

Audit Report

**Comptroller of Maryland
Field Enforcement Division**

September 2021



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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Victoria L. Gruber
Executive Director

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Gregory A. Hook, CPA
Legislative Auditor

September 7, 2021

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee
Delegate Carol L. Krimm, House Chair, Joint Audit and Evaluation Committee
Members of Joint Audit and Evaluation Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Comptroller of Maryland (COM) – Field Enforcement Division (FED) for the period beginning October 3, 2016 and ending December 31, 2020.

Prior to January 1, 2021, the Comptroller's FED was responsible for the enforcement of trade practice regulations and revenue laws related to alcoholic beverages, tobacco, motor fuel, and sales and use taxes. Additionally, FED was responsible for monitoring and enforcing the use of business licenses and for testing motor fuel quality. Effective January 1, 2021, authority to enforce the State's laws concerning alcoholic beverages and tobacco products was transferred, by law, to the newly established Alcohol and Tobacco Commission. All other authority and responsibilities of FED remain with the Comptroller, although the name of FED was effectively changed at that time to the Field Enforcement Bureau (FEB), which we will refer to for the remainder of the audit report.

Our audit disclosed that FEB did not periodically conduct formal comprehensive analyses of all alcohol and tobacco retailers inspected to identify retailers that had not been inspected for extended periods without justification, as well as duplication of inspections at the same retailers without justification. For example, according to FEB's records as of March 2021, of the 9,049 alcohol retailers in the State, 6,067 had not been inspected in the past four and a half years. There are legitimate reasons for not conducting inspections, but periodic comprehensive analyses are necessary to evaluate inspection frequency and related justifications.

Inspections of alcohol and tobacco retailers are conducted to ensure a fair operating environment for all retailers and to protect State revenue by enforcing related laws and regulations.

The sole finding in this audit report related to the alcohol and tobacco inspection and enforcement activities which were under the authority of COM during the audit period, but for which the implementation of the related audit recommendations will be the responsibility of the newly established Alcohol and Tobacco Commission (ATC). As a result, we shared this report with ATC. In addition, we obtained responses to this report from both COM, on behalf of FEB, and from ATC, and they are included as an appendix to this report. We have reviewed the responses to our findings and related recommendations, and have concluded that the corrective actions identified are sufficient to address all audit issues.

We wish to acknowledge the cooperation extended to us during the audit by FEB. We also wish to acknowledge ATC's willingness to address the audit issues and implement appropriate corrective actions.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory A. Hook". The signature is written in a cursive, flowing style.

Gregory A. Hook, CPA
Legislative Auditor

Background Information

Agency Responsibilities and Organizational Change

Prior to January 1, 2021, the Comptroller of Maryland (COM) - Field Enforcement Division (FED) was responsible for the enforcement of trade practice regulations and revenue laws related to alcoholic beverages, tobacco, motor fuel, and sales and use taxes. Additionally, FED was responsible for monitoring and enforcing the use of business licenses and for testing motor fuel quality. Effective January 1, 2021, authority to enforce the State's laws concerning alcoholic beverages and tobacco products was transferred, by law, to the newly established Alcohol and Tobacco Commission. All other authority and responsibilities of FED remain with the Comptroller, although the name of FED was effectively changed at that time to the Field Enforcement Bureau (FEB).

According to the State's records, FED's expenditures totaled approximately \$6.4 million during fiscal year 2020.

Findings and Recommendations

Alcohol and Tobacco Retailer Inspections

Finding 1

The Comptroller of Maryland - Field Enforcement Bureau (FEB), did not periodically conduct formal comprehensive analyses of all alcohol and tobacco retailers it inspected to identify retailers that had not been inspected for extended periods without justification, as well as duplication of inspections at the same retailers without justification.

Analysis

FEB did not periodically conduct formal comprehensive analyses of all alcohol and tobacco retailers inspected to identify retailers that had not been inspected for extended periods without justification, as well as duplication of inspections at the same retailers without justification. According to FEB's records as of March 2021, of the 9,049 alcohol retailers in the State, 6,067 had not been inspected in the past four and a half years. Similarly, out of 6,334 tobacco retailers, 2,785 had not been inspected during the same period. Furthermore, approximately 1,800 alcohol and 4,400 tobacco retailers were re-inspected during the period even though they did not have violations reported in their inspections prior to re-inspection.

