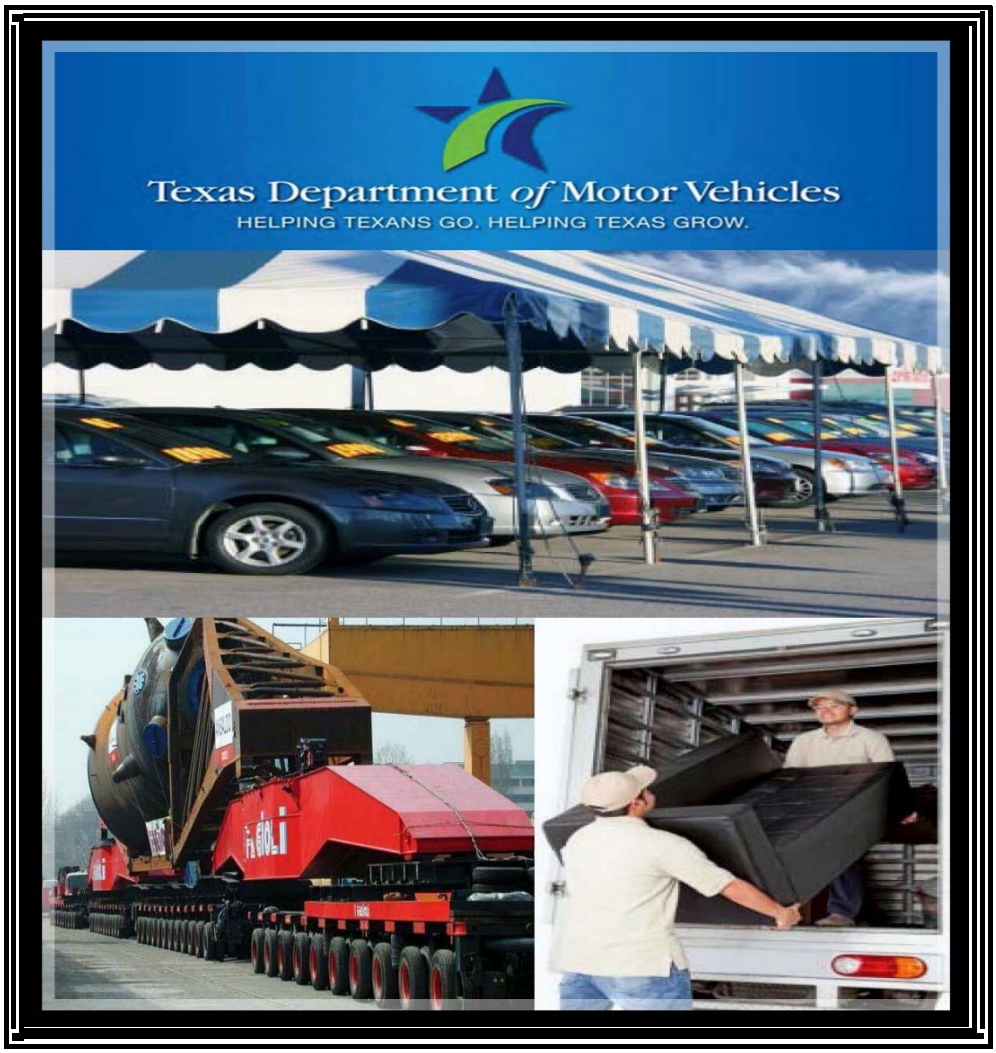
FY2014 Annual Report

Enforcement Division



Texas Department of Motor Vehicles
Final Revision: 12/29/14

Contents

Enforcement Division – General Information..... 2

Lemon Law.....5

Motor Vehicle
- FY2014 Accomplishments.....8
- Complaints.....9
- Investigations.....12
- Contested Cases.....14
- Cases Closed.....15
- Days In Process.....16
- The Notice of Violation (NOV) Process.....17
- Civil Penalties.....18

Motor Carrier
- FY2014 Accomplishments.....20
- Complaints.....21
- Cases Closed.....22
- Days In Process.....23
- The Notice of Violation (NOV) Process.....24
- Civil Penalties.....25

OverSize/OverWeight
- Program Introduction.....28
- FY2014 Accomplishments.....29
- Complaints.....30
- Cases Closed.....32
- Penalties Collected.....33
- Days In Process.....34

Outreach Efforts.....36

All FY2014 data and information presented herein is derived from annualized reports as of 9/3/2014.

Enforcement Division – General Information

The Enforcement Division's objective is to, in a fair, consistent and predictable manner, enforce the Texas statutes and rules that govern the motor vehicle, salvage and the motor carrier industries, including household goods carriers and OverSize/OverWeight vehicles. In addition, the division provides instruction to licensees, law enforcement, other state and local officials, and the public regarding those laws. The Division's guiding philosophy is that compliance is best achieved through education. The imposition of sanctions through administrative proceedings is a secondary course of action to be pursued when educational efforts have not proven successful.

In addition to its traditional enforcement role, the Division also administers the Texas Lemon Law program, now in its' 30th year of operation. This program provides to consumers and manufacturers a quicker and more cost-effective administrative process to resolve disputes related to new motor vehicles and warranties. Since its inception, the Lemon Law has facilitated over $113 million in relief to Texas consumers.

The Enforcement Division maintains its' headquarters in Austin, but has branch offices located in Pharr, Mesquite, Fort Worth, Houston, Lubbock, Longview, El Paso and San Antonio.

Enforcement Division – Primary Duties

The Enforcement Division is responsible for the administration of the Texas Transportation Code, the Texas Occupations Code and the Texas Administrative Code, as those laws relate to the motor vehicle, salvage and motor carrier industries. This is accomplished in most cases by receiving and investigating complaints filed against licensees and non-licensees. Investigators also conduct inspections of licensees and their operations throughout the state. Following the investigation of a complaint, the case is reviewed by a staff attorney, and, when a violation is found, appropriate administrative actions are initiated. The range of sanctions pursued includes civil penalties, cease and desist orders, and revocation of licenses. In some cases, a settlement will include an agreement that the licensee will attend educational programs to correct its operations and prevent future violations.

In fulfilling its responsibilities the Division conducts numerous educational programs each month for licensees and the public at locations throughout the state. Presentations are made to various law enforcement groups in order to assist those entities in carrying out their duties as they relate to the motor vehicle, motor carrier and salvage industries.

Enforcement Division – Fiscal Year 2014 Accomplishments

- The Division's contribution to increasing the Agency's visibility with its regulated communities was characterized by Division staff participating and speaking at various industry meetings, including the Texas Independent Automobile Dealer Association (TIADA), Southwest Movers Association (SMA), motorcycle dealer associations, and recreational vehicle dealer association conventions and regional seminars. Staff also made presentations at the annual Texas Trucking Association (TXTA) safety convention and at various local industry events.

- The Division developed and launched a new advertising education program aimed specifically at franchise dealers who are the largest users of advertising. These seminars were presented at five locations throughout the state, and many in the audience have requested that these special training events become an annual event. Coupled with the development of the new advertising seminar was the collaborative effort between the Division and the Texas Automobile Dealers' Association (TADA) to amend the advertising rules to clarify those rules and add specific new rules addressing abuses identified in internet advertising.

- In 2014, rules were passed by the Board that allows the Division to implement a pilot program with the Federal Motor Carrier Safety Administration (FMCSA) to enforce federal laws relating to interstate household goods moves. Under this new program, the department retains all administrative penalties that may be assessed in these cases that are investigated and prosecuted by division staff.

Enforcement Division – Five Year Accomplishments

Since its formation in 2009, the Enforcement Division:

- Has completed more than 54,850 cases, collected more than $9,238,000 in civil penalties, and facilitated the reimbursement of more than $2,048,000 to consumers through its regulation of the motor vehicle, motor carrier and salvage industries.
- Has conducted more than 250 educational sessions attended by more than 14,000 licensees, law enforcement personnel, tax office employees, and consumers. Courses included virtually every area of our regulatory responsibilities. Highlighting the division's educational efforts is our completion this year of the 14th year of Dealer Training Seminars and initiation of a new Texas Commission on Law Enforcement (TCOLE) certified training programs on oversize/overweight laws for DPS and a new program on Motor Carrier credentialing and unlicensed household goods laws for law enforcement.
- Has grown since 2009 to include, in addition to motor vehicle industry enforcement, programs dealing with oversize/overweight enforcement, motor carrier insurance and credentialing enforcement and household goods moving enforcement. The division's operations now include offices throughout the state, including Austin, Longview, Pharr, Houston, San Antonio, El Paso, Lubbock, Fort Worth and Mesquite.
- Developed and launched its "Don't Make a Move Without Us" program aimed at educating consumers and law enforcement about the dangers of unlicensed household goods movers. This program has gained national and local recognition and was instrumental in obtaining the first-ever successful prosecutions of unlicensed movers. Other highlights include the Division's pilot program partnering with the Federal Motor Carrier Safety Administration to enforce laws against interstate movers.
- Has been responsible for the state's Lemon Law program that has handled more than 2,050 complaints between new car purchasers and manufacturers. More than $5,100,000 in replacement/repurchase relief has been provided to Texas consumers. The program celebrated the 30th anniversary of the passage of the law establishing the Texas Lemon Law program during this period.

Lemon Law

In FY2014, the Texas Department of Motor Vehicles (TxDMV) celebrated the 30th anniversary of the passage of the Texas Lemon Law. This law continues to help Texas consumers who have purchased or leased new motor vehicles with defects to obtain warranty repairs, replacement or repurchase by the manufacturer. The department celebrated Texas Lemon Law Day, highlighted by the presentation of a proclamation signed in October by Governor Rick Perry.

Effective January 1, 2014, the administrative hearing function for Lemon Law/Warranty cases was returned to the TxDMV by the Texas Legislature. In response, the agency created the Office of Administrative Hearings (OAH). It is expected that the processing of cases and decisions from the OAH will be expedited and greater efficiencies will benefit consumers and manufacturers.

Administering the Lemon Law program includes warranty performance complaints from the public and complaints from the public alleging that a new vehicle is defective. When the Division receives a complaint, a case advisor, employed by TxDMV, determines whether the complainant is eligible for relief under the applicable statutes, and then attempts to mediate with the parties to a successful resolution whenever possible. If unsuccessful in mediating a resolution of the complaint, the case is referred to Office of Administrative Hearings which conducts an administrative hearing and issues a final order. During FY2014, staff was successful in mediating settlements in 75% of the cases.

