passenger carrier and public safety, the commission should create a system to determine when a carrier merits a penalty and what the magnitude of the penalty should be. In addition, to be an effective deterrent, the amount of such penalties should be more consistent with what state law permits.

The commission should require staff to examine and formally report on the feasibility of impounding the vehicles of passenger carriers that refuse to comply with commission orders or that refuse to pay citation penalties and also on the feasibility of making use of the Tax Board's program for intercepting income tax refunds, lottery winnings, and unclaimed property payments to collect unpaid citation penalties.

To ensure that passenger carriers submit accurate fee payments, the commission should require its fiscal staff to implement a process to verify passenger carrier fee payments and associated revenue.

To ensure that it complies with state law and uses passenger carrier fees appropriately, the commission should implement a process to ensure that passenger carrier fee revenues more closely match related enforcement costs.

To ensure that it does not further overcharge the transportation account, the commission should require the branch to review annually all branch staff funding distributions and align them with recent time charges.

To detect and deter carriers from operating illegally at airports, the branch should use as intended the five positions added for passenger carrier enforcement at airports. If the branch chooses not to designate five positions solely for this purpose, then it must be prepared to demonstrate regularly that an equivalent number of full-time positions are working on this activity.

To strengthen its leadership and ensure passenger carrier and public safety, the branch should produce a draft strategic plan by December 31, 2014, with a final strategic plan completed as the commission specifies. The strategic plan should include goals for the program; strategies for achieving those goals, including strategies for staff development and training; and performance measures to assess goal achievement.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

STATE OF CALIFORNIA — Edmund G. Brown Jr., Governor

PUBLIC UTILITIES COMMISSION
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June 2, 2014

Elaine Howle, State Auditor*
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Sacramento, CA 95814

Re: Response to the Bureau of State Audits Draft Report "California Public Utilities Commission: It Fails to Adequately Ensure Consumers' Transportation Safety and Does Not Appropriately Collect and Spend Fees From Passenger Carriers."

Dear Ms. Howle:

The California Public Utilities Commission (CPUC) provides the following in response to the March 27th, 2014 draft audit report from the Bureau of State Audits entitled "California Public Utilities Commission: It Fails to Adequately Ensure Consumers' Transportation Safety and Does Not Appropriately Collect and Spend Fees From Passenger Carriers." We take the audit result's implications to public safety and transportation fee assessment and collection very seriously and intend to comply with all constructive recommendations, as outlined below.

While we largely agree with the audit's individual findings and recommendations, we respectfully disagree with the overarching conclusion that the CPUC fails to adequately ensure consumers' transportation safety. The audit focused on specific enforcement activities within the Transportation Enforcement Branch, and while we agree there are certainly deficiencies in some areas, we believe that the CPUC's collective efforts to ensure Californian's transportation safety through active enforcement and licensing have not been trivial, nor a failure. 1

The CPUC has already begun to improve our methods of assessing and collecting fee payments, and we are mapping out our corrective actions in response to the other audit observations relating to deficiencies in transportation enforcement. Our goal is to make all necessary changes to policies, processes and procedures, and documentation to address all recommendations.

Audit Recommendations (in *italics*) and Responses:

1. *To ensure carrier and public safety, the commission should ensure that the branch develops policies and procedures for receiving complaints and investigating passenger carriers by December 31, 2014. These policies and procedures should ensure that all complaints are entered into the complaints database.*

* California State Auditor's comment begins on page 49.

Response: CPUC agrees with this recommendation. As recognized by the audit report, the Transportation Enforcement Branch (TEB) has suffered from high turnover in recent years and has experienced a drain in institutional knowledge due to the loss of senior management and the lack of sufficient policies and procedures. TEB staff are in the process of developing a new policy and procedures manual for enforcement activities, including policies and procedures for processing complaints and investigating passenger carriers. TEB management is committed to annually reviewing the resulting manual for completeness and accuracy to avoid this gap in documentation from occurring again. Staff will also adjust the current procedure for complaint intake to require that all complaints received first be logged into the complaint tracking database, per audit recommendation.

2. *To ensure that it resolves complaints against passenger carriers in a timely manner, the commission should establish a method for prioritizing complaints and implement a policy specifying the maximum amount of time between the receipt of a complaint and the completion of the subsequent investigation. Further, the commission should require branch management to monitor and report regularly on its performance in meeting that policy.*

Response: CPUC agrees with this recommendation. TEB will create procedures and policies for prioritizing complaints and will create milestones to guide investigators working on cases. TEB staff will summarize performance measurements in a monthly report to management.

