

**STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING**

**PERFORMANCE AUDIT REPORT
FEBRUARY 2021**



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To The Fiscal Committee Of The General Court:

We conducted a performance audit of the efficiency and effectiveness of the New Hampshire Liquor Commission (Commission), Division of Enforcement and Licensing (Division) to address the recommendation made to you by the joint Legislative Performance Audit and Oversight Committee. We conducted this performance audit 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.

The purpose of the audit was to determine how efficiently and effectively the Division operated during State fiscal years 2018 and 2019.

Given the length of this report and complexity of the audit's scope, we provide some insights into the report's structure.

- The report is assembled to be useful to several sets of potential readers with different needs, including the public, the General Court, policy committees, the Division, and the Commission.
- The report contains an executive summary, starting on page 1, that captures main themes and the most significant concerns arising from our work, and a recommendation summary, starting on page 3, distilling our recommendations into a table.

Each chapter addresses elements of the Division's operations, and all chapters contain the same basic components.

- A chapter summary establishes conditions generally applicable to the observations that follow.
- A figure at the beginning of each chapter shows the relationship between observations and the management controls necessary for effective operation.
- Each observation addresses one or more elements, or management control systems and subsystems, affecting Division operations.

- Each observation is preceded by an assessment of the maturity of the management control system or systems affecting the particular Division function or element.
- Observations generally include, in their first paragraph or two, a summary of the issues with management's control of that element. This summary is intended for general readers.
- The remainder of each observation contains detailed information generally intended to inform Division and Commission managers about specific deficiencies with management control systems. Some observations contain extensive details, and often similar facts, when describing weaknesses and their causes or likely causes. This repetition is partly because of the interrelationship between management control systems, and is necessary to allow each observation to be understood independently from the rest. This information is not intended for general readers, unless they have a specific interest in the observation's subject matter.

Office of Legislative Budget Assistant

Office Of Legislative Budget Assistant

February 2021

**STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING**

TABLE OF CONTENTS

	<u>PAGE</u>
TRANSMITTAL LETTER	i
EXECUTIVE SUMMARY	1
RECOMMENDATION SUMMARY	3
1. MANAGEMENT	19
Observation No. 1: Improve The Operating Environment And Organizational Culture	23
Observation No. 2: Improve Controls Over Strategic Management And Planning	30
Observation No. 3: Improve Controls Over Risk Management	39
Observation No. 4: Develop A System Of Control To Ensure Timely And Durable Remediation Of Audit Findings.....	43
Observation No. 5: Improve Controls Over Check and Cash Management	47
Observation No. 6: Improve Controls Over The Statutory And Regulatory Framework	49
Observation No. 7: Improve Compliance With The <i>Administrative Procedure Act</i>	56
Observation No. 8: Improve Controls Over Internal Procedure Documents	61
Observation No. 9: Improve Controls Over The Division’s Organizational Structure.....	67
Observation No. 10: Ensure Proper Control.....	75
Observation No. 11: Optimize Profitability	81
Observation No. 12: Provide Good Customer Service.....	85
Observation No. 13: Improve Controls Over Personnel Management.....	89
Observation No. 14: Improve Controls Over External Communications	96
Observation No. 15: Improve Controls Over Internal Communications	101
Observation No. 16: Improve Controls Over Records Management	105
Observation No. 17: Improve Controls Over Information Technology Systems Management.....	110
2. LICENSING	115
Observation No. 18: Improve Controls Over The Licensing Function	117
Observation No. 19: Improve Controls Over Initial Licensing.....	129
Observation No. 20: Improve Controls Over Incomplete Annual License Applications.....	139