The Lemon Law section prepares an annual report under separate cover. It can be found on the TxDMV website as follows: http://txdmv.gov/reports-and-data/cat_view/13-publications/25-reports-data/146-lemon-law

This page Intentionally Left Blank

Motor Vehicle

Enforcement

Motor Vehicle
FY2014 Accomplishments

- The Division implemented a new process for notifying the respondent of proposed sanctions that sets out in a notice letter the licensee's right to request a hearing to contest the alleged violations. This new process, Notice of Department Decision (N.O.D.D.), decreases processing time and reduces costs charged to the department by the State Office of Administrative Hearings for most contested case proceedings.

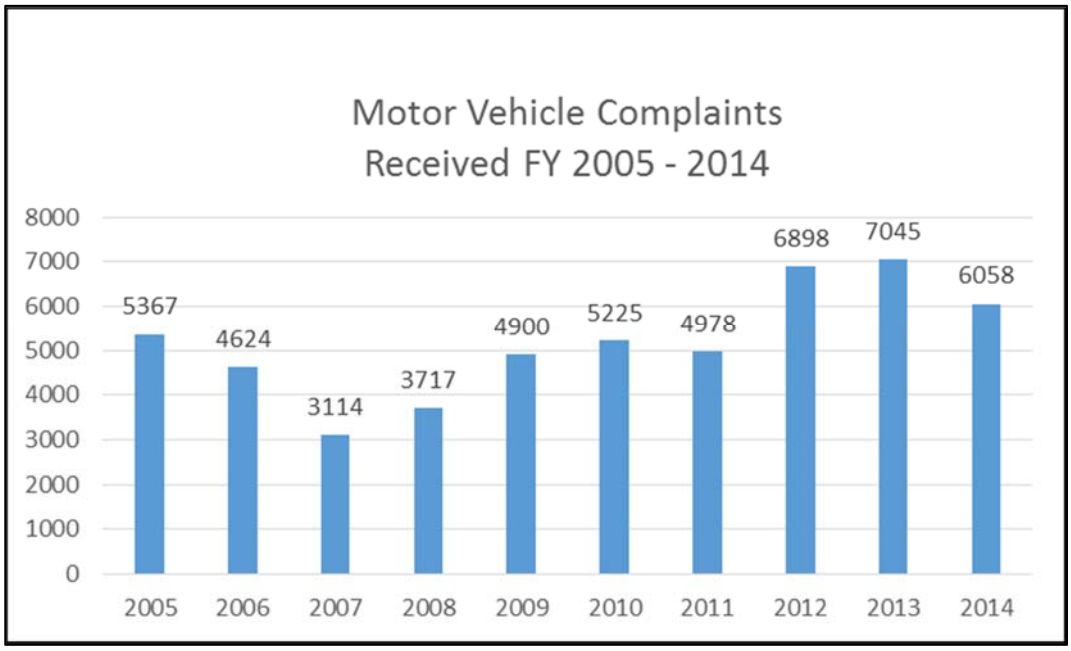
- Division investigators conducted several successful sweeps with Law Enforcement in San Antonio, Eagle Pass and El Paso, thereby, strengthening relationships with local law enforcement.

- The Dealer Training Program, now in its 15th year, was revised to ensure the most current educational topics are covered in a thorough, understandable and enjoyable manner. In particular, the advertising presentation was updated to address trends in print and internet advertising.

- The Division established an agreement with the Texas Department of Public Safety (DPS), whereby that agency refers cases where salvage dealers are observed during DPS inspections to be violating TxDMV administrative rules.

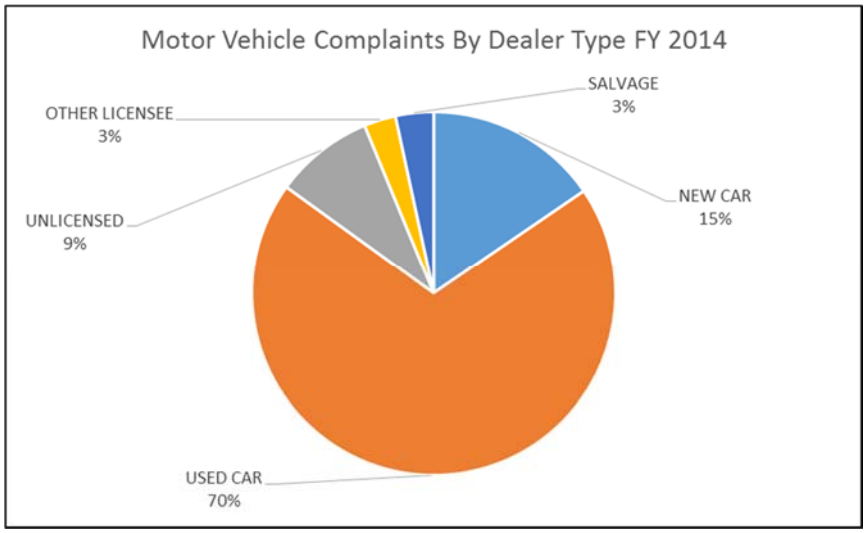
- Reimbursements to consumers where staff negotiated a settlement between the dealer and the consumer totaled $477,790 in FY2014.

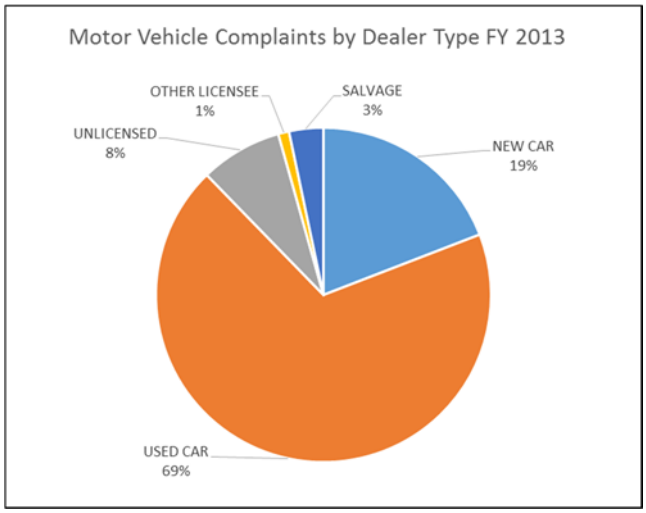
Motor Vehicle - Complaints Opened Historical – 10 Years

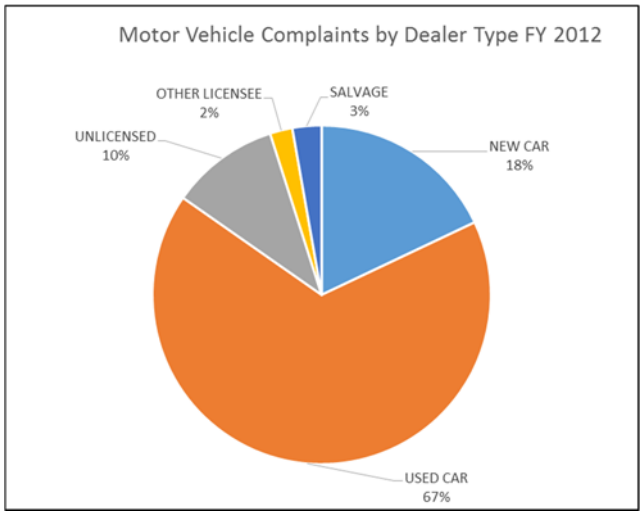


Since FY2012, motor vehicle complaints have exceeded 6,000 per year. Common complaints received by the Division include: failure to timely transfer title, failure to timely remit sales tax, misrepresentation, and vehicle inventory tax violations referred by the state's Tax Assessor and Collectors. The Division continues to work closely with law enforcement to address the unlawful sale of vehicles by persons acting as a dealer without a license. The Division also works closely with toll authorities to provide assistance with plates and tags used on vehicles abusing the toll roads.

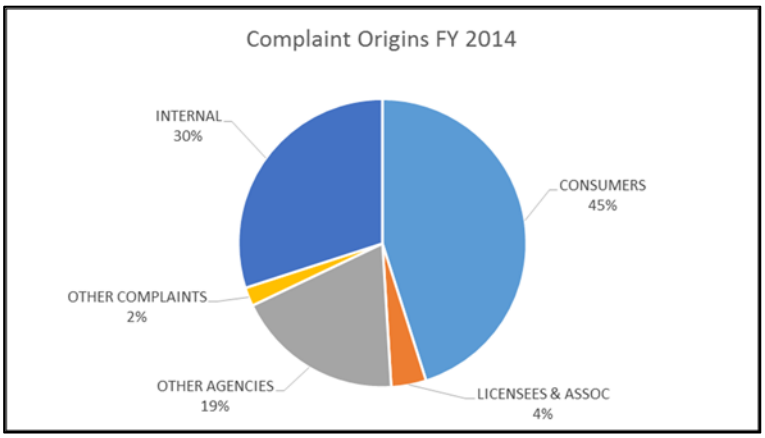
Motor Vehicle Complaints - By Dealer Type

