



DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
Office of Inspector General

RICK SCOTT
Governor

KEN LAWSON
Secretary



MEMORANDUM

TO: Ken Lawson, Secretary

FROM: Lynne T. Winston, Inspector General

A handwritten signature in blue ink, appearing to be "LW", written over the name "Lynne T. Winston".

DATE: June 16, 2015

SUBJECT: Six-Month Follow-up Response to Auditor General Report Number 2015-066,
*Department of Business and Professional Regulation – Selected Inspection
Programs – Operational Audit*

Section 20.055, Florida Statutes, requires that I monitor and report to you on the status of implementation of findings and recommendations made in audits issued by the Auditor General. Accordingly, the attached report is our six-month follow-up response to Auditor General Report Number 2015-066, *Department of Business and Professional Regulation – Selected Inspection Programs – Operational Audit* (published December 18, 2014).

Our review found that management has taken substantive action to address the issues noted in the audit report. We concluded that management has taken sufficient corrective action to close or partially close two of the four findings and, as described in the attached report, management is actively working to address the remaining issues. We will continue to monitor and report to you on progress in these areas.

We would like to thank the General Counsel and management of the divisions of Alcoholic Beverages and Tobacco; Drugs, Devices, and Cosmetics; Hotels and Restaurants; and Regulation for their assistance.

Please contact me if you have any questions.

LTW:sll

Attachment

cc: Melinda Miguel, Chief Inspector General
Kathy DuBose, Coordinator, Legislative Auditing Committee
Matilde Miller, Chief of Staff
Tim Vaccaro, Deputy Secretary of Professional Regulation
Leon Biegalski, Deputy Secretary of Business Regulation



DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
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Lynne T. Winston
Inspector General



**Six-Month Follow-up Response to
*Department of Business and Professional Regulation
Selected Inspection Programs
Operational Audit*
Auditor General Report Number 2015-066**

OVERVIEW

Section 20.055, Florida Statutes, requires the Inspector General to monitor and report to the Secretary on the status of corrective action taken in response to reports issued by the Auditor General. In December 2014, the Auditor General published Report Number 2015-066, *Department of Business and Professional Regulation – Selected Inspection Programs – Operational Audit*. This audit focused on selected inspection programs administered by the Divisions of Alcoholic Beverages and Tobacco; Drugs, Devices, and Cosmetics; Hotels and Restaurants; and Regulation. The audit also evaluated the department's cost allocation methodology and included a follow-up review of the findings noted in Auditor General Report Number 2012-017 (published October 2011).

The purpose of this report is to inform the Secretary of the status of management's response to the audit findings and recommendations.

STATUS REPORT

Finding 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.

Department's Original 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.

Status as of May 2015

The working group has completed a final draft of revisions to the department's existing conflict of interest policies and procedures. The revised draft policy incorporates a new conflict of interest reporting form that employees with inspection and related enforcement responsibilities must complete and submit to their respective division directors or their designees so that information can be used when making inspection assignments. The revised draft policy will be submitted to Senior Management for review and comment, then provided to the Secretary for final review and adoption. The revised policies and procedures and conflict of interest form will be formally adopted no later than Tuesday, June 23, 2015.

The department's conflict of interest policies and procedures do not apply to sworn law enforcement officers employed by the Bureau of Law Enforcement, Division of Alcoholic Beverages and Tobacco, which is required to maintain a policy relating to conflict of interest that is specifically applicable to this class of employees. The Division of Alcoholic Beverages and Tobacco has coordinated with the working group regarding revisions to the department's policies and procedures and has reviewed policies and forms of the Bureau of Law Enforcement that may be impacted by the department's revised policy, when implemented. Accordingly, the Bureau's policy on outside employment will be expanded and revised to reference and incorporate additional language and forms necessary for the Bureau's personnel to conform to the department's revised conflict of interest policy, when adopted. Under anticipated revisions of the Bureau's policy, inspectors will be expected to follow the department's revised conflict of interest policies and procedures, including submission of the conflict of interest reporting form required of all personnel with inspection responsibilities.

OIG Assessment

OPEN. The proposed revisions to the department's existing conflict of interest policies and procedures incorporate the enhancements outlined in the audit recommendation. The OIG will continue to monitor this issue pending adoption and implementation of the proposed revisions.

Finding 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.

