

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION**

SELECTED INSPECTION PROGRAMS

Operational Audit



SECRETARY OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Section 20.165, Florida Statutes, creates the Department of Business and Professional Regulation. The head of the Department is the Secretary of Business and Professional Regulation who is appointed by the Governor, subject to confirmation by the Senate. Ken Lawson served as Secretary during the period of our audit.

The audit team leader was Jim Beaumont, CPA, and the audit was supervised by Mary Stewart, CPA. Please address inquiries regarding this report to Christi Alexander, CPA, Audit Manager, by e-mail at christialexander@aud.state.fl.us or by telephone at (850) 412-2786.

This report and other reports prepared by the Auditor General can be obtained on our Web site at www.myflorida.com/audgen; by telephone at (850) 412-2722; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Selected Inspection Programs

SUMMARY

This operational audit of the Department of Business and Professional Regulation (Department) focused on selected inspection programs administered by the Division of Alcoholic Beverages and Tobacco; Division of Drugs, Devices, and Cosmetics; Division of Hotels and Restaurants; and Division of Regulation. Our audit also included an evaluation of the Department's cost allocation methodology and a follow-up on the findings noted in our report No. 2012-017. Our audit disclosed the following:

Finding No. 1: Department policies and procedures did not require employees to report the existence of potential conflicts of interest related to inspection assignments.

Finding No. 2: Some Department inspection policies and procedures could be enhanced by incorporating methodologies for scheduling inspections and specifying the criteria for initiating, and the time frames for conducting, inspection follow-up activities.

Finding No. 3: The Department did not always ensure that inspections were properly conducted and adequately documented in accordance with established policies and procedures.

Finding No. 4: The Department did not always timely conduct or adequately document the conduct of follow-up inspections.

BACKGROUND

The Department of Business and Professional Regulation (Department) is charged with regulating a broad spectrum of more than one million businesses and professionals for the preservation of the health, safety, and welfare of the public. The Department issues more than 200 distinct license types and regulates 24 professions and multiple industries and distributes its regulatory responsibilities across ten divisions and two commissions.

According to the Department, six divisions¹ perform regulatory responsibilities that include inspections. Those divisions' responsibilities include, but are not limited to, licensing, inspecting, and regulating public lodging and food service establishments; conducting statutorily mandated and inspections prompted by complaints received regarding establishments licensed by the Boards of Cosmetology, Barbers, and Veterinary Medicine; safeguarding the State's public health through inspections, investigations, and audits related to the manufacture and distribution of drugs, devices, and cosmetics; and enforcing the State's alcoholic beverages and tobacco laws and rules.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: Conflicts of Interest

The Legislature has declared that it is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest.² State law³ specifies that no public officer or employee is to have or hold any employment or contractual relationship with

¹ Division of Alcoholic Beverages and Tobacco; Division of Drugs, Devices and Cosmetics; Division of Hotels and Restaurants; Division of Pari-Mutuel Wagering; Division of Real Estate; and Division of Regulation.

² Section 112.311(1), Florida Statutes.

³ Section 112.313(7)(a), Florida Statutes.

any business entity or any agency which is subject to the regulation of, or is doing business with, the agency of which he or she is an officer or employee.

As part of our audit, we reviewed Department policies and procedures and noted that Department administrative policies:

- Prohibited Department employees from soliciting or accepting gifts and restricted outside employment.
- Required employees to disclose the existence of an occupational or professional license issued by the Department and to affirm, in writing, that he or she would not use the license while employed with the Department.
- Stated that it is essential all Department employees avoid any conduct or transaction which might result in, or create the appearance of, using public office for private gain, giving preferential treatment to an individual or entity, or losing complete independence or impartiality.

In response to our audit inquiry, Department management indicated that, in accordance with Department policies, employees were expected to disclose any potential conflicts of interest. However, while Department policies and procedures indicated that it was essential for all Department employees to avoid any conduct or transaction which might result in, or create the appearance of, losing complete independence or impartiality, the policies and procedures did not specifically require Department employees to report the existence of potential conflicts of interest related to inspection assignments or to submit statements disclosing conflicts of interest or affirming that there were none.

As the Department is responsible for inspecting various businesses whose noncompliance with State laws and rules could adversely affect the health, safety, and welfare of the public, policies and procedures that promote the integrity and effectiveness of the Department's inspection activities are imperative. The establishment of policies and procedures requiring employees involved in inspections and related enforcement activities to disclose, in writing, those circumstances, activities, and relationships identified by the Department as potential conflicts of interest or to affirm that they had no conflicts of interest, would provide greater assurance that Department inspections are appropriately assigned and conducted in an independent and impartial manner.

