

Final Report

Managing Alcohol Inspections

OIG Report # 17-003

January 6, 2017

*Follow-Up on a Previously
Issued OIG Report:
Report OIG-14-003*

Department of Liquor Control:
Review of Management Controls over Inspectors (January 13, 2014)

Montgomery County, Maryland
Office of the Inspector General



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Report in Brief

Managing Alcohol Inspections

January 6, 2017

Background

In a January 13, 2014 report, *Department of Liquor Control: Review of Management Controls over Inspectors*, the Office of the Inspector General (OIG) recommended that data on alcohol inspections should be used to develop management reports for monitoring and managing inspections. This review examines whether the OIG recommendation was addressed.

Why We Did This Audit

Follow-up reviews of OIG recommendations help ensure that recommendations have been addressed and that effective improvements have been implemented.

What We Found

(1) Management does not receive reports of compliance or noncompliance with State law, BLC regulations, or DLC procedures regarding twice-annual, monthly, or final inspection requirements. Furthermore, because of inconsistencies in the data that is collected and the software with which it is processed, the data currently cannot be assembled quickly into management reports. For example, licensee names and license numbers were inconsistent across internal County records. (2) OIG review of data provided by DLC indicated that in FY 2016, 53% of establishments licensed in FY 2016 did not receive all the monthly inspections required under State law. (3) Data provided by DLC indicated that not all licensees active for FY2016 received the two annual inspections that are required under BLC Regulations.

What We Recommend

(1) DLC should develop and management should review periodic reports of compliance or noncompliance with State law, BLC regulations, and DLC procedures regarding twice-annual, monthly, and final inspection requirements. (2) DLC management should track whether each newly licensed licensee has received the required monthly inspections for the first year of licensure and should see that the required inspections are performed. (3) (a) DLC management should track whether each licensee has received the required 2 inspections per year and should see that the required inspections are performed. (3) (b) The BLC should consider amending its Regulations to indicate that the fiscal year is the time period in which at least two inspections are required, for ease in monitoring whether facilities are inspected twice annually.

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Managing Alcohol Inspections

Introduction

In January 13, 2014, the Office of the Inspector General (OIG) issued a report, *Department of Liquor Control: Review of Management Controls over Inspectors* (the “2014 report”). That report looked into allegations of discrimination in the enforcement of alcohol laws, and it made a recommendation related to the management of alcohol inspections.

The OIG found in 2014 that the Department of Liquor Control (DLC) had improved internal controls over its inspections since 2011, partly through implementing a system of entering inspection data into iPads taken along on inspections, but that management controls over the activities of inspectors remained weak. The 2014 report noted that data from the iPads was not being used to create useful management reports. The OIG found that in 2011 a disproportionate number of citations went to Hispanic establishments, but that this did not occur in subsequent years.

In the 2014 report, the OIG recommended that

Data available from the iPad system should be used to develop management reports for monitoring and managing inspections:

- Supervisors of inspectors should regularly receive and review reports showing inspections, by type, conducted by each inspector daily, weekly, monthly, quarterly, and annually.
- The reports should identify the places each inspector has been and the nature of any violations found.
- The reports should measure compliance with all inspection requirements set by State law.

The Chief Administrative Officer (CAO) concurred with the OIG’s recommendation and wrote that “DLC developed the requirements for an enhanced database management system and currently is working with the Office of Procurement to issue a ‘Request For Proposal (RFP)’ for such a system.”

This audit was conducted to determine if the above recommendation in the 2014 report was fully implemented. Our audit was conducted in accordance with *Government Auditing Standards* issued by the U.S. Government Accountability Office and *Principles and Standards for Offices of Inspector General* issued by the Association of Inspectors General.

Objectives, Scope, and Methodology

The objectives of our audit were to determine the following:

- How management monitors compliance with State law and Board of License Commissioners regulations governing the frequency of routine (twice a year), monthly, and final alcohol inspections, and
- If inspections were conducted in compliance with these laws and regulations.

We focused on inspections in Fiscal Year 2016.