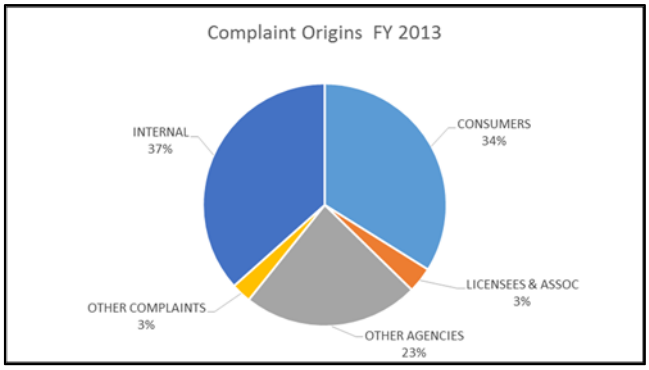


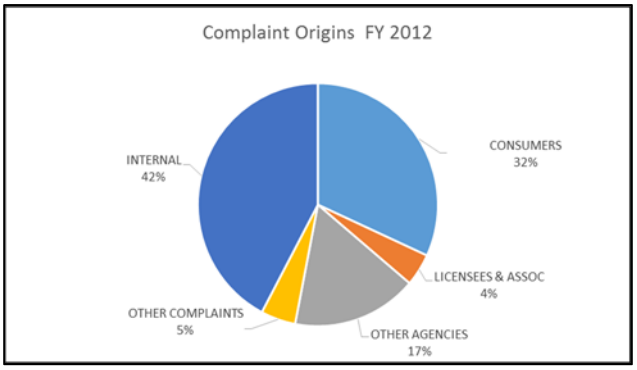




Motor Vehicle Complaints - By Origination

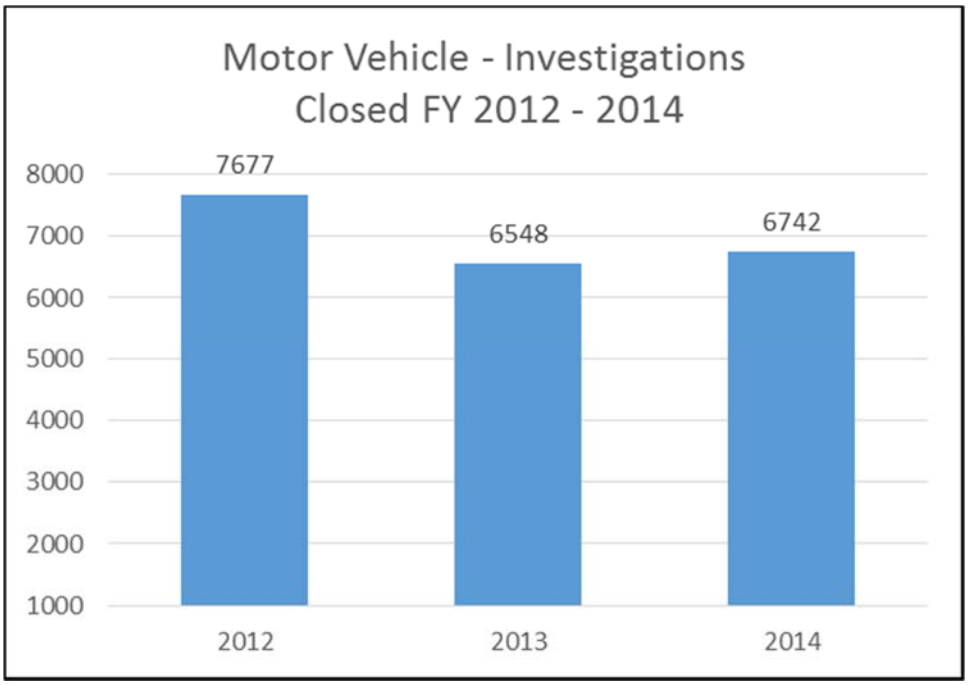






Motor Vehicle complaints originate primarily with the public, but the Division also generates complaints as a result of field inspections conducted at a dealer's licensed location. Complaints also come from other licensed motor vehicle dealers and from various governmental agencies, including County Tax Assessor Collectors and County Appraisal Districts, and law enforcement.

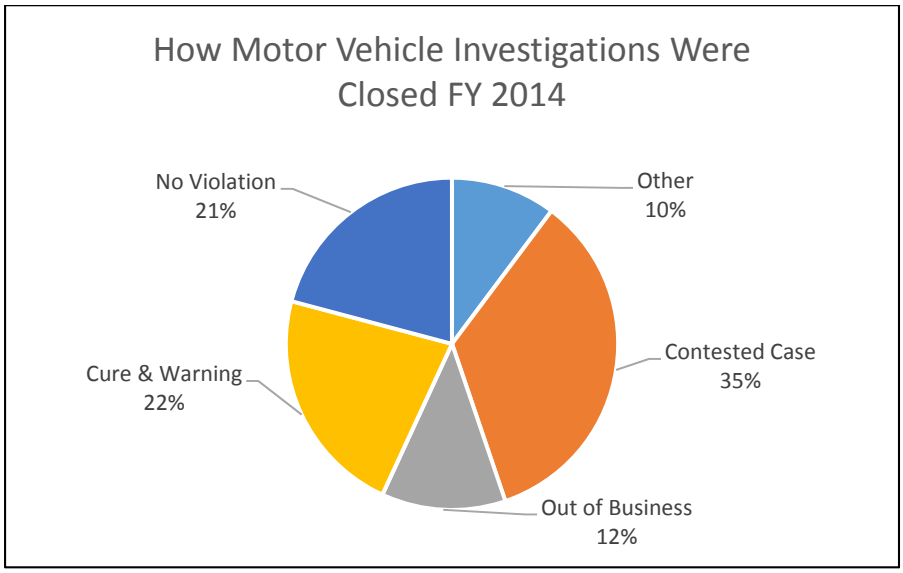
Motor Vehicle - Investigations Closed

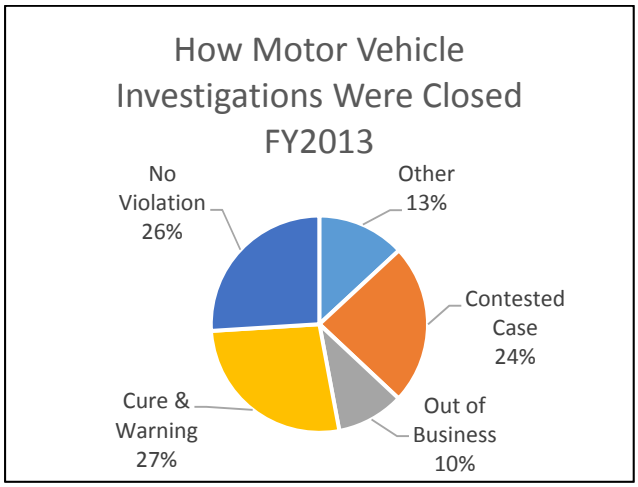


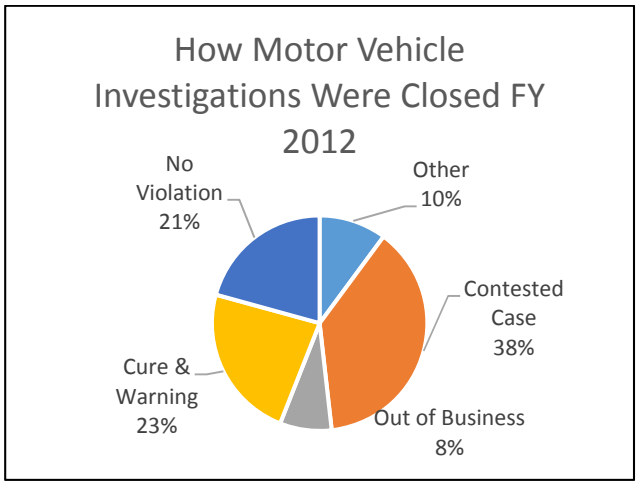
After a complaint is thoroughly investigated and reviewed by the Chief Investigator, it is referred to a staff attorney for review. The staff attorney closes the file with no action taken if there is no violation or the dealer is out of business. The attorney may also issue a warning letter or file a contested case. The chart above reflects the number of investigative files "closed" during the last three fiscal years, after all action has been taken.

A complaint filed with the TxDMV may contain multiple violations, but is counted as a single investigative file. The number of violations addressed in the current year's investigation count is: 13,099 – a 30% increase to the FY2013 violation count of 10,019.

Motor Vehicle - Investigations Closed by Category

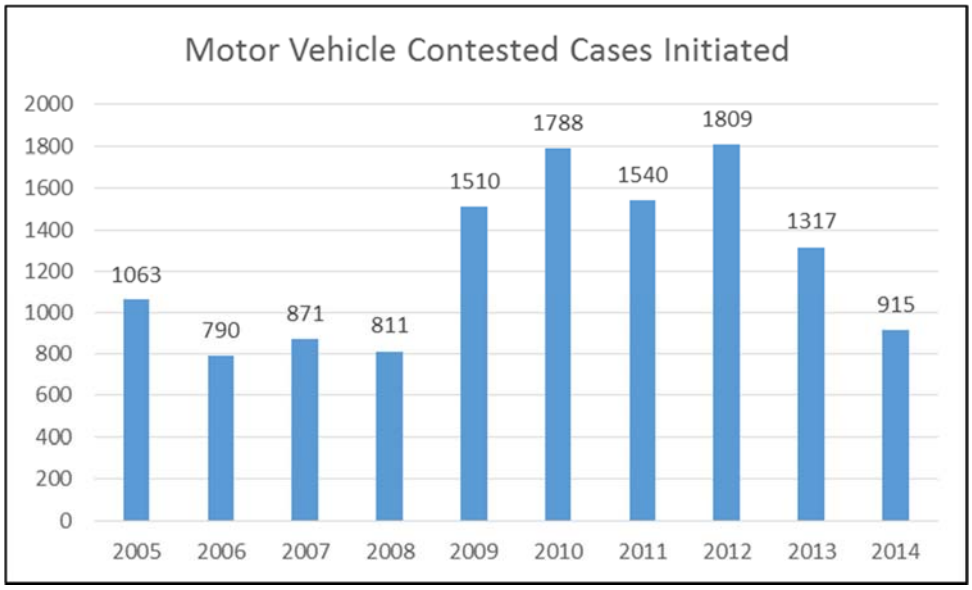




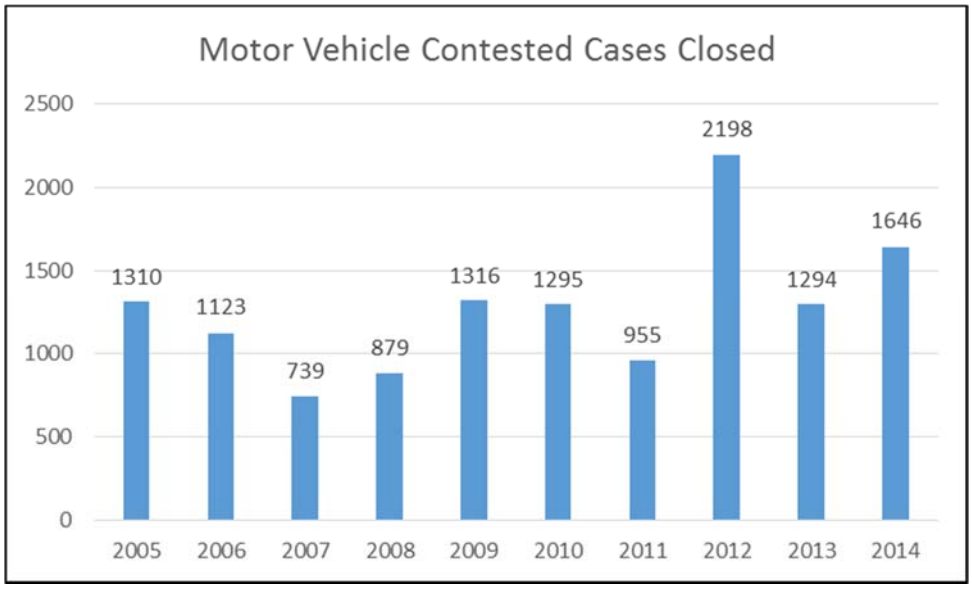


Staff attorneys review the reports completed by investigators and determine the action to be taken on a case. Many cases are closed with a warning letter or a determination that there was no violation. Approximately one-third of the cases require further processing by the Division's legal staff because a violation has been found.