Recommendation: We recommend that Department management enhance policies and procedures to require employees with inspection and related enforcement responsibilities to timely report potential conflicts of interest and to annually submit a written statement disclosing any potential conflicts of interest or affirming that there were none. Department management should use this information when making inspection assignments.

Finding No. 2: Division Policies and Procedures

The Department conducts a wide range of inspections in 18 different regulatory areas across six divisions.⁴ Each division had established policies and procedures which addressed the division-specific inspection process and included documentation requirements. The divisions utilized Versa: Regulation, a Web-based, commercial off-the-shelf database application system to support licensing, inspection, enforcement, investigation, and complaint activities. According to the Department, during the period July 2012 through December 2013, the Department conducted over 340,000 inspections.

As part of our audit, we evaluated the policies and procedures for inspections of: food service and lodging establishments by the Division of Hotels and Restaurants; cosmetology salons by the Division of Regulation;

⁴ The six Divisions included the Divisions of Alcoholic Beverages and Tobacco; Drugs, Devices, and Cosmetics; Hotels and Restaurants; Pari-mutuel Wagering; Real Estate; and Regulation.

establishments licensed to sell alcoholic beverages and tobacco products by the Division of Alcoholic Beverages and Tobacco, Bureau of Law Enforcement; and, certain businesses by the Division of Drugs, Devices, and Cosmetics. Our audit procedures disclosed that the policies and procedures for inspections by the Division of Alcoholic Beverages and Tobacco and the Division of Drugs, Devices, and Cosmetics could be enhanced. Specifically:

- *Division of Alcoholic Beverages and Tobacco.* State law⁵ provides that licensed businesses and permit holders are subject to inspection by authorized employees of the Division of Alcoholic Beverages and Tobacco. As of June 2013, the Division employed 42 inspectors with responsibility for inspecting approximately 50,000 establishments licensed to sell alcoholic beverages or tobacco products, or both, in the State. Division policies⁶ specified that the Bureau of Law Enforcement was to perform inspections at licensed premises to ensure that the licensee, business owners, and employees were operating the businesses in accordance with State alcoholic beverages and tobacco laws and rules. Licensed premises inspections could occur when an applicant applied for any alcoholic beverage license or tobacco permit, when a complaint was filed against a licensee, or on a random basis. While not mandated by State law or rule, the Division established a goal of annually inspecting 35 percent of retail alcohol and tobacco licensees and permit holders. In response to our audit inquiry, Division management indicated that licensed premises inspections were assigned to inspectors based on geographical location and the number of available inspectors. Division management stated that meetings were held weekly with Bureau inspectors to discuss and assign the inspections. Additionally, when inspections were conducted due to complaints, inspectors were assigned on a rotational basis depending on inspector availability and the location of the establishments.

We noted that while Division policies addressed documentation requirements for inspections, the Division had not outlined the methodology used to schedule inspections or how management intended to achieve the performance goal of annually inspecting 35 percent of the retail alcohol and tobacco licensees and permit holders. We analyzed the frequency in which the Division conducted inspections and found that, according to Division records at June 30, 2014, 5,071 of the 37,960 alcoholic beverage licensees (13.4 percent) and 2,878 of the 22,360 tobacco permit holders (12.9 percent), had not been inspected in over 3 years (the length of time since the previous inspections averaged 3.77 and 3.83 years, respectively). Division records also showed that 1,755 of the 5,071 alcoholic beverage licensees and 1,153 of the 2,878 tobacco permit holders had not been inspected in over 4 years. In response to our audit inquiry, Division management stated that, in December 2013, a Statewide review of uninspected premises was conducted to identify and prioritize inspection assignments to ensure each licensed premise was inspected on a target frequency of at least once every 3 years. According to Division management, the Division established a goal of inspecting by December 2014 those locations where a licensed premise inspection had not been conducted within the preceding 2 years.

Additionally, while Division policies required inspectors to note violations on a *Record of Inspection – Official Notice Form*, and provide a date for required compliance, the policies did not specify the violations requiring follow-up actions by Division inspectors or provide the time frames in which specific violations were to be remedied and follow-up inspections conducted.

- *Division of Drugs, Devices, and Cosmetics.* State law⁷ and Department rules⁸ provide that the Division of Drugs, Devices, and Cosmetics may inspect establishments where drugs, devices, or cosmetics are made, stored, sold, offered for sale, exposed for sale, or kept for sale or use for the purpose of protecting public health from misbranded or adulterated drugs, devices, or cosmetics or from other violations of State law and Department rules. According to Division management, as of June 2013, the Division employed 10 full-time inspectors and 1 part-time inspector for the almost 6,000 applicable establishments located in the State.⁹ While Division policies¹⁰ addressed documentation requirements for inspections, the policies did not describe the

⁵ Sections 562.41(5) and 569.004, Florida Statutes.