Our methodology is detailed in Appendix B.

Background

The Montgomery County DLC controls the wholesale distribution in the County of all beverage alcohol and the retail sale in the County of all distilled spirits for off-site consumption¹. There are over 1,000 establishments licensed to sell alcohol in Montgomery County. These include restaurants and stores that sell wine and beer.

Under Maryland state law, the Montgomery County Board of License Commissioners (BLC) may issue licenses to sell alcohol, suspend or revoke licenses, and impose fines². The BLC consists of five members appointed by the County Executive and subject to confirmation by the County Council³.

¹ Md. Alcoholic Beverages Art. § 25-307.

² Md. Alcoholic Beverages Art. §§ 4-202, 4-604, 25-2802.

³ Md. Alcoholic Beverages Art. § 25-202.

The DLC Standard Operating Procedures describe the seven types of inspections DLC conducts, as follows, in part:

1. Pre License/ Transfer Inspection

- This documents compliance with requirements such as zoning, seating, alcohol awareness certification, location, and other business in the area.

2. Final Compliance Inspection

- The applicant must have certificates and licenses required by law, requirements of the BLC must have been met, and the facility must be set up and ready to open.

3. Routine Inspection

- This inspection form is used more frequently than the others and helps inspectors meet the mandate of inspecting each facility twice annually.

4. Notice Inspection

- This inspection is conducted when a licensee is placed on notice by a directive from the BLC or senior DLC Licensure, Regulation, and Education staff.

5. Generic/ Incident Report Inspection

- This inspection is used to document a situation that occurred at a facility, a follow up from a previous inspection, or other information that is not captured on another Inspection Report Form.

6. Monthly Inspection

- These inspections are conducted at facilities with certain types of beer, wine, and liquor licenses.

7. Compliance Check Inspection

- These are used mainly for alcohol sale to minor violations. They are planned and conducted in concert with police officers, who make the final decision regarding when and where they are performed.

There are two legal requirements regarding the frequency of alcohol inspections: a requirement for at least twice-annual inspections of all licensees and a requirement for monthly inspections of new licensees. We reviewed whether inspections were being monitored by management for compliance with these laws. We also reviewed whether final inspections were conducted to meet the requirement stated in DLC Standard Operating Procedures that they be conducted before a new or transfer license is issued.

In Montgomery County, the alcohol inspectors and BLC administrative staff are part of the DLC. DLC inspectors capture inspection information electronically on iPads as they are at establishments' locations, using forms developed in iFormbuilder software.

Data on individual inspections is sent electronically to licensees and DLC management. The DLC Standard Operating Procedures state that the Chief of the Division of Licensure, Regulation, and Education (LRE) receives violation reports only, and DLC's Compliance Manager reviews all inspection reports from each inspector.

The OIG calculated that DLC inspectors conducted 3,684 inspections in fiscal year 2016 (FY2016). Based on this, the OIG calculated that on average there are 15 inspections per working day⁴.

The following table shows the three requirements that we tested:

Inspections Required	Frequency/ Timing	Applicable to	Authority
Monthly	Monthly physical inspections during the initial license year	Facilities newly licensed to sell beer, wine, and liquor (BWL licensees)	Md. Ann. Code Alcoholic Beverages Article § 25-902(d)(2)(i), § 25-903(e)(1), § 25-906(d)(2)(i). BLC Rules and Regulations § 5.3(b)
Twice-Annual	At least 2 inspections per year	All licensed facilities	BLC Rules and Regulations § 5.3(a)
Final	Conducted before issuance of a new or transferred license	All newly licensed facilities	DLC Standard Operating Procedures

We determined that there were licensees missing monthly and annual inspections, but that the final inspections were conducted as required.

Findings & Recommendations

This report makes three Findings and associated Recommendations.

⁴ We subtracted holidays and weekends from the total number of days in a year.

Finding 1: Management does not receive reports of compliance or noncompliance with State law, BLC regulations, or DLC procedures regarding twice-annual, monthly, or final inspection requirements. Furthermore, because of inconsistencies in the data that is collected and the software with which it is processed, the data currently cannot be assembled quickly into management reports. For example, licensee names and license numbers were inconsistent across internal County records.