	<u>PAGE</u>
Observation No. 21: Improve Controls Over Short-duration Licenses	141
Observation No. 22: Improve Controls Over Required Training	144
Observation No. 23: Improve Controls Over Seasonal Licenses	148
Observation No. 24: Improve Controls Over License Renewals	150
Observation No. 25: Improve Controls Over Annual License Expiration	156
Observation No. 26: Improve Controls Over Licensing-related Petitions	160
3. THE DIRECT SHIPPER PROGRAM	165
Observation No. 27: Improve Controls Over The Direct Shipper Program.....	166
Observation No. 28: Ensure Proper Control Of Directly Shipped Alcoholic Beverages.....	173
Observation No. 29: Establish Proper Control Over Pack And Ship Entities.....	180
Observation No. 30: Improve Controls Over Direct Shipments To Licensees	182
Observation No. 31: Improve Controls Over Permitting	184
Observation No. 32: Improve Controls To Optimize Profitability Of The Direct Shipper Program	189
4. EXAMINATIONS	193
Observation No. 33: Improve Controls Over The Examination Function	194
Observation No. 34: Improve Controls Over Examinations To Ensure Proper Control.....	199
Observation No. 35: Improve Controls Over Product, Package, And Container Approvals.....	203
Observation No. 36: Improve Controls Over Examinations To Optimize Profitability.....	209
5. ENFORCEMENT	217
Observation No. 37: Improve Controls Over The Enforcement Function	219
Observation No. 38: Discontinue Extra-jurisdictional And Ineffective Enforcement Activities.....	226
Observation No. 39: Discontinue Elective Training, Education, And Outreach Without Demonstrated Benefits.....	233
Observation No. 40: Improve Controls Over Preventing Unlicensed Or Unpermitted Activity	237
Observation No. 41: Develop Controls Over Adulteration And Misbranding.....	241
Observation No. 42: Improve Controls Over Premises Inspections.....	245

	<u>PAGE</u>
Observation No. 43: Improve Controls Over Compliance Checks	256
Observation No. 44: Improve Controls Over Compliant Management	261
Observation No. 45: Comply With And Improve Regulatory And Procedural Construct Over Investigations And Sanctions.....	266
Observation No. 46: Improve Controls Over Investigations.....	273
Observation No. 47: Improve Consistency In Levying Sanctions	283

APPENDICES

Appendix A: Scope, Objectives, And Methodology	A-1
Appendix B: Liquor Commission Response	B-1
Appendix C: Liquor Commission And Office Of Legislative Budget Assistant- Audit Division Comments On Observation No. 38	C-1
Appendix D: Survey Of The State Law Enforcement Community	D-1
Appendix E: Survey Of New Licensees.....	E-1
Appendix F: Survey Of Renewing Licensees	F-1
Appendix G: Status Of Prior Audit Observations	G-1

LIST OF TABLES

Table 1: Maturity Of Division Control Systems As Of June 2019	23
Table 2: Maturity Of Controls Underlying Division Functions As Of June 2019	27
Table 3: Commission-reported Prior Audit Status And LBA Assessment, Through SYF 2019.....	45
Table 4: Division Performance Management Of Primary Proper Control Requirements.....	79
Table 5: Division Tax And Fee Collection Practices	83
Table 6: Customer Satisfaction Requirements In SOP And Feedback Sought	87
Table 7: Total Licenses By Category And License Type, As Of August 14, 2019	127
Table 8: Direct Shipper Tax Revenue, SFYs 2018-2019	165
Table 9: Direct Shipper Program: Shipments, Minimum Number Of Bottles Shipped, And Tax Revenue, CY 2018	171
Table 10: Direct Shipper Program Requirements, Compliance, And Weaknesses Identified	174
Table 11: Permitting Timeliness Based On File Review	185
Table 12: Licensees Receiving An Examination During SFYs 2018-2019	201

	<u>PAGE</u>
Table 13:	Certain Product, Package, And Container Requirements: Gaps Between Statute, Rules, SOP, and Practice.....205
Table 14:	Monthly Tax Reporting Requirements.....210
Table 15:	Licensee Risk Of Noncompliance By License Type And Subtype, SFYs 2018-2019.....221
Table 16:	Knowledge Management Systems Used In Monitoring Licensee And Permittee Compliance225
Table 17:	Special Investigations Not Tied To A Licensee Or Permittee, SFYs 2018-2019.....229
Table 18:	Statutory Requirements And Division Controls.....242
Table 19:	Premises Inspections By Area And Investigator, SFY 2019.....249
Table 20:	Licensees Receiving The Most Excessive Premises Inspections, SFYs 2018-2019.....250
Table 21:	Investigator Premises Inspection And Examiner Examination Duplication, SFYs 2018-2019252
Table 22:	Premises Inspections By Area, SFY 2019.....253
Table 23:	Compliance Check Operations During SFYs 2018-2019 And LBA-assessed Risk Level.....257
Table 24:	Licensees Subjected To Compliance Checks, SFYs 2018-2019.....258
Table 25:	Timeliness Of Investigations Into Licensee And Permittee Compliance, SFYs 2018-2019277
Table 26:	Timeliness Of Field Operations Bureau Investigations, SFYs 2018-2019.....278
Table 27:	Administrative Sanctions Levied By The Administrative And Field Operations Bureaus, SFYs 2018-2019285
Table 28:	Offense And Arrest Reports By Geographic Area, SFYS 2018-2019.....288
Table 29:	Status Of Prior Audit Observations And Status Key G-1