⁶ Division of Alcoholic Beverages and Tobacco, Bureau of Law Enforcement, Policy 4-9, *Field Assignments*.

⁷ Section 499.051, Florida Statutes.

⁸ Department Rule 61N-1.019, Florida Administrative Code.

⁹ In response to our audit inquiry, Division management indicated that approximately 500 out-of-State establishments were also subject to inspection; however, due to resource constraints, the overwhelming proportion of inspections were conducted in-State.

¹⁰ Division of Drugs, Devices, and Cosmetics, *Desk Guide for Inspectors*.

methodology used to schedule inspections. In response to our audit inquiry, Division management indicated that the current inspection process was to conduct routine inspections of in-State medical gas and prescription drug wholesale distributors and manufacturing establishments every 2 years. Division management also indicated that inspections were given priority for those establishments considered to be of higher risk, such as establishments that may involve a public health threat, new establishments, or establishments where a change of address or ownership had occurred.

During the period July 2012 through December 2013, the Division conducted 1,150 inspections. In response to our audit request for a listing of those inspections considered by Division management to be follow-up inspections, Division management provided a list of 24 inspections. However, Division management indicated that the Division had not been tracking follow-up inspections and that, until recently, they had been unaware that Versa: Regulation had the capability to track follow-up inspections. Additionally, we noted that the Division's policies did not address the performance of follow-up procedures to determine whether violations noted during inspections were timely remedied. Subsequent to our audit inquiry in April 2014, the Division amended its policies to address follow-up inspections. The amended policies required that follow-up inspections be conducted either as directed by supervisory personnel or at an individual inspector's discretion, subject to workload demands. However, the Division's amended policies did not clearly indicate the types of violations that would require a follow-up inspection or specifically address the time frames in which violations were to be remedied and follow-up inspections conducted.

Absent policies and procedures which establish methodologies for scheduling inspections and specify the criteria and time frames for conducting inspection follow-up activities, the risk that significant noncompliance could go undetected or previous violations will not be timely corrected is increased. In addition, given the number of Department inspectors available to conduct the large number of inspections required, a risk-based approach to scheduling inspections may provide additional assurance that licensees and permit holders with previous violations and those that have not been recently subject to inspection are given priority in the inspection scheduling process.

Recommendation: We recommend that Department management enhance applicable inspection policies and procedures by incorporating inspection scheduling methodologies and specifying the criteria for initiating, and the time frames for conducting, inspection follow-up activities. When establishing such methodologies, criteria, and time frames, Department management should consider employing a risk-based approach.

Finding No. 3: Inspections

As previously noted, the Department licenses, inspects, and regulates public lodging and food service establishments; conducts statutorily mandated and complaint-driven inspections of establishments licensed by the Board of Cosmetology; safeguards the State's public health through inspections, investigations, and audits related to the manufacture and distribution of drugs, devices, and cosmetics; and enforces the State's alcoholic beverages and tobacco laws and rules.

As part of our audit, we examined Department records for 100 inspections (25 each for the Divisions of Alcoholic Beverages and Tobacco; Drugs, Devices, and Cosmetics; Hotels and Restaurants; and Regulation) conducted during the period July 2012 through February 2014. Our audit procedures disclosed that the Division of Alcoholic Beverages and Tobacco did not properly conduct or adequately document inspections in accordance with Division policies and procedures. Division of Alcoholic Beverages and Tobacco policies specified that all inspections were to be documented using the *Record of Inspection – Official Notice Form*, as well as the appropriate inspection checklist completed by the inspector to indicate the compliance items reviewed, the corresponding State law or Department rule, and violation code, when applicable. However, we found that, for 4 inspections, the Division was unable to provide evidence that the required inspection checklists were completed. In response to our audit inquiry, Division

management indicated that the checklists were either inadvertently not completed or otherwise completed and not effectively uploaded into OnBase, the Department's document imaging system.

Properly conducted and adequately documented inspections provide assurance that licensees are complying with the requirements of State law, Department rules, and applicable Division policies and procedures. Additionally, improved documentation of inspection results would better demonstrate accountability and consistency; promote efficient, accurate, and complete reporting of inspection results; and assist the Department in identifying higher risk licensees.

Recommendation: We recommend that Department management ensure that inspections are conducted and documented in accordance with established policies and procedures.