In June of 2016, we requested from DLC all reports of compliance or noncompliance in FY2016 with the twice-annual, monthly, and final inspection requirements, but DLC had no reports measuring compliance with these requirements.⁵

The Compliance Manager, who assigns inspection tasks to the inspectors, and the LRE Division Chief confirmed that they receive emails on individual inspections. DLC management told us that they can request reports from DLC's information technology staff, but they did not state that they ever requested or received reports indicating whether requirements were met. The Compliance Manager told us that to determine if the required inspections are being done, he looks at the total number of inspections conducted compared to the total number of licensees.

The Chairman of the Board of License Commissioners told us that the BLC receives reports on inspections of license applicants when the BLC is deciding whether to issue a license, and the BLC receives reports on inspections of licensees who have had violations and are appearing before the BLC at show cause hearings⁶. The BLC also receives reports showing total numbers of licensees, violations, and show cause hearings, in order to prepare for annual meetings with the County Executive. We were told that DLC also provides the BLC with information as requested by the BLC.

However, the BLC does not receive information about routine inspections.

⁵ DLC does report the number of “alcohol compliance checks to minors (under 21)” it performs each year. These are conducted with the Montgomery County Police. There is no requirement in law or in Standard Operating Procedures for Inspections for a particular number of these inspections to be conducted, but DLC has set a performance goal for itself of 400 per year.

⁶ A show cause hearing is held for the purpose of deciding whether to suspend or revoke a license, or to impose a fine in lieu of suspension or revocation.

We also requested lists of establishments required to have had routine⁷, monthly, and final inspections in FY 2016. DLC did not provide us with the requested lists.

DLC's Compliance Manager provided us with separate spreadsheets listing the results of inspections conducted in FY2016 that DLC terms routine, monthly, and final, while noting that all seven types of inspections count toward the mandate of two inspections per year. We then requested data on all the inspections that count toward the twice-annual inspection requirement, and DLC sent us four spreadsheets with the remaining four types of inspection data.

We conclude that compliance information is not readily available for the following reasons:

- Data on one of the seven types of inspections was not sent for over two weeks after our request was made, as the Compliance Manager wrote that he needed "to gather" it,
- Certain information was missing, and
- The data did not indicate whether legal requirements were met.

In addition, because of inconsistencies in the data that is collected and the software with which it is processed, the data cannot currently be assembled quickly into management reports:

- Data from the seven types of inspections cannot simply be aggregated, as some data was inconsistent, for example inspector names, licensee names, license numbers, and dates;
- The Compliance Manager advised us that records of when licenses were picked up could not be sorted by date;
- The Compliance Manager uses a version of Excel that is older than the IT Manager uses, and when data from the two versions are linked, errors in formulas result; and
- Some of the information needed for analyzing compliance is in the County's Oracle system, which is sometimes inconsistent with the information in DLC's iPad system.

Consistency in data collection and software would enable the data to be aggregated more quickly, making it easier to determine whether inspection requirements have been met.

Almost three years after the CAO wrote that DLC was developing requirements for an enhanced database management system that would produce management reports, DLC still does not have such a system. We were informed in June of 2016 that DLC is no longer working

⁷ We initially requested information on inspections DLC terms "routine," because DLC states on its website that "A Routine Inspection is a state mandated check of each establishment twice a year." However, DLC's spreadsheet of "routine" inspections did not include all seven types of inspections that count toward meeting the twice-yearly inspection mandate.

with the Office of Procurement to obtain the system and is instead working with the County Department of Technology Services (DTS) to formulate an in-house database management program. As of the beginning of December, we have not been told that DLC expects to have a system from DTS any time soon.

We do not advocate and have at no point advocated that DLC contract for or purchase an expensive database management system. Based on the OIG's experience, we know that it is possible to analyze the data that DLC collects and prepare reports using Excel spreadsheets. The techniques the OIG used included pivot tables and lookup functions. If training is needed for DLC staff, County employees may take Excel classes through the County Office of Human Resources' Training and Organizational Development Division. If DLC addresses the inconsistencies in the data and the software with which it is processed, monitoring the inspections against frequency requirements will become less time-consuming.