Motor Vehicle - Contested Cases Initiated - Historical 10 Years

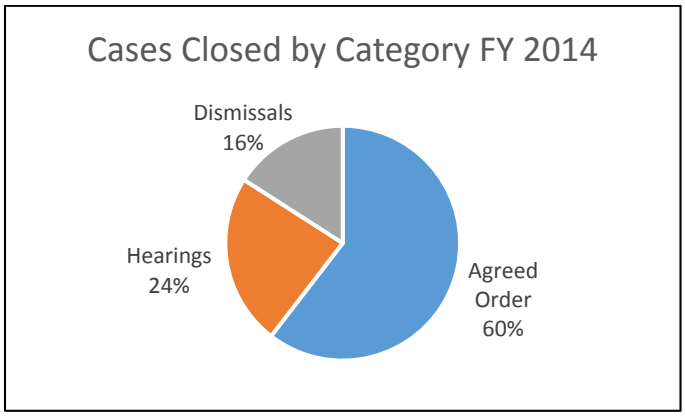


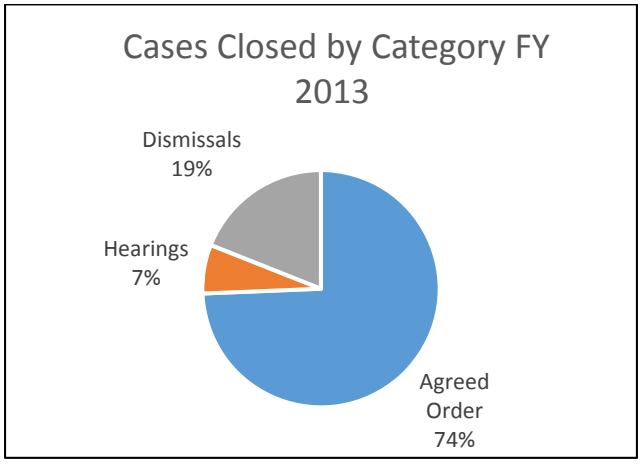
Motor Vehicle - Contested Cases Closed

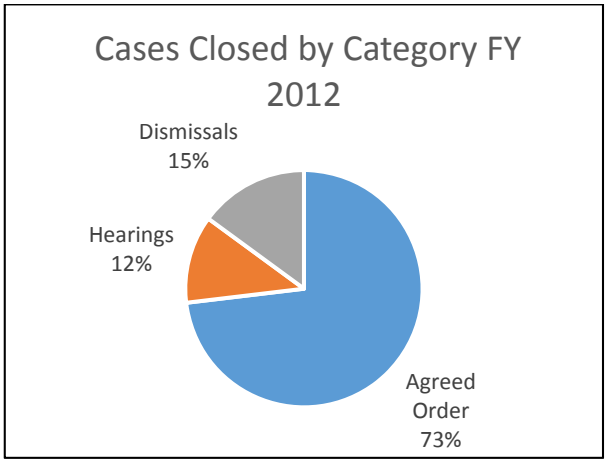


In appropriate cases, the Enforcement attorney will initiate administrative litigation by filing a contested case proceeding by preparing an Original Petition or Notice of Department Decision (NODD) describing the alleged violation. The petition or NODD explains the rights of the licensee, and invites settlement discussions. The vast majority of these contested cases are settled through agreed orders between the attorney and the licensee.

Motor Vehicle – Contested Cases Closed by Category





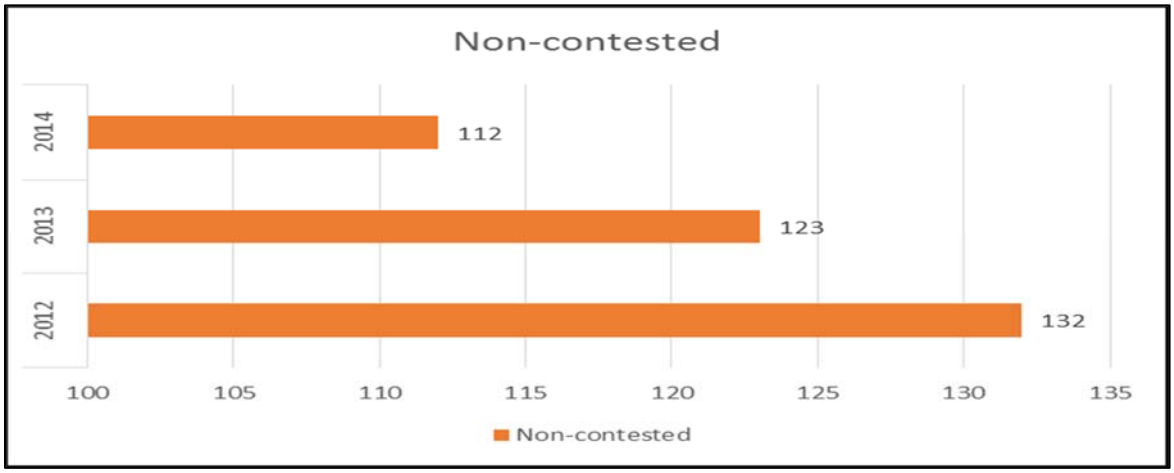


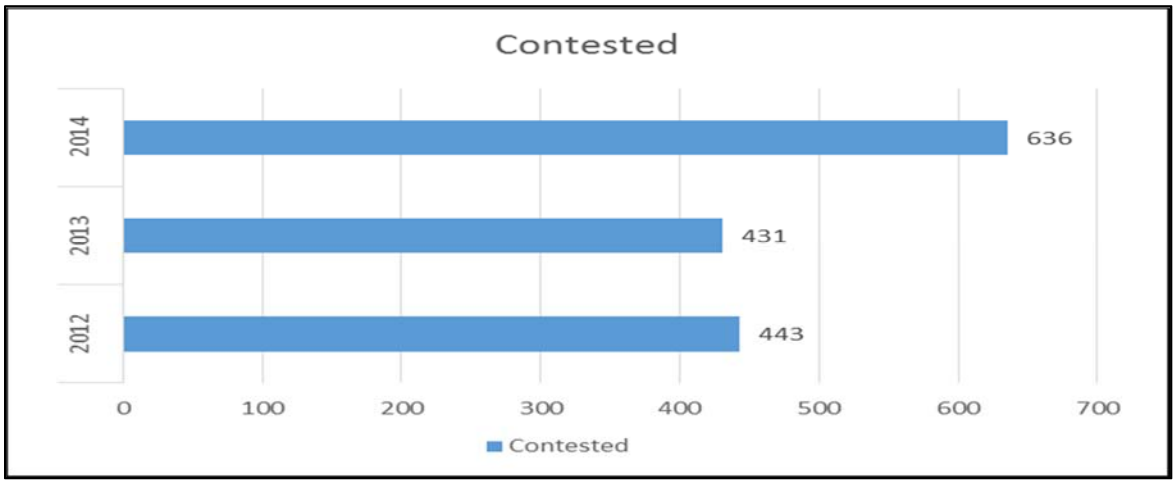
If a settlement is reached, an Agreed Order is drafted and sent to the licensee for signature.

If a settlement cannot be reached, the case is scheduled for hearing before an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). Almost all of these cases result in a default, where the licensee fails to appear at the scheduled hearing. When the licensee fails to appear, the ALJ issues an order dismissing the case and returns it to the division for final disposition by issuing an order.

In FY2014 there were 291 hearings held where a default was entered due to the Licensee's failure to appear. There was 1 case during fiscal year 2014 where a hearing was held and was attended by the licensee and the ALJ issued a proposal for decision. The TxDMV board or its delegate then issued an order.

Motor Vehicle
Days in Process





Non-contested cases are those cases that do not require a petition to be filed or a Notice of Department Decision to be sent in order to close the case. These cases consist of cases closed with warnings, a finding that the respondent is out of business, referrals to other agencies and other similar dispositions.

Contested Cases are those cases where a petition and notice is prepared by an Enforcement staff attorney. These cases require further time to allow for a response from the licensee and, until February 2014, required action by TxDMV board members in order to close the case.