Finding No. 4: Follow-Up Inspections

To determine whether a licensee had taken timely and appropriate corrective actions for violations and noncompliance noted during inspections, follow-up inspections were performed by the various Department divisions. As part of our audit, we examined Department records for 86 licensees requiring follow-up inspections (25 each for the Divisions of Alcoholic Beverages and Tobacco and Hotels and Restaurants; 31 for the Division of Regulation; and 5 for the Division of Drugs, Devices, and Cosmetics) conducted during the period July 2012 through February 2014 and found that the divisions did not always timely perform or adequately document the follow-up inspections. Specifically, we noted that:

- *Division of Alcoholic Beverages and Tobacco.* For the follow-up inspections of 6 licensees, the Bureau of Law Enforcement inspector closed the inspection without adequately documenting a determination that the violations cited during a previous inspection had been corrected or, when violations had not been corrected, that another follow-up inspection would be required. Additionally, the inspector did not provide 1 of these 6 licensees with a date for required compliance. In response to our audit inquiry, Division management stated that the Bureau of Law Enforcement had undergone a major personnel reclassification transition within the past 2 years that may have contributed to these deficiencies.
- *Division of Hotels and Restaurants.* For the follow-up inspections of 4 licensees, the inspector completed the inspection without clearly documenting a determination that the violations cited during a previous inspection had been corrected. Division policies¹¹ required inspectors to specifically address the violations that triggered the follow-up (callback) inspections. The inspector concluded that 1 licensee met inspection standards but did not document on the callback report licensee compliance with requirements previously cited with violations. For the follow-up inspections of the other 3 licensees, the inspectors documented licensee compliance for some but not all applicable requirements cited with violations during the previous inspection. In response to our audit inquiry, Division management indicated that the inspectors did not follow established policies.
- *Division of Regulation (Cosmetology Salon Inspections).* The Division did not always take appropriate or timely action when violations cited during the previous inspection were not corrected. Division policies and procedures¹² specified that when an inspection had been performed and disciplinary action taken, such as a citation issued, another inspection was to be conducted within 120 days or by the end of the fiscal year. Specifically, citations were issued during the inspections of 3 licensees, but no follow-up inspections had been scheduled or conducted. As of July 21, 2014, 21, 21, and 292 days, respectively, had elapsed since the follow-up inspections were due. In response to our audit inquiry, Division management indicated that the inspectors failed to manually enter a follow-up inspection date in Versa: Regulation for 2 licensees and the inspector mistakenly closed the other licensee's inspection without noting that a follow-up inspection was

¹¹ Division of Hotels and Restaurants, *Operations and Support Guidelines*.

¹² Division of Regulation, Inspection Program, Policy and Procedures Manual, Section VIII, *Inspections Generated by Disciplinary Action*.

required. For another licensee, although Versa: Regulation showed that follow-up actions were required, the inspector did not schedule or conduct a follow-up inspection until subsequent to our audit inquiries. The inspector conducted the follow-up inspection 236 days after it was due and determined that the licensee was in compliance. Lastly, the inspector conducted the follow-up inspection of a fifth licensee 177 days late. In response to our audit inquiry, Division management stated that the inspector in this instance had not manually scheduled a follow-up visit in Versa: Regulation as required by Division policies and procedures.

Absent the timely performance and adequate documentation of appropriate follow up with licensees regarding the status of violations and noncompliance noted during inspections, the Department has reduced assurance that the licensees have timely taken the necessary corrective actions to ensure compliance with applicable State laws and rules.

Recommendation: We recommend that Department management ensure that follow-up inspections are appropriately conducted and documented in accordance with established guidelines.

PRIOR AUDIT FOLLOW-UP

The Department had taken corrective actions for the findings included in our report No. 2012-017.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida’s citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from January 2014 through August 2014 in accordance with 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit focused on selected inspection programs administered by the Divisions of Alcoholic Beverages and Tobacco; Drugs, Devices, and Cosmetics; Hotels and Restaurants; and Regulation. Our audit also included an evaluation of the Department’s cost allocation methodology. The overall objectives of the audit were:

- To evaluate management’s performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and guidelines.
- To examine internal controls designed and placed in operation to promote and encourage the achievement of management’s control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

Our audit also included steps to determine whether management had corrected, or was in the process of correcting, all deficiencies disclosed in our report No. 2012-017.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management’s internal controls, instances of noncompliance with applicable governing laws, rules, or contracts, and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this

audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature, does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit we:

- Reviewed inspection policies and procedures for the Divisions of Alcoholic Beverages and Tobacco; Drugs, Devices, and Cosmetics; Hotels and Restaurants; and Regulation to determine whether the policies and procedures were current and correctly reflected applicable provisions of State law.
- For divisions conducting regulatory inspections, surveyed management to gain an understanding of the types of inspections conducted by each division and the laws, rules, and policies and procedures applicable to each inspection type.
- Reviewed selected division inspection forms to determine whether they were adequately designed to verify the licensee's compliance with applicable laws, rules, and other guidelines.
- Reviewed Departmentwide policies and procedures and interviewed Department management to determine whether the Department had established procedures requiring inspectors to report conflicts of interest.
- Evaluated the methodologies used by selected divisions to schedule licensees for inspection.
- Examined employee records for 22 Division of Drugs, Devices, and Cosmetics inspectors and 25 Division of Hotels and Restaurants inspectors to determine whether the inspectors met the qualifications to perform inspections.
- Examined documentation for 100 inspections conducted by the Divisions of Alcoholic Beverages and Tobacco (25 inspections); Drugs, Devices, and Cosmetics (25 inspections); Hotels and Restaurants (25 inspections); and Regulation (25 inspections) during the period July 2012 through February 2014 to determine whether the inspections were properly documented and performed in accordance with applicable laws, rules, and guidelines.
- Examined documentation for 86 follow-up inspections conducted by the Divisions of Alcoholic Beverages and Tobacco (25 inspections); Drugs, Devices, and Cosmetics (5 inspections); Hotels and Restaurants (25 inspections); and Regulation (31 inspections) during the period July 2012 through February 2014 to determine whether follow-up inspections were planned, performed, documented, and timely completed in accordance with applicable laws, rules, and guidelines.

- Analyzed customer complaint data in Versa: Regulation for the period July 2012 through February 2014 to assess whether licensees with customer complaints and also had violations noted during Department inspections.
- Analyzed customer complaint and fine data in Versa: Regulation for the period July 2012 through February 2014 to assess whether there was a correlation between licensees with customer complaints and fines issued by the Department.
- Obtained an understanding of selected information technology (IT) controls pertinent to Versa: Regulation and OnBase and performed appropriate audit procedures to determine whether selected general and application IT controls were in place and effective.
- Performed inquiries, observations, and inspections of documents and records related to the Department's methodology for allocating costs during the period July 2012 through January 2014. Evaluated whether the Department's cost allocation plan was sufficient to allocate all costs to each regulated business and profession in a reasonable and equitable manner and in the appropriate amounts.
- From the six quarterly allocations completed for the period July 2012 through December 2013, selected and examined the allocation completed for the quarter ended June 30, 2013, to determine whether the data supporting the allocation was complete and accurate, the bases for the allocations were supported by Department records, and the allocation was mathematically accurate.
- To determine whether the financial reports prepared by the 22 regulatory Boards¹³ included the required elements and materially agreed with the State's accounting records, the Florida Accounting Information Resource Subsystem (FLAIR), examined operating account financial reports for the quarter ended June 30, 2013, for 3 of the Boards.
- Analyzed regulatory program profile data and other information to determine the fiscal condition of the various Department regulatory programs, the sufficiency of fees charged, and the causes of any deficits or surpluses. Analyzed the Professional Regulation Trust Fund as a whole and by profession to determine the sufficiency and reasonableness of fees collected and expenses charged; the cause for any declining or surplus balances; and whether recommended fee changes were needed to eliminate surplus or deficit amounts.
- Evaluated Department actions taken to correct the deficiencies noted in our report No. 2012-017. Specifically:
 - Interviewed Department personnel and reviewed and evaluated established procedures and Department records to determine whether significant receivables were timely assigned to an appropriate fee type and unassigned revenue balances were properly monitored.
 - Analyzed Department records to evaluate management's progress in properly accounting for and processing balances in unassigned revenue accounts.
 - Evaluated Division actions taken to align slot machine occupational license issuance requirements to applicable Department rules.
 - Evaluated Division actions taken to align cardroom occupational license issuance requirements to applicable Department rules.
 - Reviewed selected Division of Pari-Mutuel Wagering cardroom and slot operations remittance reports from September 2013 and February 2014 to verify that the forms had been updated to provide for the licensee's attestation under oath that the reports submitted were accurate, complete, and in compliance with all requirements of State law.
 - Interviewed Department personnel and obtained an understanding of selected IT controls pertinent to the Central Management System database and determined whether applicable logical access controls were in place and effective.

¹³ The Department administers or provides administrative support to 22 Boards that regulate various professions in the State.