FEB's written procedures indicate that judgment as well as complaints received are primary factors in determining which businesses to inspect, and that an aggressive but random inspection process helps promote voluntary compliance. We recognize the importance of judgment and the benefit of a random approach in selecting businesses for inspection. However, without a periodic comprehensive analysis of which businesses have and have not been inspected, there is no assurance that certain businesses will ever be inspected, resulting in possible complacency. In addition, duplication of inspections without justification may occur without management's knowledge. In this regard, FEB's procedures indicate that inspection documentation should be monitored and tracked to avoid multiple inspections at the same retailers without justification.

Inspections of alcohol and tobacco retailers are conducted to ensure a fair operating environment for all retailers and to protect State revenue by enforcing laws and regulations regarding, for example, proper licensing and record keeping.

Recommendation 1

We recommend that

- a. the newly established Alcohol and Tobacco Commission (ATC) periodically perform formal comprehensive analyses of all alcohol and tobacco retailers in order to help identify retailers that have not been inspected for extended periods without justification, as well as re-inspections of the same retailers without justification; and**
- b. to help facilitate these analyses, FEB provide ATC with available data regarding retail establishments subject to inspection, as well as historical data regarding retailers it has and has not inspected during the past several years.**

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the Comptroller of Maryland (COM) – Field Enforcement Division (FED), now the Field Enforcement Bureau (FEB), for the period beginning October 3, 2016 and ending December 31, 2020. The audit was conducted 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.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine FEB's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included confiscated property, business licenses, and routine inspections.

Our audit did not include certain support services provided to FEB by COM – Office of the Comptroller. These support services (such as procurement, processing of invoices, maintenance of accounting records, human resources, related fiscal functions, and payroll processing prior to January 1, 2018) are included within the scope of our audits of the Office of the Comptroller. In addition, our audit did not include certain support services provided to FEB by COM – Central Payroll Bureau, effective January 1, 2018. These support services (payroll processing) are included within the scope of our audits of the Central Payroll Bureau since that date. Furthermore, our audit did not include certain support services provided to FEB by COM – Information Technology Division related to the monitoring of information technology equipment and services and the operation of the Annapolis Data Center. The operation of the Annapolis Data Center includes the development and maintenance of FEB applications and maintenance of the operating system and security software environment. These support services are included in the scope of our audits of the Information Technology Division.

Our assessment of internal controls was based on agency procedures and controls in place at the time of our fieldwork. Our tests of transactions and other auditing procedures were generally focused on the transactions occurring during our audit period of October 3, 2016 to December 31, 2020, but may include transactions before or after this period as we considered necessary to achieve our audit objectives.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, tests of transactions, and to the extent practicable, observations of FEB's operations. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk, the timing or dollar amount of the transaction, or the significance of the transaction to the area of operation reviewed. As a matter of course, we do not normally use sampling in our tests, so unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the

transactions tested. Therefore, unless sampling is specifically indicated in a finding, the results from any tests conducted or disclosed by us cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue data). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from this source were sufficiently reliable for the purposes the data were used during this audit. We also extracted data from FEB's systems for the purpose of testing certain areas, such as inspection activity. We performed various tests of the relevant data and determined that the data were sufficiently reliable for the purposes the data were used during the audit. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

FEB's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved. As provided in *Government Auditing Standards*, there are five components of internal control: control environment, risk assessment, control activities, information and communication, and monitoring. Each of the five components, when significant to the audit objectives, and as applicable to FEB, were considered by us during the course of this audit.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes a finding relating to a condition that we consider to be a significant deficiency in the design or operation of internal control that could adversely affect FEB's ability to maintain reliable financial records, operate

effectively and efficiently, and/or comply with applicable laws, rules, and regulations. As the recommendations to this finding would fall to the Alcohol and Tobacco Commission (ATC) to implement, this report was also shared with the ATC. Our audit did not disclose any significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to FEB that did not warrant inclusion in this report.