LIST OF FIGURES

Figure 1:	System Of Management Control21
Figure 2:	Alcohol By Volume In Statute51
Figure 3:	Knowledge Management Process95
Figure 4:	Model Division Internal Knowledge Management Process.....101
Figure 5:	Licensing Processes To Achieve Expected Outcomes.....116
Figure 6:	Initial Licensing Process123
Figure 7:	Direct Shipper Program Processes To Achieve Expected Outcomes166

		<u>PAGE</u>
Figure 8:	Total Reported Direct Shipments And Tax Revenue, CY 2018	170
Figure 9:	Approvals And Denials Of Retailer, Importer, And Wholesaler Direct Shippers In Division Meeting Minutes, SFYs 2018-2019	187
Figure 10:	Examination Processes To Achieve Expected Outcomes	194
Figure 11:	Product, Package, And Container Requests Received, August 2017 Through June 2019	207
Figure 12:	Inflation-adjusted And Unadjusted Beverage Tax Revenues And Trends, CYs 1998-2018	213
Figure 13:	Enforcement Processes To Achieve Expected Outcomes	218
Figure 14:	Enforcement Process Model	237
Figure 15:	Commission Investigation And Sanctioning Process In Rule	265
Figure 16:	Closure Of Field Operations Bureau Investigations Into Potential Licensee Or Permittee Noncompliance, SFYs 2018-2019	275
Figure 17:	Investigation Caseload And Average Days To Close Investigations For Certain Investigators, SFYs 2018-2019	279
Figure 18:	Sanctions Recorded By Certain Investigators As A Percentage Of Total Sanctions Recorded, SFYs 2018-2019	287

ABBREVIATIONS

24/40 Standard	The liquor investigator standard to conduct 24 premises inspections per 40-hour work week
<i>2006 Management Letter</i>	<i>State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2006</i>
<i>2009 Performance Audit</i>	<i>State Of New Hampshire Liquor Commission Performance Audit Report April 2009</i>
<i>2013 Management Letter</i>	<i>State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2013</i>
<i>2014 Management Letter</i>	<i>State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2014</i>
<i>2015 Management Letter</i>	<i>State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2015</i>
<i>2016 Management Letter</i>	<i>State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2016</i>
<i>2018 Management Letter</i>	<i>State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2018</i>
ABV	Alcohol By Volume
<i>Act</i>	<i>Administrative Procedure Act</i>
<i>Alcoholic Beverages</i>	Encompassing Title XIII of the Revised Statutes Annotated, Chapters 175 through 180

CALEA®	Commission on Accreditation for Law Enforcement Agencies, Incorporated, a private, nonprofit, tax-exempt corporation
CIU	Criminal Intelligence Unit
Commission	Liquor Commission
CY	Calendar Year
DBMS	Database Management System
Division	Division Of Enforcement And Licensing
Division Meeting	Division Of Enforcement And Licensing Meeting
DRE	Drug Recognition Expert
DTF	Drug Task Force
DUI	Driving Under The Influence
Governor's Commission	Governor's Commission On Alcohol And Drug Abuse Prevention, Intervention, And Treatment
IT	Information Technology
LBA	Legislative Budget Assistant
MTS	Management Training Seminar
Program	Direct Shipper Program
P&S	Pack And Ship
RSA	Revised Statutes Annotated
SFY	State Fiscal Year
SJD	Supplemental Job Description
SOP	Standard Operating Procedure

GLOSSARY OF TERMS

Abuse	Behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary business practice, given the facts and circumstances.
Alcoholic Beverage	Any drink intended for human consumption containing alcohol, including beer, wine, and other beverages, and liquor as defined in statute.
Applicant	A person who has submitted a license or permit application.
Beer	Beer, specialty beer, lager beer, ale, porter, and similar fermented malt beverages with an alcohol by volume of one half of one percent and above.
Beverage	Beer, specialty beer, wine, similar fermented malt or vinous liquors and fruit juices, and any other liquid intended for human consumption as a beverage having an alcoholic content of not less than one half of one percent by volume and not more than six percent alcohol by volume at 60 degrees Fahrenheit.