- Interviewed Department personnel and reviewed Department accounting records to determine whether taxes receivable and related revenues were properly recorded at June 30, 2013.
 - Interviewed Department personnel and evaluated whether FLAIR user access procedures had been enhanced to provide for a specific time frame within which FLAIR user access privileges should be updated or removed. Examined FLAIR user access privilege records for 10 Department employees who separated from Department employment during the period July 2012 through January 2014 to determine whether the access privileges had been timely canceled.
- Reviewed applicable laws, rules, and other State guidelines to obtain an understanding of the legal framework governing Department operations.
 - Interviewed Department personnel and reviewed established policies and procedures to obtain an understanding of Department internal controls related to the Department’s administration of the State Purchasing Card Program, travel expenditures, wireless communications and other devices, tangible personal property, budget, cash management, contracts, motor vehicles, purchasing, settlement agreements, reconciliations of various accounting records, collection of social security numbers from individuals, and the Florida Single Audit Act (FSAA).
 - Observed, documented, and evaluated the effectiveness of selected administrative processes and procedures related to the Department’s administration of the State Purchasing Card Program, travel expenditures, wireless communications and other devices, tangible personal property, budget, cash management, contracts, motor vehicles, purchasing, settlement agreements, reconciliations of various accounting records, collection of social security numbers from individuals, and the FSAA.
 - Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
 - Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
 - Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a periodic basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT’S RESPONSE

In a response letter dated December 17, 2014, the Secretary of the Department provided responses to our audit findings and recommendations. The Secretary’s letter is included as **EXHIBIT A**.

**EXHIBIT A
MANAGEMENT'S RESPONSE**



Office of the Secretary
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Ken Lawson, Secretary

Rick Scott, Governor

December 17, 2014

David W. Martin, CPA
Auditor General
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Mr. Martin:

In accordance with Section 11.45(4)(d), Florida Statutes, I have enclosed our response to the preliminary and tentative audit findings and recommendations included in your operational audit of the *Department of Business and Professional Regulation, Selected Inspection Programs*.

We appreciate the time and energy put forth by your staff, as well as your continuing efforts to improve the operations of state government.

If you have any questions concerning this response, please contact Lynne T. Winston, Inspector General, at (850)-414-6700.

Sincerely,

Ken Lawson

cc: Leon Biegalski, Deputy Secretary of Business Regulation
Tim Vaccaro, Deputy Secretary of Professional Regulation
Matilde Miller, Chief of Staff
Lynne T. Winston, Inspector General

KL:sll

Enclosure

EXHIBIT A (CONTINUED)
MANAGEMENT'S RESPONSE

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Response to Preliminary and Tentative Audit Findings and Recommendations

*Department of Business and Professional Regulation,
Selected Inspection Programs*

Finding No. 1: Conflicts of Interest

Department policies and procedures did not require employees to report the existence of potential conflicts of interest related to inspection assignments.

Recommendation

We recommend that Department management enhance policies and procedures to require employees with inspection and related enforcement responsibilities to timely report potential conflicts of interest and to annually submit a written statement disclosing any potential conflicts of interest or affirming that there were none. Department management should use this information when making inspection assignments.

Agency Response

We concur. The department's Ethics Officer will establish a working group to enhance the department's existing conflict of interest policies and procedures. The working group will include senior managers from the Division of Administration and from the divisions that employ staff with inspection and related enforcement responsibilities. The working group will develop requirements for timely reporting of potential conflicts of interest by these staff, and procedures for their annual submission of written conflict of interest statements. The working group will also develop policies and procedures regarding management's use of these statements in making inspection assignments. We anticipate the enhanced policies and procedures will be adopted by June 30, 2015, for implementation during the first quarter of Fiscal Year 2015-16.

Finding No. 2: Division Policies and Procedures

Some Department inspection policies and procedures could be enhanced by incorporating methodologies for scheduling inspections and specifying criteria for initiating, and the time frames for conducting, inspection follow-up activities.

Recommendation

We recommend that Department management enhance applicable inspection policies and procedures by incorporating inspection scheduling methodologies and specifying the criteria for initiating, and the time frames for conducting, inspection follow-up activities. When establishing such methodologies, criteria, and time frames, Department management should consider employing a risk-based approach.

EXHIBIT A (CONTINUED)
MANAGEMENT'S RESPONSE

Agency Response

We concur. Detailed responses from the Division of Alcoholic Beverages and Tobacco and the Division of Drugs, Devices, and Cosmetics are presented below.

Division of Alcoholic Beverages and Tobacco

As noted in the audit finding, the Division independently identified this issue in December 2013 and immediately initiated a targeted approach to bring all licensed premises inspections current with the target inspection frequency of at least one inspection at each licensed premise every three years.