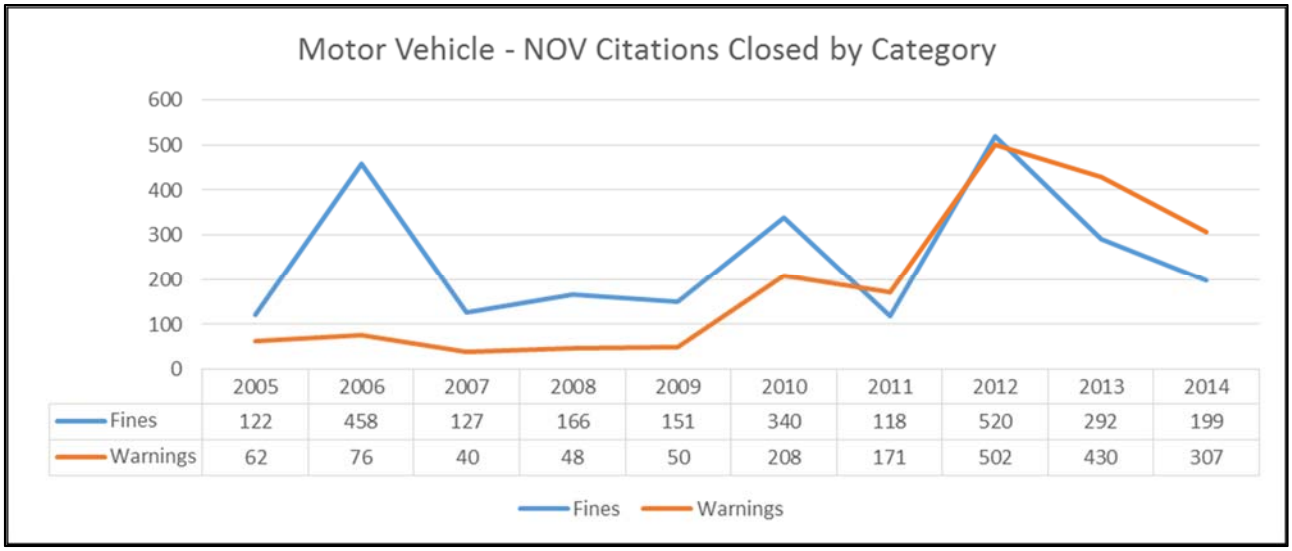
With the approval and direction of the TxDMV board, effective in February 2014, final orders are now routed to the MVD Director for signature. This change should improve the time necessary to close these cases.

The Notice of Violation (NOV) Process For Motor Vehicles

All the previous discussions and charts of investigations and contested cases include the data for Notice of Violation (NOV) cases. These cases involve issuing a "citation" by the investigators for minor violations. This section provides a detailed look at the NOV data independently.

The NOV process was developed as a tool to be utilized by an investigator to address some common violations through a more cost effective and time efficient procedure than the standard complaint process. Typically, a NOV is used during the course of a self-initiated inspection where a violation is noted. Each investigator is issued a pre-numbered, inventory-controlled, book of "citations" for which up to three violations (from a limited list) can be cited per dealer. The fines for these minor violations range from $50 to $200 or, in appropriate cases, the investigator may issue the dealer a warning citation.

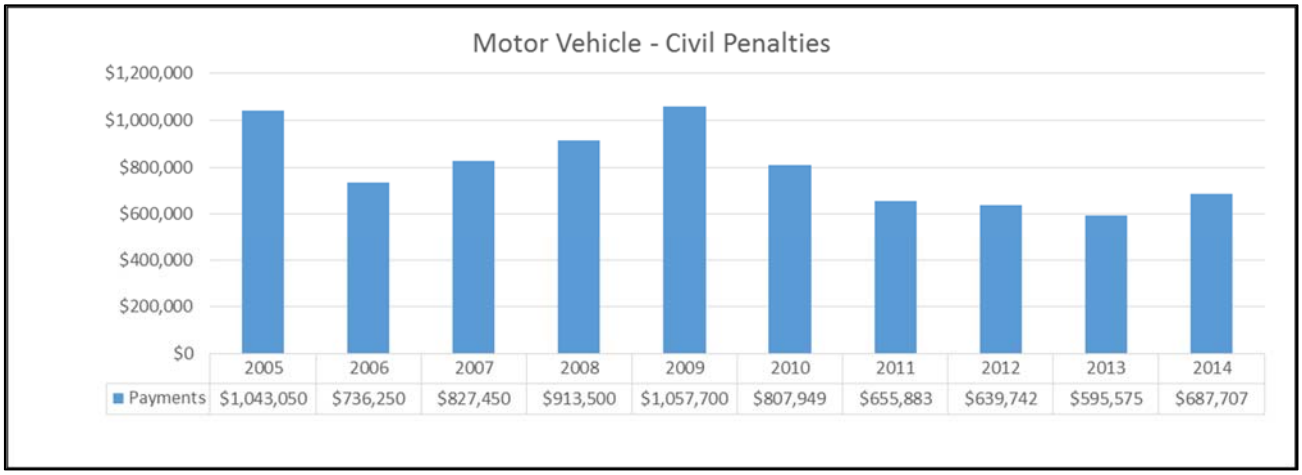
Once a citation is written, whether a warning or a fine, the citation is entered into the database as a historical item on the dealer's enforcement history just as the standard complaint process does. A NOV is treated similar to a contested case in that the dealer has all due process rights including the right to request a hearing. The historical chart below shows the Fines and Warnings for closed NOV citations.



	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Fines	122	458	127	166	151	340	118	520	292	199
Warnings	62	76	40	48	50	208	171	502	430	307

In FY 2014, a total of $30,650 was paid in civil penalties (fines) by licensees who received NOV citations.

Motor Vehicle Civil Penalties
Historical - 10 Years



	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Payments	$1,043,050	$736,250	$827,450	$913,500	$1,057,700	$807,949	$655,883	$639,742	$595,575	$687,707

The chart above reflects a historical view of the civil penalties collected over the most recent ten year period. Both civil penalties for the standard contested case procedure and civil penalties for NOV's are included in these amounts.

Motor Carrier
Household Goods

Enforcement

Motor Carrier
FY2014 Accomplishments

- A highlight of this year was the Division's annual press event in May 2014 for the start of National Moving Month. The Agency co-sponsors the event with the Southwest Movers Association, Federal Motor Carrier Safety Administration (FMCSA), Better Business Bureau and National Moving and Storage Association.

- In the area of Household Goods Enforcement, the Division continued its education efforts with its "Don't Make a Move Without Us" program, providing training to law enforcement about the dangers associated with unlicensed household goods movers, the criminal actions that may be taken against unlicensed movers, and specifically addressing how to handle "hostage" move situations. In all situations during the past year involving a hostage move where Division investigators were called to intervene, the consumer's goods were returned to the consumer.

- In FY 2014 the Division launched the Notice of Violation (NOV) process for the Motor Carrier section as a more cost effective and time efficient way to address some of the more common minor violations for motor carriers including household goods carriers.

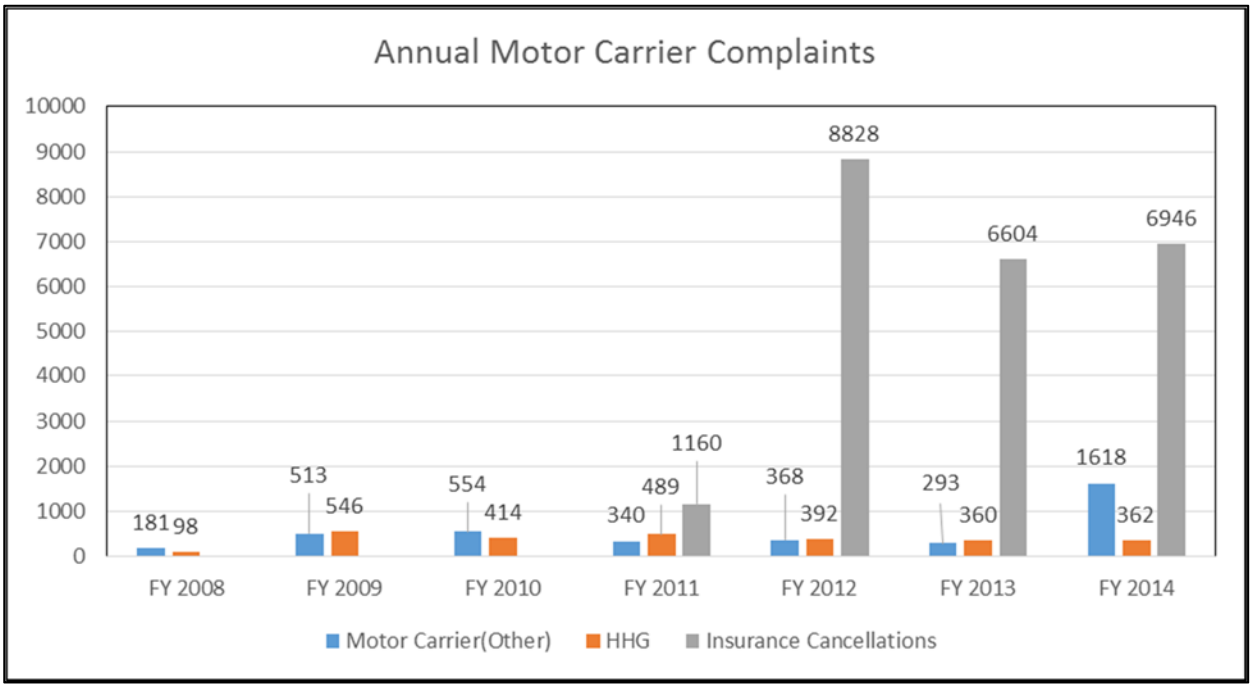
- The Division continued its aggressive program to enforce laws requiring motor carriers to maintain the required amounts of liability insurance when carrying goods and the public on Texas highways.

- A new enforcement initiative was launched to identify and administratively prosecute motor carriers operating on Texas highways that are not properly registered under Unified Carrier Registration (UCR).

- Staff attorneys received training in order to provide internal mediation services which reduced the division's annual mediation costs. Further reductions in costs for this program are anticipated for FY2015.

- A record $1,527,651 was collected in administrative penalties in FY2014.