Control	The policies, procedures, techniques, and mechanisms that enforce management's directives to achieve an agency's objectives and address related risks.
Control Subsystem	A subset of controls operating within a control system.
Control System	A collection of controls that, when integrated and functioning properly, cover a general operational area.
Goal	An aspirational aim.
Inputs	Resources and activities that are needed for, or guide, operations.
License	Commission issued permission to operate an entity involved in the possession or transfer of alcoholic beverages, including annual, seasonal, special, and one-day licenses.
Licensee	A person having a Commission-issued license to operate a business manufacturing, transporting, distributing, selling, or serving alcoholic beverages.
Liquor	All distilled and rectified spirits, alcohol, wines, fermented and malt liquors and cider, of over six percent alcoholic content by volume at 60 degrees Fahrenheit, not including specialty beer.
Management Control	A process used by management to help an organization achieve objectives and outcomes.
Permit	Commission-issued permission to operate as a direct shipper.
Permittee	A person having a Commission-issued direct shipper permit.
Objective	A specific and measurable aim, based on a goal, against which management can benchmark performance.
Outcome	Impacts resulting from services.
Output	Services provided by activities.
Specialty Beer	Beer having an alcohol content greater than six percent but not more than 12 percent by volume at 60 degrees Fahrenheit, and above 12 percent by volume if approved by the Commission.
Target	An aspirational numerical value of inputs, outputs, or outcomes, based on an objective, against which management can measure performance.
Unlicensed	An entity with a business model including possession or transfer of alcoholic beverages, but without a license.
Unpermitted	An entity with a business model including the direct shipment of alcoholic beverages into New Hampshire but without a direct shipper permit.
Waste	The act of using or expending resources carelessly, extravagantly, or to no purpose, relating primarily to mismanagement, inappropriate actions, or inadequate oversight.
Wine	A product obtained by fermenting the natural content of fruit or other agricultural products containing sugar and containing more than six percent but not more than 18 percent alcoholic content by volume at 60 degrees Fahrenheit.

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STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING

EXECUTIVE SUMMARY

The Liquor Commission (Commission) lacked adequate management controls to ensure the Division of Enforcement and Licensing (Division) achieved expected outcomes. The Division was the State's agency dedicated to enforcing the provisions of liquor laws and rules, and was to help accomplish the Commission's basic statutory duties to: 1) optimize profitability, 2) ensure proper control of alcoholic beverages, 3) operate efficiently and effectively, and 4) provide good customer service. Commission data indicated the Division collected nearly \$38.3 million in beverage taxes during calendar years (CY) 2017-2019, and during State fiscal years (SFY) 2018-2019 collected nearly \$0.5 million in wine taxes and \$9.4 million in licensing and permitting fees; oversaw 6,866 licensees and permittees; conducted 737 licensee examinations, 8,707 premises inspections, and 583 investigations; and levied 2,343 sanctions.

However, the Commission lacked a risk-based, data-informed strategy upon which the Division could base its strategy and plans, and lacked adequate rules to structure Division practices and regulate the alcoholic beverage industry. Division practices were neither objectively shown to be capable of producing expected outcomes nor able to demonstrate what outcomes were actually produced. The Division lacked a strategy or supporting plans; a cohesive approach to managing risk; performance goals, objectives, or targets; integration with relevant State strategies; adequate procedural and oversight controls; and integrated knowledge management practices to ensure it helped achieve expected outcomes. Deficient controls affected every Division function we reviewed—licensing, the Direct Shipper Program, examinations, and enforcement.