To support this effort, the Division's Bureau of Law Enforcement (Bureau) developed a technology query for each Investigative Specialist II (ISII) to use when identifying locations for scheduling daily licensed premises inspections. The ISIIs have been trained in the process of using this query to generate a list of premises in their region which have not been inspected within the past two years of the query date. The utilization of this query enables the ISIIs to prioritize inspection scheduling on locations requiring an inspection in order to meet the Division's target frequency for inspections. Importantly, this approach is succeeding, and the Division is on track to bring all licensed premises current with the target inspection frequency by the end of the 2014 calendar year.

Ensuring the target inspection frequency is maintained in future years remains a primary focus in the Division. As the inspection query is reviewed further and the Bureau's civilianization transition continues, technology and staffing resources will be monitored to identify any other issues burdening the Division's approach to a consistent and timely inspection program. The Division will formalize the inspection priority directives currently employed in the field through updates to the Bureau's policies and procedures for inspections during the coming fiscal year. The Bureau's updates will address criteria and timeframes for conducting follow-up inspections.

The audit's recommendation for a risk-based approach to inspections is not clearly distinguished from the Division's current inspection and investigation approach. The Division's standard inspection program is complemented by routine inspections and investigations triggered by referrals of violations and unlicensed or criminal activity from the Division's enforcement personnel and other bureaus, cooperating law enforcement, and state agencies, and public complaints. The inspections and investigations initiated in response to these referrals serve to emphasize law enforcement focus on higher risk licensed premises. In many scenarios, these risk-based referrals involve investigative measures not conducive to the process of standard inspection activities.

EXHIBIT A (CONTINUED)
MANAGEMENT'S RESPONSE

Division of Drugs, Devices, and Cosmetics

As noted in the audit finding, the Division has very limited inspection resources – 10.5 inspectors – and a significant number of licensed establishments – approximately 6,000. Thus developing and implementing a risk-based methodology for scheduling routine and follow-up inspections is essential to the Division's ability to safeguard the public from harm due to the use of misbranded or adulterated drugs, devices or cosmetics.¹ The Division is committed to developing a risk-based methodology setting forth the criteria for routine and follow-up inspections.

Any risk-based methodology must factor in the resources available, the relative risk to the public posed by the regulated activity, and the history of the entity involved. Toward the goal of developing these criteria, the Division has undertaken a survey of the Division's field inspectors.² The survey instrument will use the expertise of the field staff to determine the scope of factors that must be considered in developing the criteria for the risk-based methodology. Such factors must include, at a minimum, the following:

- The type of activity being engaged in
- The potential harm the activity poses to the public if not carried out correctly
- The history of the individuals or entities engaging in the activity, including prior violations of division statutes and rules, and whether those violations were remedied
- The time since the last inspection by the Division, the federal government, or other regulatory entity

In addition to the field survey, the Division will review current data collection and management systems (Versa: Regulation, OnBase, etc.) available within the department to assist the Division with developing and implementing the risk-based methodology. The Division will review other agencies' policies and procedures, such as the federal Food and Drug Administration, to glean insight into how those agencies conduct their risk-based inspection programs.

Once the data is collected, division management will consider the information, the alternatives to current procedures (random inspections as an alternative to routine inspections; abbreviated inspections) and the risk associated with shifting resources to conduct follow-up inspections. A Division Policy and Procedure will then be drafted reflecting the methodology, criteria for initiating the follow-up inspection, and time frame for the follow-up inspection/activities.

¹It should be noted that in addition to routine and follow-up inspections, the Division's inspectors expend a significant portion of their time conducting 1) pre-permit inspections; and 2) review of product registrations. The Division is required to conduct inspections of new establishments prior to the establishments engaging in division-regulated activities; the Division is required to accomplish these pre-permit inspections in accordance with the timeframes set forth in Chapter 120, F.S. The Division is also required to review and register every drug, device and cosmetic product manufactured in this state prior to that product being sold in Florida. This review is both time sensitive and labor intensive. These two functions affect the time Division inspectors have available to conduct routine and follow-up inspections.

²The Division's field staff is comprised of highly educated, qualified, and trained individuals; several of the inspectors have been qualified as experts in their field; nine of the inspectors are licensed pharmacists and several of them hold doctors of pharmacy degrees.

EXHIBIT A (CONTINUED)
MANAGEMENT'S RESPONSE

Finding No. 3: Inspections

The Department did not always ensure that inspections were properly conducted and adequately documented in accordance with established policies and procedures.

Recommendation

We recommend that Department management ensure that inspections are conducted and documented in accordance with established procedures.