Motor Carrier Complaints Opened Historical

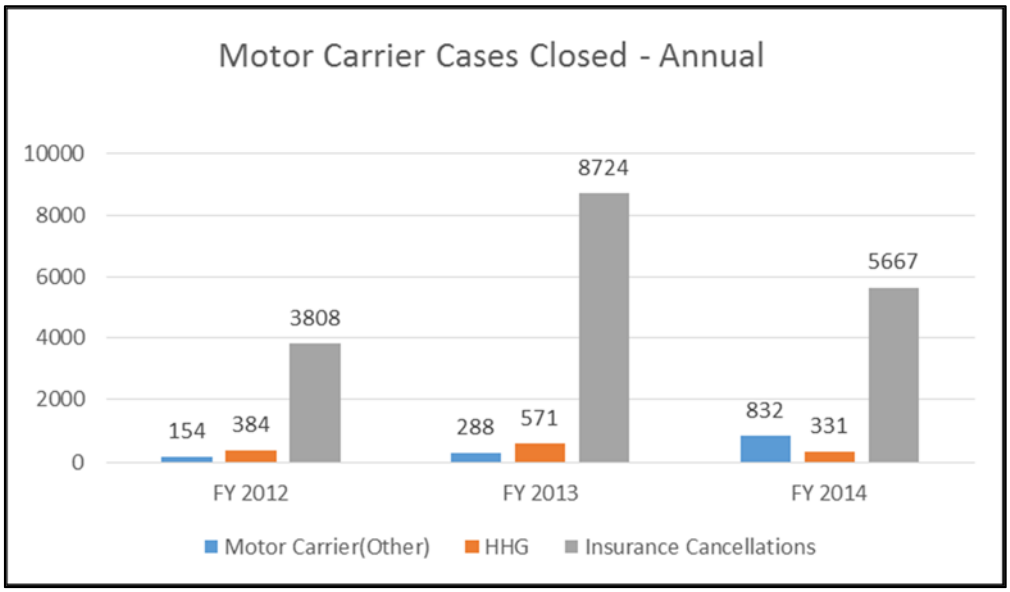


Most motor carrier complaints during the last three years originated from internal initiatives to identify and administratively address violations by motor carriers operating on Texas highways that are not properly registered because their insurance has lapsed or the carrier has failed to provide evidence they maintain the proper insurance required by law. The Enforcement Division initiative to verify liability insurance coverage began in June 2011. A subsequent initiative to review cargo liability coverage for Household Goods Carriers began in June 2014.

The complaints reported under Motor Carrier (Other) are based primarily on Unified Carrier Registration (UCR) violations and Department of Public Safety complaints for multiple safety violations.

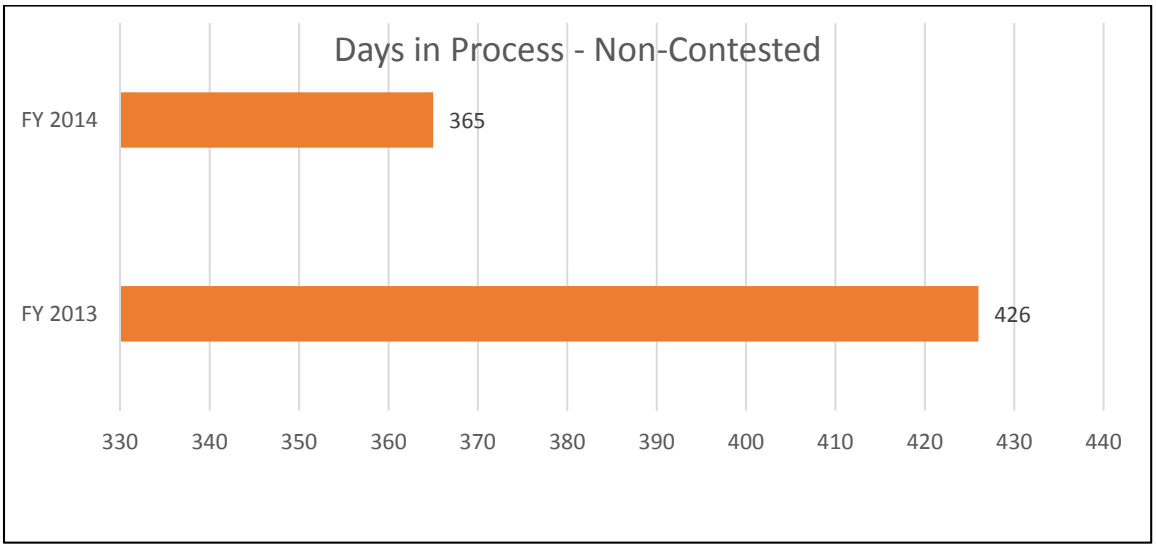
The HHG category consists primarily of consumer complaints/claims for damaged or missing goods, advertising violations, and violations for operating without proper markings for moving companies.

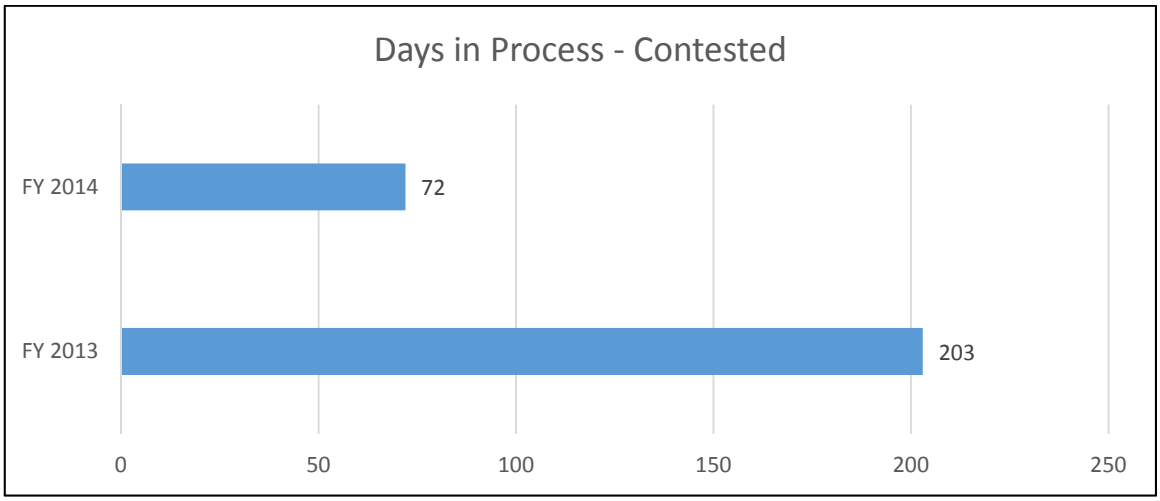
Motor Carrier
Cases Closed by Case Type



The greatest number of cases closed were for failure to maintain or provide insurance documentation for the proper registration of the motor carrier.

Motor Carrier
Days in Process





The majority of contested cases for FY2014 are the recent insurance certificate cases in which the "investigation" has already been conducted and the attorney can immediately proceed with initiating a contested case proceeding. Additional staff has been assigned to Motor Carrier Enforcement to decrease processing times.

Note: Verifiable data is not available for prior periods.

The Notice of Violation (NOV) Process For Motor Carriers

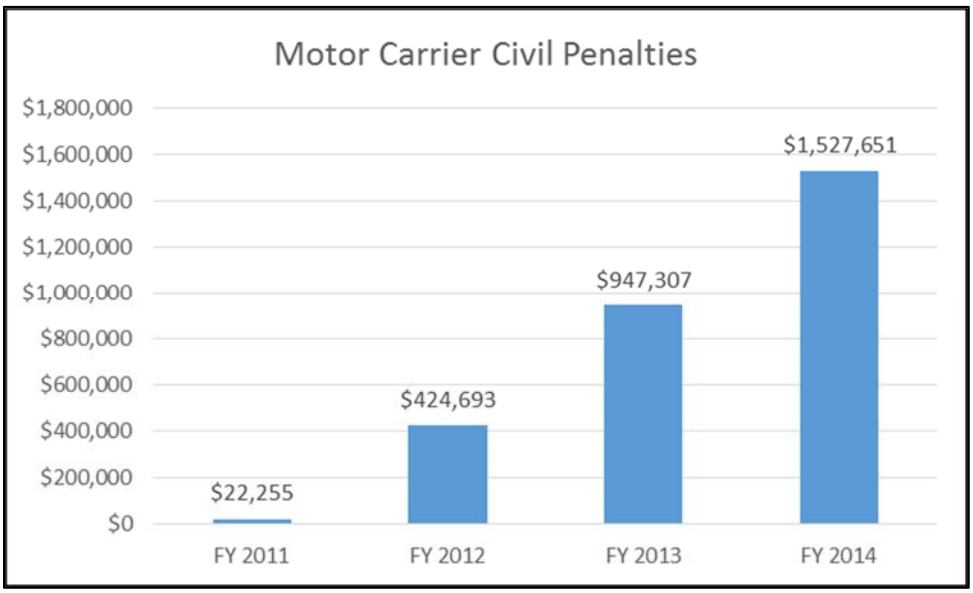
The NOV process was developed to address common violations in a more cost effective and timely manner. Investigators can immediately address a limited list of minor violations by a motor carrier by issuing a pre-numbered citation indicating the violation.

Any citation that includes a fine is treated similar to a contested case in that the carrier has all due process rights, including the right to request a hearing. Once a citation is written, whether a warning or a fine, the citation is entered into the database to create a historical record for the carrier.

The motor carrier section launched the NOV process in FY2014 primarily to address minor violations such as household goods carriers displaying improper or no markings and household goods carriers or buses that were not properly registered to operate.

In FY2014 there were 30 NOV's issued by the Motor Carrier Section; 17 included fines and 13 were closed with warnings.

Motor Carrier
Civil Penalties - Historical



Civil Penalties for Motor Carrier enforcement actions have been on a steady increase since the new enforcement initiative was launched to identify and administratively address motor carriers operating on Texas highways that failed to maintain registration requirements or failed to maintain insurance. 95% of the cases closed in FY 2014 included an administrative penalty.

This page Intentionally Left Blank

OverSize/OverWeight

Enforcement

OverSize/OverWeight Vehicles & Loads
Enforcement Program Introduction

Texas roadways and bridges are engineered and constructed to withstand usage within certain size and weight parameters. When these parameters are exceeded, structural damage, excessive road-wear, and road hazards can result. To ensure the safety of the travelling public and to extend the life of our roadways and structures, restrictions are placed on OverSize/OverWeight loads. These restrictions are established in the Texas Transportation Code. When loads exceeding legal size and weight restrictions cannot be reasonably dismantled for shipment, motor carriers must obtain permits to allow for their safe transport over state roadways.

On January 1, 2012, the size and weight enforcement program was transferred from the Texas Department of Transportation to the Texas Department of Motor Vehicles (TxDMV). The OverSize/OverWeight section of the Enforcement Division is charged with enforcing the applicable statutes and related administrative rules as set forth in the Transportation Code and the Texas Administrative Code.

To meet statutory mandates and to support the Enforcement Division goals, the OverSize/OverWeight program uses a three-fold approach of education, complaint investigation and an appropriate imposition of sanctions, when needed. These activities help maintain public safety, protect the transportation system and the loads transported within the state.