It appears to the OIG that DLC might benefit from keeping running totals of inspections per licensee, until such time as it may decide to do so with an automated method.

Recommendation 1

DLC should develop and management should review periodic, for example monthly, reports of compliance or noncompliance with State law, BLC regulations, and DLC procedures regarding twice-annual, monthly, and final inspection requirements.

Finding 2: OIG review of data provided by DLC indicated that in FY 2016, 53% of establishments licensed in FY 2016 did not receive all the monthly inspections required under State law.

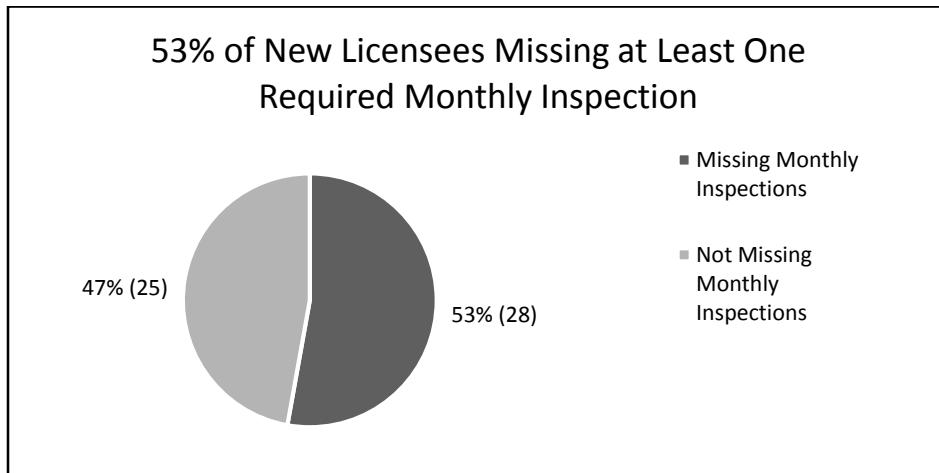
Maryland state law requires "at least monthly physical inspections" during the initial license year for establishments licensed to sell beer, wine, and liquor. Maryland state law also requires that licensees submit monthly statements showing gross receipts from the sale of food and from the sale of alcoholic beverages. BLC Regulations require that the receipts from certain food sales be at least 40% of the gross receipts from the sale of food and alcoholic beverages. We did not review whether the ratio documentation was provided or whether the ratio requirement was met.

Monthly inspections are required beginning the month after the licensee picks up its license. After we requested data on license pickup dates, DLC provided a spreadsheet of license pickup data.

In the license pickup data sent by DLC, there were 53 BWL (Beer, Wine, and Liquor) licenses with FY2016 pickup dates⁸. For each of these, we aggregated the numbers of all types of inspections these licensees received.

We compared the number of months elapsed since the licenses were picked up to the number of inspections of any kind since the licenses were picked up. If the number of months was greater than the number of inspections, then monthly inspections were missing.

We determined that monthly inspection requirements were not met for 53% of the licensees that were required to have monthly inspections.



Source: OIG analysis of data provided by DLC

⁸ DLC also provided a separate spreadsheet of BWL licensees.

The following table shows that licensees were missing between 1 and 11 monthly inspections in FY2016, and that overall 100 inspections were missed:

Monthly Inspections

Number of Missing Inspections	Count of Licensees with This Number Missing
None	25
1	11
2	3
3	5
4	1
6	2
7	3
10	2
11	1
Total	53

Source: OIG analysis of data provided by DLC

The DLC Compliance Manager stated in July of 2016 that, based on the total inspection numbers he has seen, he concludes that certain monthly inspections are probably not being done. In October, he informed us that because of the OIG review, he has started using electronic recurring calendar appointments to help schedule monthly inspections. We saw, during inspector interviews, these monthly appointments on an inspector's calendar.