The response from COM, on behalf of FEB, and from ATC to our findings and recommendations, respectively, are included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise COM and ATC regarding the results of our review of their responses.

APPENDIX



Peter Franchot
Comptroller

Jeffrey A. Kelly
Director
Field Enforcement Bureau

August 25, 2021

Mr. Gregory A. Hook, CPA
Legislative Auditor
Department of Legislative Services
Office of Legislative Audits
301 West Preston Street, Room 1202
Baltimore, MD 21201

Dear Mr. Hook:

We acknowledge receipt of the draft audit report on the Field Enforcement Bureau for the period beginning October 3, 2016 and ending December 31, 2020 and have submitted a written response to the audit report.

The Comptroller and the Executive Director of the Alcohol and Tobacco Commission appreciate your objective appraisal of our operations and commends your auditors for their professionalism and thorough review.

Sincerely,

Emmanuel M. Welsh
Chief of Staff

Jeffrey A. Kelly
Director, Field Enforcement Bureau (previously)
Executive Director, Alcohol and Tobacco Commission

cc: Honorable Peter V. R. Franchot, Comptroller

**Comptroller of Maryland
Field Enforcement Division**

Agency Response Form

Alcohol and Tobacco Retailer Inspections

Finding 1

The Comptroller of Maryland - Field Enforcement Bureau (FEB), did not periodically conduct formal comprehensive analyses of all alcohol and tobacco retailers it inspected to identify retailers that had not been inspected for extended periods without justification, as well as duplication of inspections at the same retailers without justification.

We recommend that

- a. the newly established Alcohol and Tobacco Commission (ATC) periodically perform formal comprehensive analyses of all alcohol and tobacco retailers in order to help identify retailers that have not been inspected for extended periods without justification, as well as re-inspections of the same retailers without justification; and**
- b. to help facilitate these analyses, FEB provide ATC with available data regarding retail establishments subject to inspection, as well as historical data regarding retailers it has and has not inspected during the past several years.**

Agency Response			
Analysis			
Please provide additional comments as deemed necessary.	The OLA analysis is accurate in that there are no documented comprehensive analyses, and subsequent documented justification, as it relates to those retailers who have not been inspected, as well as those who have been inspected more than once, in any given cycle or period.		
	While we readily acknowledge the benefit of such documented analyses, repetitive inspections that are seemingly “without justification” to an observer may in fact be anything than that. These repeat inspections may be driven by observations the agent/inspector has made or suspicious activity he/she has seen, information provided by industry competitors, complaints from nearby citizens/residents indicating a problem location with disorderly or other criminal activity but not a violation of items that we enforce including trade practices, requests from elected officials on behalf of their constituents for additional inspections, concerns of our partners in regulation - the local boards, or other reasons.		
	To restate, FEB and ATC agree that no documented comprehensive analyses were conducted and could prove beneficial moving forward.		
Recommendation 1a	Agree	Estimated Completion Date:	07/01/2021

**Comptroller of Maryland
Field Enforcement Division**

Agency Response Form

Please provide details of corrective action or explain disagreement.	<p>Effective January 1, 2021, the Maryland General Assembly reassigned the responsibility for regulating the alcohol and tobacco industries to the newly formed Alcohol and Tobacco Commission (ATC). While FEB agrees with the recommendation, it no longer has regulatory responsibility to effectively implement or require the formal comprehensive analyses. However, FEB will provide historical, non-tax related information to the ATC to facilitate their formal comprehensive analyses.</p> <p>Effective July 1, the ATC will implement a system for documented supervisory analyses of alcohol and tobacco retailer inspections.</p>		
Recommendation 1b	Agree	Estimated Completion Date:	6/28/2021
Please provide details of corrective action or explain disagreement.	<p>On June 28, 2021, FEB Director Jeffery A. Kelly memorialized via a letter to ATC Acting executive Director, Anthony V. Hatcher an agreement to provide data the FEB has on alcohol and tobacco retail locations that are subject to inspection and the historical, non-tax related information of those locations previously inspected.</p>		

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