3. *To ensure that the branch conducts thorough investigations of passenger carriers, the commission should do the following:*
    a. *Establish standards specifying the types of evidence that it considers sufficient to determine whether a passenger carrier is operating illegally.*
    b. *Implement a policy that directs investigators to obtain sufficient evidence to justify determinations and to verify carrier claims that they are no longer operating, or are not operating illegally.*

Response: CPUC agrees with this recommendation. TEB will document the type of evidence that is necessary for an investigator to determine when a carrier is operating illegally, or conversely, the determination that a carrier is not operating illegally or no longer operating. In addition to verifying whether licensing requirements have been met, an investigator must also find evidence of the following three elements to determine illegal activity: 1) transportation of passengers has occurred, 2) over public highways, and 3) for compensation. This evidence can be difficult to obtain without catching a carrier "in the act" so to speak, however TEB is committed to strengthening its enforcement efforts by establishing effective standards.

    c. *Require investigators to review passenger carriers for compliance with each state law relating to passenger carrier requirements.*

Response: CPUC agrees with this recommendation.

    d. *Implement a formal training program to ensure that all investigators have adequate knowledge and skills related to regulating passenger carriers.*

Response: CPUC agrees with this recommendation. Although TEB does not currently have a formal written training program, investigators are provided on-the-job training. TEB supervisors in Los Angeles and San Francisco are currently documenting the training provided to their respective new hires in order to create a formal training program.

4. *To better ensure carrier and public safety, the commission should create a system to determine when a carrier merits a penalty and what the magnitude of the penalty should be; such penalties should be more consistent with what state law permits.*

Response: CPUC agrees with this recommendation. TEB and the commission will work together to evaluate current policies in the context of BSA audit recommendations; staff will create a written policy to guide staff when issuing citations. TEB's current policy for determining fines is based on criteria outlined in a past commission decision. This policy has been used for all but the lowest fines (those under $5,000). The Safety Enforcement Division (which TEB is a part of) has historically engaged in progressive enforcement as a way to ensure regulatory compliance; because of this, the strongest penalty is often not assessed on the first violation, the goal being to create a deterrence and promote compliance. Another factor TEB must consider when evaluating penalties is that a majority of passenger carriers cited are small businesses with limited assets and resources. Due to the way that fines can be compounded, many fines can reach six figures for a carrier whose gross revenue would not even reach that amount. Fines assessed at that level would likely be significantly reduced if the citation were appealed to an Administrative Law Judge.

5. *The commission should require staff to examine and formally report on the feasibility of impounding the vehicles of passenger carriers who refuse to comply with commission orders or refuse to pay citation penalties and also on the feasibility of making use of the Tax Board's program for intercepting income tax refunds, lottery winnings, and unclaimed property payments to collect unpaid citation penalties.*

Response: CPUC agrees with this recommendation and commits to a feasibility study for these two enforcement options, the results of which will be reported to the Commissioners.

6. *To ensure that passenger carriers submit accurate fee payments, the commission should require fiscal staff to implement a process to verify passenger carrier fee payments and associated revenue.*

Response: CPUC agrees with this recommendation and recognizes the risk of underreporting that self-reported revenue presents if not validated in some way. Our goals are to both ensure full payment and potentially deter passenger carrier operators tempted to misreport their revenues. In the short-term, this will be accomplished though redirection of staffing resources currently in the Fiscal Office. CPUC annually receives up to 8,000 passenger carrier payments, many of which are small businesses or owner-operators. With current staffing levels the Fiscal Office will be unable to perform full verification of revenue for every one of these revenue payments. CPUC Management is considering the option of having Fiscal Office staff regularly audit a sample of fee payments using a protocol that staff would develop with TEB staff. Additionally, the Fiscal Office will request additional staffing resources to support this new revenue verification function in the longer term.

7. *To ensure that it complies with state law and uses passenger carrier fees appropriately, the commission should implement a process to ensure that revenue from passenger carrier fees more closely matches related enforcement costs.*

Response: CPUC agrees with this recommendation and will implement a new user fee assessment process for the Public Utilities Commission Transportation Reimbursement Account beginning in the fall of 2014. This process will be coupled with the zero-based budget process the agency is preparing for FY 2015-16, which is an agency-wide effort to evaluate program needs to support CPUC regulation of all utilities, including transportation.