Department's Original 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 ISII's 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 ISII's 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.

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. 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. 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.

Status as of May 2015

Division of Alcoholic Beverages and Tobacco

The Division's Bureau of Law Enforcement continues to rely on a technology query developed for each Investigative Specialist II (ISII) to use when identifying locations for scheduling daily licensed premises inspections, which has been effective in meeting target frequency for inspections of licensed premises in accordance with the Bureau's current frequency goal. The Bureau is currently working toward a preliminary draft of updates to the policies and procedures for inspections to formalize the inspection priority directives currently employed in the field to meet this target frequency. As noted in the Division's initial audit response, this policy revision is anticipated to be adopted during the coming fiscal year.

The audit's recommendation for a risk-based approach to inspections was 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.

Division of Drugs, Devices, and Cosmetics

The Division's first priority is to conduct pre-permit inspections, i.e. those inspections that directly result in permitting a new business to begin operating in Florida. The Division has developed a risk-based matrix for scheduling routine inspections of existing entities. The matrix sets forth the methodology for Division inspectors to select, prioritize, and conduct routine inspections. The matrix establishes five (5) risk categories, identifies the entities that fall within each risk category, and sets forth the frequency with which the division will inspect the entities within each risk class. Once finalized, the matrix will provide clear guidance to the division's inspection force on selecting entities for routine inspections.

The five (5) risk categories (Very High, High, Medium, Low, and Very Low) are based on the potential risk presented to the public health by the regulated activities conducted by entities within the category. The Division has made a preliminary determination as to which permitted entities are assigned to the various risk categories and identified the number of such entities. The Division is currently determining the inspection frequency for each risk category. The frequency will be based on the public health risk presented by the regulated activities conducted and the Division's resources.

With the assistance of the Division of Technology, the Division is establishing permit modifiers that will capture the risk category and inspection frequency for each permit. The Division will evaluate each entity's assigned initial risk category and inspection frequency to determine if the entity's risk category or inspection frequency warrants enhancement or reduction based on the entity's regulatory history.

The finalized risk-based routine inspection schedule matrix will be incorporated into the Division's inspection procedures. This risk-based inspection schedule will include guidelines that apply to follow-up inspections and how the Division will address scheduling and conducting follow-up inspections.

OIG Assessment

OPEN. Management of the Divisions of Alcoholic Beverages and Tobacco and of Drugs, Devices, and Cosmetics are actively working to enhance applicable inspection policies and procedures within their respective divisions. The OIG will continue to monitor implementation of the audit finding and recommendation.

Finding 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.

Original 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 iPad 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.

Status as of May 2015

Division of Alcoholic Beverages and Tobacco

Pursuant to the Division's initial audit response, the Division has continued to emphasize management review of inspection activity and records in ABTSTAT meetings and other supervisor meetings and trainings to ensure administrative errors like those noted in the audit are minimized. In addition, the Bureau has subsequently expanded inspection checklists, introducing several new checklists unique to certain license types to address the standards of particular statutory provisions and to meet various regulatory points of emphasis. A complete review and update of all inspection checklists and corresponding violation references is anticipated to be undertaken in the coming fiscal year as time and resources permit. As the Bureau pursues this review and any necessary updates, the Division will continue to emphasize implementation training and management review of inspection activity when utilizing updated checklists and procedures.

OIG Assessment

CLOSED. The Division has established a number of mechanisms to help minimize the occurrence of administrative errors and ensure that inspections are conducted and documented in accordance with established policies and procedures.

Finding 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.

Original 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 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.

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.