OverSize/OverWeight
FY2014 Accomplishments

- Division staff developed an Advisory Contact program whereby visits are made to motor carriers to provide information on size and weight laws and to seek voluntary compliance with those laws. This contact is used for education purposes only, but, a “no action” complaint is generated when a violation is found.

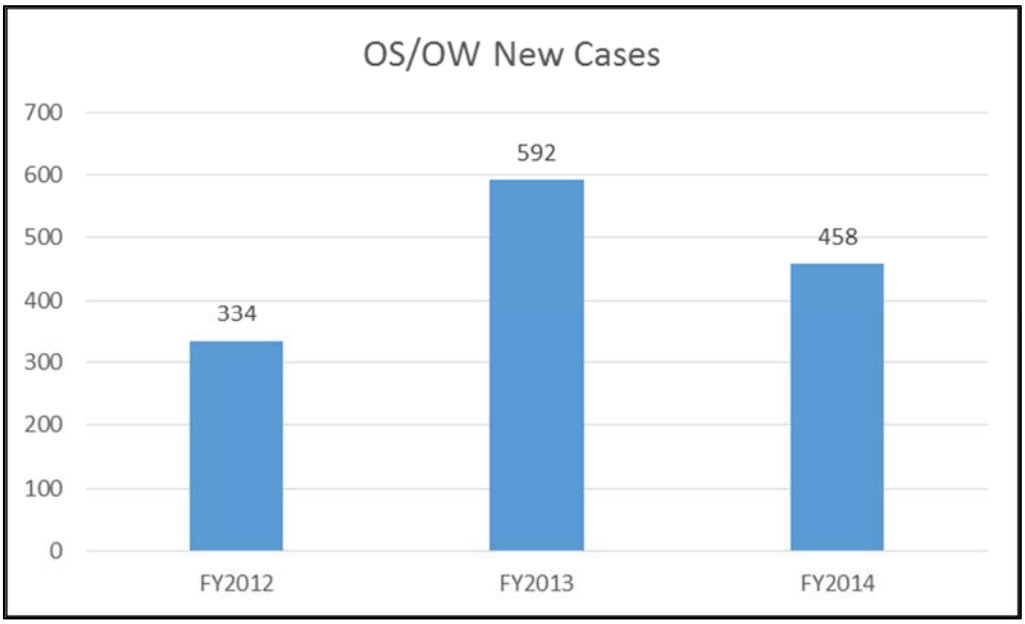
- Throughout FY2014, Division staff assisted multiple local law enforcement agencies (Williamson County Sherriff, Burleson Police Department., La Porte Police Department and Harris County Sherriff) in accessing and utilizing the TXPROS system to aid in their jobs at roadside. The staff also provided assistance on submitting oversize / overweight tickets with problem carriers and everyday normal inspections.

- Attorney review and prosecution of oversize / overweight cases is current as of the end of FY2014, eliminating a 12 month back log of cases.

- Division staff developed a training program for the Department of Public Safety and other law enforcement agencies for Size and Weight enforcement. Steps have been taken to certify this training for Texas Commission on Law Enforcement (TCOLE) hours, as is done for other law enforcement training provided by the Division.

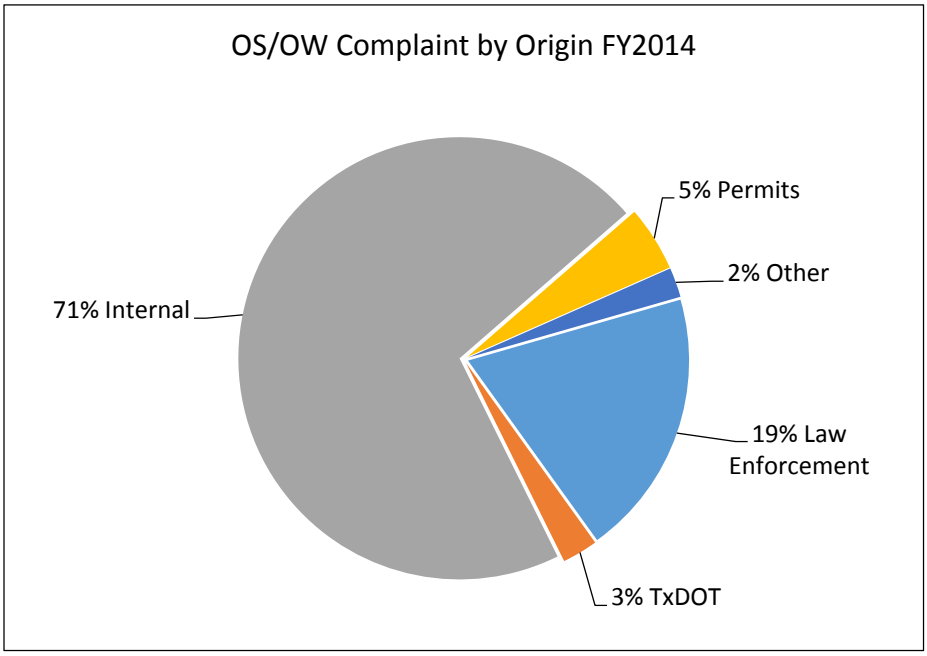
- Investigative focus this year was in the fossil fuel production areas of the state where, due to heavy and/or oversized equipment and load transports, there is a significant increase in road deterioration and structural damage.

OverSize/OverWeight Complaints Opened - Historical



The Enforcement Division's OverSize/OverWeight section responds to complaints relating to violations of size/weight laws. This section of investigators reviews citations issued by law enforcement and conducts audits of motor carriers where there appears to be a pattern of violations. An online complaint management system is also available to encourage involvement by the public.

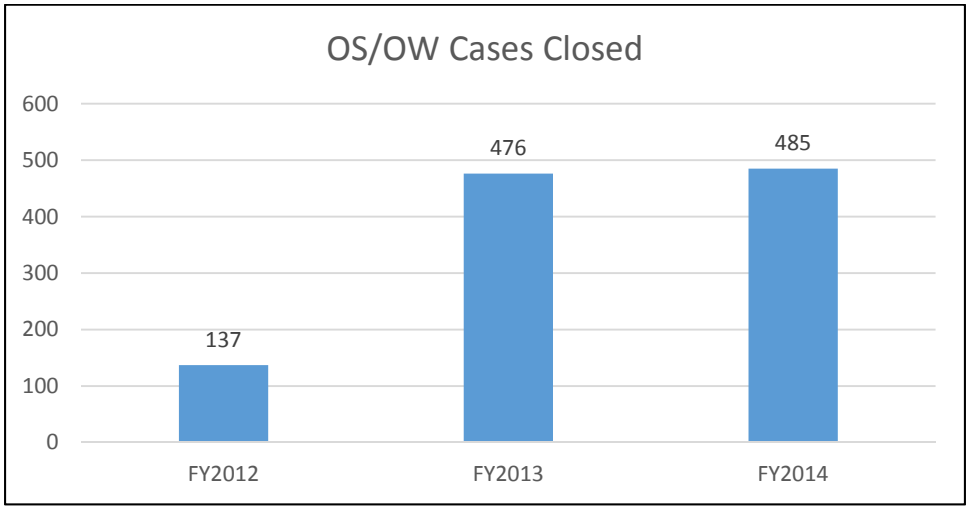
OverSize/OverWeight Complaints by Origination FY2014

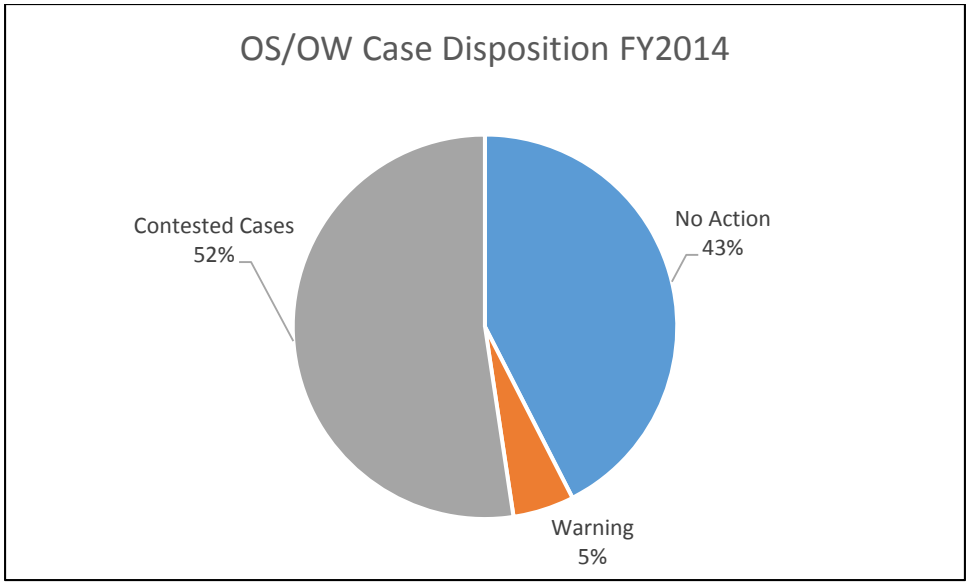


As illustrated above, the majority of complaints for Size and Weight are self-initiated. The investigative staff utilizes the Texas Department of Public Safety (DPS) violations database to identify repeat offenders or those entities whose use of the Texas roadways poses a significant safety hazard as identified by DPS. The OS/OW section also conducts investigations where there have been "bridge hits" or other instances where the highways have been damaged.

Note: Complaint origin data is not available prior to FY2014.