8. *To ensure that it does not further overcharge the transportation account, the commission should require the branch to review annually all branch staff funding distributions and align them with recent time charges.*

Response: CPUC agrees with this recommendation. This analysis has already been completed for TEB staff, and adjustments to funding distributions are in the process of being made for Fiscal Year 2014-15. Additionally, CPUC will implement a policy to require all Division Budget Control Officers (BCOs) to annually evaluate the funding distributions of their employees against actual time worked (timesheets), and work with the CPUC Budget Office to make adjustments if necessary. As noted by the audit, as of April 1, 2014, CPUC implemented a new policy that requires Divisions to submit justification and documentation to set the funding distribution for a new employee or an employee that is changing positions with the CPUC. This is reviewed and approved by the CPUC Budget Office for completeness and potential impacts on fund appropriations before being processed.

9. *To detect and deter carriers from operating illegally at airports, the branch should use as intended the five positions added for passenger carrier enforcement at airports. If the branch chooses not to designate five positions solely for this purpose, then it must be prepared to demonstrate on a regular basis that an equivalent number of fulltime positions are working on this activity.*

Response: CPUC agrees with this recommendation.

10. *To ensure carrier and public safety, the branch should produce a draft strategic plan by December 31, 2014, with a final strategic plan completed as the commission specifies. The strategic plan should include goals for the program; strategies for achieving those goals, including strategies for staff development and training; and performance measures to assess goal achievement.*

Response: CPUC agrees with this recommendation and recognizes the need for a cohesive strategic plan to support the various corrective actions TEB will make as a result of this audit.

Summary of Response

The audit identifies a number of deficiencies related to CPUC's transportation enforcement activities as well as issues related to collection, assessment and spending against passenger carrier user fees. CPUC agrees with the audit's individual findings and recommendations and has already made proactive changes to resolve some issues. Additionally, CPUC is committed to developing a corrective action plan that will guide progress toward the implementation of the remaining recommendations. These corrective actions will include documenting policies, processes and procedures related to transportation enforcement work, establishing new investigation standards, and developing a process to verify passenger carrier revenue.

We look forward to continuing to work with you and your staff to improve the CPUC's practices.

Should you have questions or require further information, please contact Michelle Cooke, Deputy Executive Director for Budget and Administration and Administrative Services Director, at (415) 703-2163.

Sincerely,

Paul Clanon
Executive Director

cc: Michael R. Peevey, President, CPUC
Michelle Cooke, Deputy Executive Director/Administrative Services Director, CPUC

Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE CALIFORNIA PUBLIC UTILITIES COMMISSION

To provide clarity and perspective, we are commenting on the California Public Utilities Commission's (commission) response to our audit. The number below corresponds to the number we have placed in the margin of the commission's response.

1

Based on the findings outlined in our report, we stand by our conclusion that the commission has failed to adequately ensure consumer's transportation safety. We examined the commission's consumer safety activities related to the audit objectives approved by the Joint Legislative Audit Committee. Within this audit scope, which the audit report clearly states is focused on passenger carriers regulated by the commission, we found a continual pattern of inadequate policies and practices along with instances that highlight those inadequacies. For example, our audit identified, among other concerns, the following issues related to passenger safety:

- As we state on page 20, the commission's Transportation Enforcement Branch (branch) conducted adequate investigations in only 23 of the 40 cases we reviewed. In the remaining cases discussed on pages 21 and 22, the branch either did not review passenger carriers for compliance with safety-related licensing requirements or the investigators did not use sound investigative approaches that demonstrated due diligence. For instance, an investigator closed a case after a carrier threatened a complainant with a weapon, rather than taking steps to ensure consumer safety, such as alerting law enforcement. Also, a branch investigator took a passenger carrier at his word that he was not operating vehicles without California Highway Patrol safety inspections rather than obtaining evidence to verify the carrier's claim. Moreover, the branch did not cite a passenger carrier transporting 13 people, including children, in an 11-person capacity van, a clear safety hazard.

- Further, as we describe on page 25, when an unlicensed carrier was involved in an accident during which three passengers were ejected resulting in one fatality, and the branch determined the carrier lacked liability insurance and other licensing requirements, it cited the carrier for only 2 percent of the amount the law allows.

- Additionally, as described on page 18, the branch does not ensure that it investigates consumer complaints and issues citations in a timely manner. For example, for one investigation, the investigator did not issue the citation until nearly eight months after substantiating violations in which the passenger carrier failed to adhere to several safety requirements, including failing to enroll all of its drivers in a drug and alcohol testing program and a California Department of Motor Vehicles program that monitors drivers' records.