Status as of May 2015

Division of Alcoholic Beverages and Tobacco

As noted in the Division's initial audit response, the Bureau has been developing a follow-up feature within the Versa: Regulation application that will be designed to allow an inspector to schedule a follow-up inspection prior to exiting the licensed premise during the original inspection. The follow-up feature is intended to 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 was projected to be completed by early Fiscal Year 2015-16. However, due to the 4.15 Versa: Regulation application upgrade in May 2015, further testing of the inspection application needed to be performed to evaluate compatibility and potential impacts to the OnBase document management system. Initial testing has indicated the inspection application is not fully functional in the upgraded Versa: Regulation system as of May 14, 2015. Further testing and modification of the inspection application may be needed to address compatibility concerns prior to implementation in the upgraded system. Accordingly, the Division will be requesting priority consideration and implementation of the follow-up features of the inspection application while other inspection application system changes are reviewed and revised for compatibility. The follow-up features of the inspection application are now projected to be completed late in Fiscal Year 2015-16, pending further review and coordination with the Division of Information Technology's future service pack cycles. 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 March 2015, the Division issued updated Operations and Support Guidelines for the inspection of food service establishments. The revised guidelines include enhanced protocols for conducting and documenting follow-up inspections. The Division provided training on the revised guidelines to inspection staff statewide in March 2015. The training included and emphasized procedures for verification of all violations on follow-up inspections. In April 2015, during the statewide District Manager/Supervisor Summit, the Division presented Quality Assurance training to ensure inspection staff is complying with established guidelines for

conducting and documenting follow-up inspections. The Division's Quality Assurance program requires supervisors to conduct periodic, formal evaluations of each inspector's compliance with inspection guidelines, including those guidelines related to follow-up inspections.

Division of Regulation

Effective December 2, 2014, the Division revised the *Inspection Program Policy and Procedures Manual* to provide enhanced guidelines for conducting follow-up inspections. The manual specifies that a follow-up inspection may be accomplished through receipt of documentation from the licensee evidencing compliance, or by visiting the establishment and conducting a complete inspection. On-site follow-up inspections are documented on an inspection form.

Division staff runs monthly reports of completed inspections to ensure that all required follow-up inspections have been scheduled. Staff has found no issues relating to the scheduling or documentation of follow-up inspections.

The Division is continuing to work with the Division of Technology on an iPad enhancement that will prevent inspectors from closing an inspection when discipline has been issued until a follow-up inspection date has been selected. The enhancement is scheduled for testing by the Division's data steward in the first quarter of Fiscal Year 2015-16. Until the new technology is available, division management will continue to review monthly inspection reports to ensure that follow-up inspections are scheduled and conducted according to Division policy and procedures.

OIG Assessment

PARTIALLY CLOSED. The Division of Alcoholic Beverages and Tobacco is continuing to work with the Division of Technology to replace manual processes with a technological solution for scheduling follow-up inspections. The OIG will continue to monitor the Division's progress in this regard.

The Division of Hotels and Restaurants' Quality Assurance program ensures that inspectors follow established guidelines for conducting and documenting follow-up inspections. Effective January 1, 2015, the Division's Quality Assurance program requires supervisors to conduct periodic, quality assurance reviews of each inspector's activity, to include file reviews of completed inspections; on-site observation of the inspector's inspection activity; and independent quality assurance visits to inspected establishments. The OIG concluded these quality assurance procedures effectively address the audit finding and recommendation and further monitoring of this issue within the Division of Hotels and Restaurants is not required.

The Division of Regulation is also working with the Division of Technology to develop a technological means for ensuring that inspectors schedule required follow-up inspections. The OIG will continue to monitor the Division of Regulation's progress in this regard.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this follow-up report was to determine the status of action taken by department management in response to the findings and recommendations made in Auditor General Report Number 2015-066, *Department of Business and Professional Regulation – Selected Inspection Programs – Operational Audit*. Our review focused on corrective action taken since the report's publication on December 18, 2014.

In May 2015, department management provided updated information on the status of its implementing actions. We reviewed the information and supporting documentation and obtained additional information and documentation as necessary to complete our assessment.

This work product was prepared pursuant to Section 20.055, Florida Statutes, and in accordance with applicable *Principles and Standards for Offices of Inspectors General* (as published by the Association of Inspectors General) and *International Standards for the Professional Practice of Internal Auditing* (as published by the Institute of Internal Auditors, Inc.).

To promote accountability, integrity, and efficiency in government, the Office of Inspector General conducts audits and reviews of Department of Business and Professional Regulation programs, activities, and functions. This work product was prepared pursuant to Section 20.055, Florida Statutes, and in conformance with applicable *Principles and Standards for Offices of Inspectors General* (as published by the Association of Inspectors General) and applicable standards of the *International Standards for the Professional Practice of Internal Auditing* (as published by the Institute of Internal Auditors, Inc.). Other reports prepared by the Office of Inspector General of the Department of Business and Professional Regulation can be obtained by telephone (850-414-6700) or by mail (1940 North Monroe Street, Tallahassee, FL 32399-1018).