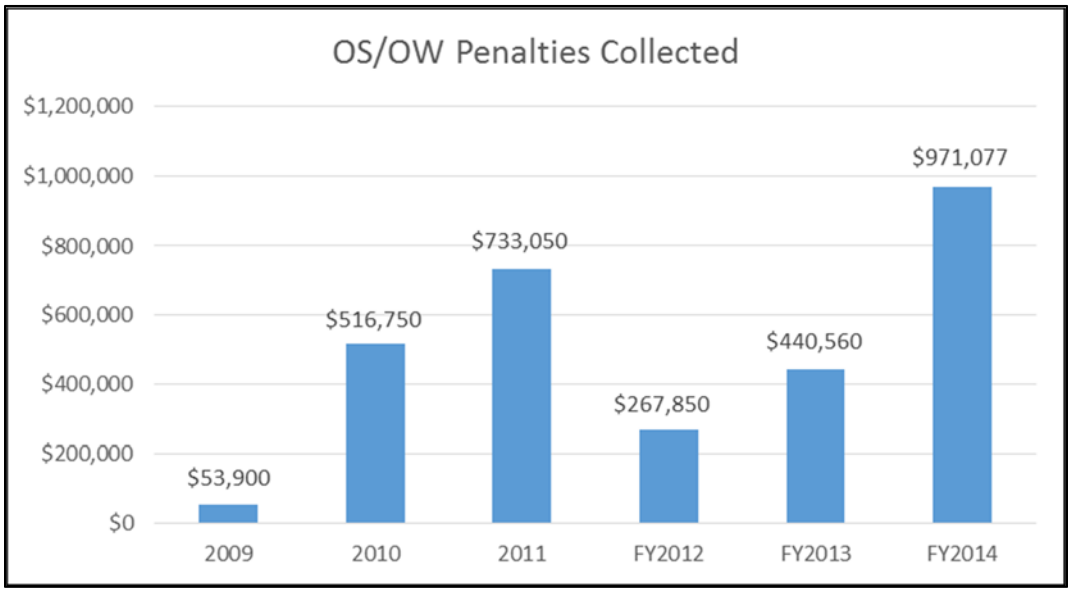
OverSize/OverWeight Cases Closed - Historical





Historically, approximately one-half of the investigations conducted result in administrative actions with the staff attorney filing a contested case proceeding.

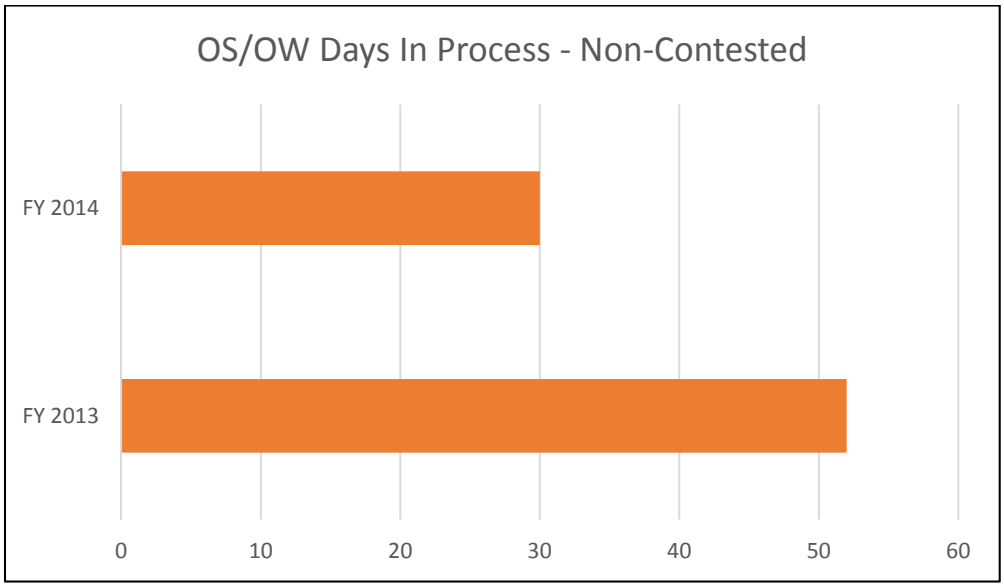
OverSize/OverWeight Penalties Collected – Historical



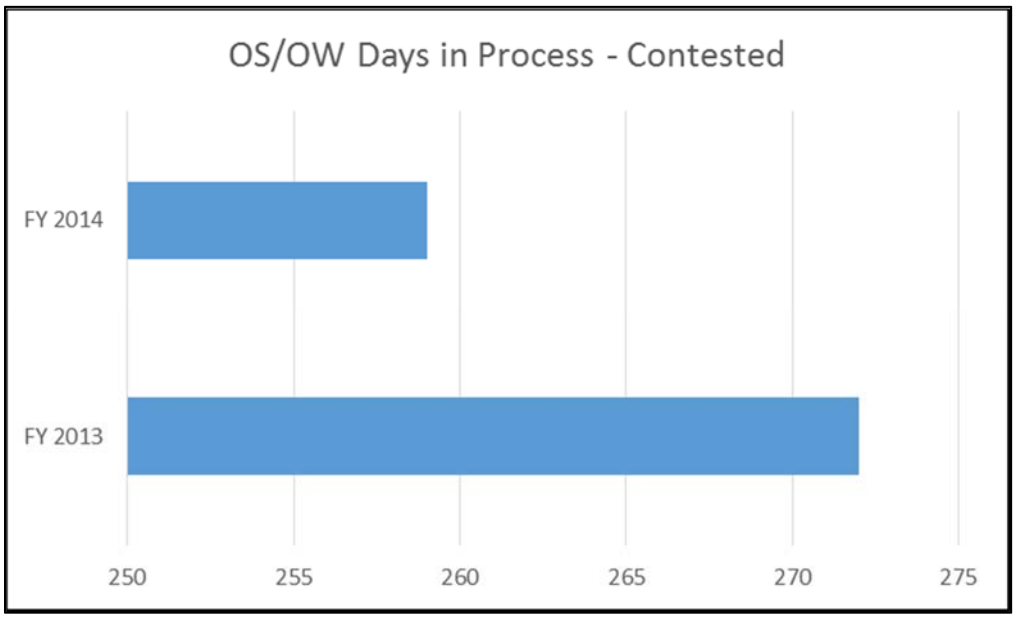
In 2012, the TxDMV Board amended 43 Texas Administrative Code §219.121 to limit the aggregate amount of administrative penalties for multiple violations not to exceed $30,000.

The increase in collected penalties for FY2014 can be attributed to the successful efforts of the staff to eliminate the case backlog and more effectively prosecute violations.

OverSize/OverWeight Days in Process



The Advisory Contact program started in early FY2014, which allows for a complaint to be closed on the same day it is opened. The impact of this program is shown above in the decrease to the days in process from FY2013 to FY2014.



A focused effort by staff to review and close older cases improved the days in process from FY2013 to FY2014.

Enforcement Division Outreach

Efforts

DEALER TRAINING SEMINARS

In an effort to better inform our licensees and other stakeholders regarding the many laws affecting the motor vehicle distribution industry, the Enforcement division launched the Dealer Training Seminar (DTS) program in 1999. The Dealer Training Program, now in its 15th year, is revised periodically to ensure the most current educational topics are covered in a thorough, understandable and enjoyable manner. In particular, the advertising violations section of the presentation was updated in 2014, to address trending issues in print and internet advertising.

In addition to the Dealer Training Seminar, where, as discussed above, advertising is one of the topics, the Division developed and launched a new advertising education program aimed specifically at franchise dealers who are the largest users of advertising. These seminars were presented at five locations throughout the state, and many in the audience have requested that these special training events become an annual event.

The standard Dealer Training Seminar is presented at different locations each year throughout the state. Seminars were held in 11 different locations in 2014 providing a total of 13 days of instruction. The free seminars are scheduled and located in such a manner that every dealer in the state receives an invitation at least once every two years.

Over the years in which this seminar has been presented, the total number of attendees exceeds 25,294. In FY2014 there were 3,546 attendees, of which approximately 68% were independent dealers, 11% were affiliated with franchised dealerships, and the remaining attendees included tax assessor-collector staff, law enforcement, and persons who may be considering becoming a licensee.

The program consists of presentations on the basic laws involved in operating a motor vehicle dealership, such as licensing requirements, daily operations, titling, and taxes, financing and advertising. Speakers include staff from not only the Enforcement Division but also from the Vehicle Titles & Registration Division of TxDMV and the Office of the Consumer Credit Commissioner.

DTS provides an excellent opportunity to educate a dealer population that has no mandated education requirements, and gives the licensees an opportunity to meet agency personnel. Many licensees take advantage of the opportunity to talk with agency representatives and ask questions they have been unable to resolve over the phone or otherwise.

Another opportunity DTS provides is the ability to directly poll the licensee body on issues that affect the industry. Such information is useful to the division in developing and modifying policies and rules.

LAW ENFORCEMENT TRAINING

Enforcement Division personnel continue to provide training to various law enforcement agencies. Many of our employees have served in law enforcement, giving them a unique perspective on the training requirements of officers in the field. Subjects covered in different sessions during training includes: E-tags, dealer laws, curb-stoning and general information on TxDMV operations and resources.

Efforts to enhance the knowledge of law enforcement agencies in the area of motor carrier operations, has led to the creation of a Motor Carrier Law Enforcement Training Course. Our staff provided 17 classes in 2014 which have informed attendees of the issues unique to the motor carrier industry.

The OverSize/OverWeight section of the Enforcement Division has developed a training program specifically to educate law enforcement and other entities regarding rules and regulations that govern oversize/overweight vehicles and loads.

Many of the law enforcement trainings that are hosted by the Enforcement Division are accredited for TCOLE credit. Any officer that attends these sessions will earn credits necessary to maintain their commission.

OTHER INDUSTRY APPEARANCES

The division participated in a number of dealer and industry-based events this year including conferences for the National Insurance Crime Bureau Conference, the National Odometer and Title Fraud Enforcement Association and the Midwest Odometer Title Fraud Enforcement Association.

OS/OW investigators met with law enforcement officers in the Southern Region to educate attendees on permits and motor carrier registration. There were 9 informal meetings with law enforcement personnel providing instructions on OS/OW laws.

For the fourth consecutive year, the Enforcement Division Director addressed the Texas Independent Automobile Dealers Association's annual conference. He was also the keynote speaker at this year's International Association of Auto Theft Investigators meeting held in Fort Worth.

Division staff addressed motor carriers at several Texas Trucking Association (TXTA) functions this year to inform and promote compliance.

OS/OW staff provided 11 informal educational classes regarding permitting and motor carrier registration to Tax Assessor Collector offices and/or local judges in multiple southern counties in Texas.

In addition to the DTS seminars, the Enforcement division participated in 51 outreach efforts and provided information to over 1200 attendees at various events.