DLC management informed us that DLC was considering proposing legislation to eliminate Maryland requirements for monthly inspections and for monthly documentation of food and alcohol revenues. DLC management stated that DLC checked the food and alcohol ratios and found that the licensees were always in compliance.

Recommendation 2

DLC management should track whether each newly licensed licensee has received the required monthly inspections for the first year of licensure and should see that the required inspections are performed.

Finding 3: Data provided by DLC indicated that not all licensees active for FY2016 received the two annual inspections that are required under BLC Regulations.

BLC Rules and Regulations § 5.3(a) requires at least two inspections of all licensed facilities annually. According to DLC Standard Operating Procedures, all seven types of inspections that DLC performs count toward meeting this requirement.

There were 933 establishments licensed both at the beginning and the end⁹ of FY2016. DLC conducted 2,943 inspections of these licensees in FY2016, so there was an average of 3.15 inspections per licensee during that time period. However, this is an average and does not indicate whether the licensees individually received the required inspections.

We analyzed inspections of these 933 licensees, aggregating the seven types of inspections. We determined that 85 out of the licensees did not receive two inspections during FY2016.

The Director of Compliance determined that of the 85 establishments identified by the OIG, 78 were required to have had two annual inspections. He also determined that 22 (2.4% of the 933 total) had fewer than 2 inspections in a 12-month period. The Director of Compliance looked to see if 2 inspections were done in the 12-month period beginning with the date of license issuance. This differs from the OIG's methodology, which counted, for all licensees, the number of inspections in the fiscal year. The BLC Regulations require that "[a]ll licensed facilities will be inspected twice annually,"¹⁰ but they do not define "annually."

If the BLC amended its Rules and Regulations regarding annual inspections to indicate a standard time period, such as a fiscal year, this would simplify monitoring and the management of inspections. Using a fiscal year as the standard period might be preferable to using a calendar year, as the fiscal year requirement would not result in increased pressure for inspections during the holidays near the end of the calendar year.

DLC management informed us that the DLC Compliance Manager monitored inspections using a non-automated method before the iPad system was adopted, but he stopped doing so once the inspection data began to be collected in the iPad system. However, DLC management stated that the iPad system is difficult to use for monitoring whether inspections comply with

⁹ We looked at inspections of licensees licensed at the beginning and the end of FY2016, because licensees only active for part of the year might not have required two inspections.

¹⁰ BLC Rules and Regulations § 5.3(a).

frequency requirements, so the Compliance Manager plans to resume tracking inspections against the annual requirement using a non-automated method.

Recommendation 3

- (a) DLC management should track whether each licensee has received the required 2 inspections per year and should see that the required inspections are performed.
- (b) The BLC should consider amending its Regulations to indicate that the fiscal year is the time period in which at least two inspections are required, for ease in monitoring whether facilities are inspected twice annually.

Summary of the Chief Administrative Officer's Response

The response from the Montgomery County Chief Administrative Officer (CAO) to the final draft report is included in its entirety in Appendix A.

The CAO agreed with our recommendations. Nothing in the response caused us to alter our report.

Appendix A: Chief Administrative Officer's Response



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestone
Chief Administrative Officer

MEMORANDUM

December 22, 2016

TO: Edward L. Blansitt, Inspector General
FROM: Timothy L. Firestone, Chief Administrative Officer
SUBJECT: Response to Confidential Final Draft: Managing Alcohol Inspections

I am in receipt of your Confidential Final Draft: Managing Alcohol Inspections. We agree with the recommendations and have already begun work to implement them. Following are the answers to the Draft's specific recommendations:

Recommendation 1: DLC should develop and management should review periodic, for example monthly, reports of compliance or noncompliance with State law, BLC regulations, and DLC procedures regarding twice-annual, monthly, and final inspection requirements.

CAO Response: As you know, there are several sources of information and systems retaining the related data on all aspects of the Department of Liquor Control's (DLC) inspection and licensing activities. Currently, we are in the process of developing a comprehensive single tracking and reporting system to monitor all DLC inspections and licensing and compliance with laws, regulations, and procedures. In addition, beginning in January 2017, the Board of License Commissioners will take a more proactive role in monitoring of license inspection reporting.