A well-designed regulatory program could have increased the likelihood that regulation of alcoholic beverages adequately protected the public and ensured other expected outcomes were achieved. While there were features of management controls present, there was no assurance: 1) each process was controlled, 2) controls were properly designed, 3) controls effectively cooperated, 4) controls were monitored in operation, 5) agency culture was control-focused, 6) operations complied with statute and rules, 7) performance was measured, and 8) controls were iteratively refined. Many existing Division control processes lacked a discernable design and the Division's legacy control framework was largely abandoned in CY 2014 when the Division stopped conforming to national law enforcement agency accreditation standards. No substitute control framework was implemented, and the Division instead relied on dated practices that lacked efficiency or effectiveness measures and were repeated as a matter of habit. Without a formal, objective risk assessment, there was no way to determine what risks these practices were designed to mitigate. Without any cost-benefit or similar analysis, there was no way to determine whether practices efficiently mitigated risks. Performance measurement centered on quantifying how many times a task was accomplished, not whether the right task was accomplished, or how well it was accomplished. Outcome achievement was based on qualitative impressions.

The Division was constituted as the regulatory agency intended to enforce liquor laws and rules and the only entity focused solely on systematically ensuring licensee and permittee compliance throughout the lifecycle of regulated activity. However, the Division's enforcement scope was knowingly expanded by past administrations, dissipating regulatory effort to the detriment of primary Division duties. Ineffective and inefficient deployment of resources, often outside the scope of the Division's responsibilities, led to uninspected and unexamined licensees while extra-jurisdictional tasks were accomplished.

Inefficiency compromised optimization of profitability. We found numerous inefficiencies, including some that were long-standing and identified in prior audits. Processes often involved decades-old manual practices augmented with unintegrated information technology systems. The statutory and regulatory framework was complex, at times unnecessarily so. There were 45 alcohol-related license and permit types with over 100 variations, or subtypes. Rules were poorly maintained and at times outdated, incomplete, and inaccurate, leading to broad, ad hoc rulemaking. Complexity, ad hoc rulemaking, and other defects in the control framework led to waste and abuse.

Knowledge management was inadequate. Division components collected operational data and information that often remained within that component. Data and information were undervalued and not leveraged to inform organizational management and help achieve expected outcomes. Inadequacies rendered many transactions unauditible. Records were inconsistently reliable to a degree that we qualify every conclusion resting on them. Documentation of management controls was inconsistent, particularly lacking for administrative functions. Employee descriptions of practices were insufficiently complete and accurate, compelling us to further qualify the content of this report.

Current Division management, in place since April 2017, did not create the defective control systems—many defects were long-standing, and some were commonly known. However, management was not aware of the extent of some of the defects we identified. As far back as CY 1994, we found retail operations were the Commission’s focus and it struggled with its “status as a State agency,” citing, among other things, “a cumbersome and inefficient organization without clear policies and procedures and without adequate planning and leadership.” Commission management was made aware of several defective controls through numerous audits since CY 1994, but lacked a system to ensure the conditions leading to audit findings were resolved and processes remained under control and continuously monitored. Many issues re-emerged and some underlying defects were further exacerbated by practices during the current audit period. Defects led to persistent inefficiency, waste, and noncompliance; inhibited achievement of expected outcomes; and accommodated abuse. The Division monitoring for and sanctioning licensee and permittee noncompliance while not controlling its own compliance with statute, rule, and internal standards was incongruous.

Nonetheless, current management was responsible for effective management and reportedly focused on improving its field enforcement operations, which was believed to most immediately need attention. Management reported undertaking a review of internal practices, identifying some of the same issues we identified. However, there was no holistic approach to management control, risk management, strategy development, planning, and performance management that could help ensure the issues we presently identify will be fully remediated and remain effectively controlled. Developing such controls, including a risk-based, data-informed strategy and supporting plans, and detailed implementing procedures, will likely take a substantial amount of time and effort. Without these underpinnings, Division efforts to manage change run the risk of occurring in isolated components of the Division without obtaining measurable improvements in achieving expected outcomes. The Division also runs the risk of dissipating managerial and planning capacity by seeking to regain national accreditation under law enforcement agency standards at the same time it should be addressing the broader, more fundamental underlying conditions leading to the numerous findings related to its regulatory responsibilities.

**STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING**

RECOMMENDATION SUMMARY

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
1	23	No	<p>Liquor Commission (Commission) management improve the Division of Enforcement and Licensing’s (Division) operating environment and organizational culture; ensure culture supports effective management control; develop a relevant strategy and plans; determine the most efficient way to ensure effective control; ensure uncontrolled processes and practices are adequately controlled; ensure existing controls are effective; objectively determine whether obtaining third-party accreditation will efficiently and effectively enhance Division-wide management controls and help ensure expected outcomes are achieved; and ensure Division management demonstrates the importance of controls.</p> <p>Division management improve the environment and culture; refine an environment and culture supportive of effective management control; develop formal, comprehensive controls; pursue accreditation only if it is objectively demonstrated to be the most efficient means to implement, operate, and monitor an effective system of management control that produces expected outcomes; develop comprehensive standard operating procedures (SOP); and develop strategy, plans, and measures to ensure effective control and achievement of expected outcomes.</p>	Concur
2	30	No	<p>Commission management improve strategy and planning; develop a risk-based, data-informed strategy and supporting plans to ensure expected outcomes are achieved; include measurable goals, objectives, targets, and timelines; ensure the Division implements complimentary strategies and plans; incorporate timely resolution of current and prior audit findings; monitor performance; and publicly report on performance and achievement of expected outcomes.</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
2 (Continued)	30	No	Division management improve strategy and plans; develop a strategy and plans to operationalize Commission strategy and plans; fully implement updated planning SOPs; ensure subordinate elements conform to strategy, plans, and SOPs; tie staff performance measures to organizational performance; and monitor and report publicly on performance and achievement of expected outcomes.	
3	39	No	<p>Commission management improve risk management; develop a comprehensive risk management policy and processes tied to strategy and plans; implement, monitor, and refine SOPs; develop risk tolerances; recognize, evaluate, and effectively respond to risks affecting achievement of expected outcomes; and regularly reviews and addresses changing risks.</p> <p>Division management improve risk management; adapt and implement the Commission’s risk management policies and practices; develop holistic strategic, operational, and tactical risk management SOPs and ensure other SOPs manage risk; and discontinue relying on informal, qualitative, intuition-based, tactical level risk management.</p>	Concur
4	43	Yes	<p>The Legislature consider increasing its oversight of Commission efforts to address conditions leading to prior and current audit observations.</p> <p>Commission management improve remediation of prior audit findings; improve transparency; comply with Executive Orders to post remedial action plans and semiannual progress reports for each audit; develop and implement policy and procedures to durably remediate audit findings; and incorporate audit resolution processes into strategy and plans.</p> <p>Division management improve remediation of prior audit findings; develop a strategy and resourced, time-phased plan to timely remediate</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
4 (Continued)	43	Yes	audit findings; monitor remediation to ensure effectiveness and durability; and publicly report on plan execution.	
5	47	No	<p>Commission management durably remediate deficiencies in cash and check processing; centralize payment processing; segregate business office and operational duties; and implement an SOP compliant with statute and State policy.</p> <p>Division management develop and improve a single Division-wide cash and check handling SOP compliant with statute, State policy, and revised Commission SOP.</p>	Concur
6	49	Yes	<p>Commission management improve controls over the statutory and regulatory framework; seek legislative changes to simplify the statutory framework; develop and implement a simplified regulatory framework; ensure the Division suggests changes to statute and requests changes to rules; develop a controlling SOP; and monitor compliance.</p> <p>Division management improve controls over the statutory and regulatory framework; include a relevant element in strategy and plans; review practices and internal forms; identify and recommend changes to simplify the statutory and regulatory framework; and implement simplified statutes, rules, SOPs, procedures and internal forms.</p>	Concur
7	56	No	<p>Commission management comply with the <i>Administrative Procedure Act (Act)</i>; develop, implement, and monitor an SOP to ensure <i>Act</i> compliance; discontinue ad hoc rulemaking; ensure declaratory rulings and other general requirements binding on the public are adopted in rules; ensure external forms comply with the <i>Act</i> and corresponding rules; and adopt required rules.</p> <p>Division management ensure practice complies with laws and rules; discontinue ad hoc rule-</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
7 (Continued)	56	No	making; develop and implement SOPs to ensure <i>Act</i> compliance; ensure organizational culture focuses on statutory compliance; review and identify practices affecting the public, and seek to codify them into properly adopted rules and external forms; review and minimize the external forms inventory; and monitor compliance.	