Agency Response

We concur. The period reviewed for this audit followed closely the Division of Alcoholic Beverages and Tobacco's transition to revised and updated inspection checklists in the Bureau of Law Enforcement (Bureau). These updated checklists have substantially improved the depth of routine inspections and the consistency by which each licensed premise is inspected by the Division. During the period of audit review, the Division also incorporated the Versa: Regulation application in the field-based i-PAD systems utilized by Investigative Specialist II personnel. Once an inspection is completed, each ISII uploads the inspection form to Versa Regulation and OnBase simultaneously. This process ensures inspection forms are recorded for future review and retrieval in a reliable data system and reduces the probability of misplaced field records.

As reported to the Auditor General, the Bureau maintains a quarterly performance and accountability review program known as ABTSTAT, in which law enforcement supervisors participate in review of inspection and administrative case activity during the preceding quarter. Each ABTSTAT is designed to identify deficiencies and improvement opportunities across the Division's law enforcement functions, including inspections. The Division will continue to emphasize management review of inspection activity and records in future ABTSTAT meetings to ensure administrative errors are minimized and that inspections are conducted and documented in accordance with established policies and procedures.

Finding No. 4: Follow-up Inspections

The Department did not always timely conduct or adequately document the conduct of follow-up inspections.

Recommendation

We recommend that Department management ensure that follow-up inspections are appropriately conducted and documented in accordance with established guidelines.

Agency Response

We concur. Detailed responses from the affected divisions are presented below.

Division of Alcoholic Beverages and Tobacco

Currently, the Division's ISII personnel manually notate which inspections have identified violations which require a follow-up inspection. Additionally, the ISII personnel are now re-opening the original inspection and creating a 2nd, 3rd, or 4th visit when necessary with the

EXHIBIT A (CONTINUED)
MANAGEMENT'S RESPONSE

applicable records for each subsequent visit. For future inspections, the Bureau of Law Enforcement (Bureau) is currently developing a follow-up feature within the Versa: Regulation application that will be designed to allow the inspector to schedule a follow-up inspection prior to exiting the licensed premise during the original inspection. The follow-up feature will notify the licensee of the date of the anticipated follow-up inspection. Once the follow-up inspection is scheduled, the second inspection visit will reappear on the list of inspections that the Inspector uploads each day for scheduling. The follow-up inspection will generate a record of the initial inspection reflecting only the original violation(s) needing review for compliance in the second inspection visit.

The follow-up feature in the Versa: Regulation application is projected to be completed early in Fiscal Year 2015-2016. If available sooner the Division will begin implementing the feature through appropriate training and updates for ISII personnel and their supervisors in the Bureau. Once implemented, the Division will employ performance and accountability management reviews through ABTSTAT and other necessary means to monitor the performance of the new feature in the application as well as the timing and consistency achieved in follow-up inspection visits.

Division of Hotels and Restaurants

In July 2014, the Division implemented risk based inspection frequency of food service establishments. As part of the implementation process, the division is reviewing and updating its *Operations and Support Guidelines*. Revisions will include and further enhance follow-up inspection protocols. Training on the enhanced protocols will be presented to inspection staff, statewide. We expect to issue updated *Guidelines* and complete staff training by March 2015. As part of this initiative, supervisors will also monitor completed follow-up inspections to ensure their staff is complying with established guidelines for conducting and documenting follow-up inspections.

Division of Regulation (Cosmetology Salon Inspections)

While follow-up inspections are not mandated by law or rule, they are essential to ensure licensees comply with the statutes and rules that govern the profession. The Division's *Inspection Program Policy and Procedures Manual* provides guidelines for conducting follow-up inspections. To help ensure that follow-up inspections are appropriately conducted, the Division is revising the *Manual* to clarify that a follow-up inspection may be accomplished either by physical inspection or by the receipt of documentation from the licensee evidencing compliance.

Prior to the transition to iPad technology in July 2013, inspectors documented inspection results using personal data assistants (PDAs). Whereas the PDAs automatically scheduled follow-up inspections, the iPad requires inspectors to schedule the follow-up manually. To help ensure that follow-up inspections are appropriately scheduled, Division management determined that inspectors needed additional training on the use of iPads. Accordingly, the Division held in-person training with all inspectors in Orlando on October 15, 2014. The training included an emphasis on scheduling follow-up inspections.

The Division is currently working with the department's Division of Technology to create a new capability which will allow inspectors to more easily schedule a follow-up inspection. This new capability is almost complete and will be tested by the division's data steward to ensure the function works, as intended.

EXHIBIT A (CONTINUED)
MANAGEMENT'S RESPONSE

Division management now performs monthly reviews to ensure that follow-up inspections are scheduled in accordance with division policies and procedures. Management also generates reports to ensure the follow-up inspections are closed within 120 days.