Recommendation 2: DLC Management should track whether each newly licensed licensee has received the required monthly inspections for the first year of licensure and should see that the required inspections are performed.

CAO Response: Please note that the intent of the monthly inspection is to monitor that the businesses selling liquor are meeting the food-to-alcohol ratio requirement as well as to add guidance and counsel to assist the new licensees. Beer, Wine, and Liquor (BWL) licensees that are required to have monthly inspections for the first year are also required to submit monthly food-to-alcohol ratio reports. These reports are successfully tracked. Additionally, BWL license holders certify on their annual renewal applications that the food-to-alcohol ratio requirements are being met.

Effective December 1, 2016, immediately after DLC's Licensure, Regulation, and

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Appendix A: Chief Administrative Officer's Response

Edward L. Blansitt, Inspector General
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Education (LRE) division issues a BWL license, the licensing process includes a reoccurring e-mail alert sent to individual inspectors to complete monthly inspections at the facility. In addition, a monthly "check box" will be added to the routine inspection reports thereby reducing under reporting issues previously encountered during these checks. Finally, inspectors are now tracking monthly inspections on spreadsheets while we pursue a comprehensive single tracking system to monitor and report on all inspections.

Recommendation 3: (a) DLC management should track whether each licensee has received the required 2 inspections per year and should see that the required inspections are performed. (b) The BLC should consider amending its Regulations to indicate that the fiscal year is the time period in which at least two inspections are required, for ease of monitoring whether facilities are inspected twice annually.

CAO Response: Moving forward, DLC will track twice annual inspections by fiscal year. This will allow for progress reports to be used by management to ensure all facilities receive two checks annually. New licenses issued before the commencement of the fiscal year would have met the twice annual inspection requirement for the prior fiscal year by virtue of the pre-hearing and final inspection.

Currently, the compliance manager is tracking twice annual inspections on a hard copy list of businesses while we pursue a single comprehensive tracking system to monitor and report on all inspections.

Thank you again for your work on this Draft. If you have questions, please contact Fariba Kassiri, Acting Director, at (240) 777-1922 or Fariba.Kassiri@montgomerycountymd.gov.

TLF:kd

cc: Susan Heltemes, Chair, Board of License Commissioners
Fariba Kassiri, Acting Director, Department of Liquor Control
Kathie Durbin, Division Chief, Licensure, Regulation and Education, Department of Liquor Control

Appendix B: Methodology

We interviewed Department of Liquor Control supervisors and staff, as well as the Chair of the Board of License Commissioners. We reviewed state law, County regulations, and department standard operating procedures governing frequency of inspections.

We analyzed data from DLC regarding alcohol inspections. Initially, we requested and received spreadsheets with inspection data on the inspections DLC terms routine, monthly, and final, as these appeared to be the relevant types of inspections for our analysis, according to the DLC website.

However, DLC informed us that the other four types of inspections also counted toward meeting legal requirements, so we requested those, in addition. In response to our request for all the inspections that would count toward the twice-annual inspection requirement, DLC sent us the remaining four types of inspection data.

Annual Inspections

To focus on licensees active for the whole fiscal year and thus subject to the twice-annual requirement, we began with the data on license issue dates provided by DLC and created a list of establishments licensed on or before July 1, 2015 that were also active on June 30, 2016. For these, we aggregated the numbers of inspections from the seven types of inspections. We tallied the total number of inspections during FY 2016 and compared the totals to the legal requirement of two inspections per year.

Monthly Inspections

To determine which licensees required monthly inspections, we worked with the list of licensees that picked up licenses in FY2016. We sorted by license type and selected BWL licenses, of which there were 83. We deleted data for licenses picked up after 6/30/2016, or before 7/1/2015, to focus on FY 2016. For the 53 licensees left, we compared the number of inspections required in FY2016, based on the months elapsed, with the number of inspections of any kind.