8	61	No	Division management improve management of SOPs; develop a relevant strategy and plans; ensure procedural documents are needed, accurate, internally and externally consistent, and conform to law and rules; ensure operations rely on SOPs; ensure the SOP managing policy and procedure ensures compliance, efficiency, consistency, accuracy, and effectiveness of SOPs; ensure forms are codified in SOPs; and divest the Division from unneeded procedural documents and forms.	Concur
9	67	No	<p>Commission management improve control over the Division’s organization; develop related rules; and either provide formal delegations of Commission authority exercised by staff or retain authority the Commission does not wish to delegate.</p> <p>Division management improve controls over its organization; conduct analyses and risk assessments to optimize its organization; periodically publish accurate organizational charts; rationalize, implement, and timely update SOPs and supplemental job descriptions (SJD); and ensure conformity to delegations of Commission authority.</p>	Concur
10	75	No	<p>Commission management exercise oversight of Division performance in ensuring proper control.</p> <p>Division management ensure proper control; implement a performance management system tied to proper control; develop a resourced, time-phased plan to ensure control outcomes; revise SOPs, including performance measurement requirements in contracts and grants; and monitor and regularly report on proper control outcomes.</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
11	81	No	<p>Commission management exercise oversight of Division performance in optimizing profitability.</p> <p>Division management optimize profitability; implement a performance management system tied to optimization of profitability; develop a resourced, time-phased plan to reengineer operations to assure optimization of profitability; revise SOPs; and monitor and regularly report optimization of profitability.</p>	Concur
12	85	No	<p>Commission management exercise oversight of Division performance in providing good customer service.</p> <p>Division management provide good customer service; implement a performance management system tied to a customer service strategy; develop a resourced, time-phased plan to reengineer operations to assure provision of good customer service; revise SOPs; collect comprehensive customer satisfaction data; and monitor and regularly report on customer service quality.</p>	Concur
13	89	No	<p>Commission management ensure the Division develops controls over personnel management to achieve expected outcomes and annually evaluate the Director.</p> <p>Division management improve management of personnel performance; develop a related strategy and plans; ensure staff receive required performance evaluations; hold staff accountable for performance; revise SOPs and SJDs; and conduct analyses to determine optimal staff allocations, including the ratio of sworn to unsworn staff, and reallocate staff accordingly.</p>	Concur
14	96	No	<p>Commission management improve external knowledge management, report externally on operations biennially, report on audit remediation routinely, and ensure reliable, comprehensive operational information is regularly reported externally.</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
14 (Continued)	96	No	Division management improve external knowledge management; develop strategy and plans; conform to statute, executive orders, agreements, and other external communication requirements; implement and monitor SOPs; develop and implement quarterly external reporting on enforcement activity at unlicensed establishments and provide it to the General Court; and obtain feedback from relevant stakeholders and the general public.	
15	101	No	Division management improve internal knowledge management; develop strategy and plans; optimize internal communications and supporting information technology (IT) systems; improve efficiency and effectiveness of internal communications, intelligence, and analysis; discontinue collection of data not supporting outcome achievement; develop comprehensive SOPs; and base decision-making on reliable data and objective analytics.	Concur
16	105	No	<p>Commission management provide adequate oversight and SOPs to ensure Division records management practices efficiently comply with law.</p> <p>Division management improve records management; comply with recordkeeping requirements and ensure adequate and proper documentation of the Division’s functions, policies, decisions, procedures, and essential transactions; develop a strategy and plans; rationalize operations and inventory records to ensure each process is monitored; discontinue recordkeeping practices without a purpose; develop comprehensive SOPs; implement controls to ensure data reliability; and once revised controls consistently produce reliable records, establish a date after which data can be relied upon for decision-making.</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
17	110	No	<p>Commission management ensure Division IT systems management efficiently and effectively helps achieve expected outcomes.</p> <p>Division management improve IT systems management; develop long- and short-term strategies and plans to efficiently and effectively automate business practices; integrate disparate databases and records into existing records management systems; develop comprehensive SOPs to adequately control systems, their use, and data quality; ensure data quality standards are continuously met; and train employees and monitor performance.</p>	Concur
18	117	Yes	<p>Commission management assess risk to determine how licensing requirements can achieve expected outcomes; seek legislative changes to the licensing construct; monitor Division licensing operations; and revise rules to reflect statute, comprehensively reflect requirements, and do not add undue complexity.</p> <p>Division management improve controls over licensing; develop strategy and plans; develop comprehensive SOPs; involve non-licensing sections in licensing process only when necessary and efficient; simplify practices; tie employee performance to goals, objectives, and targets; and periodically report on performance.</p>	Concur
19	129	No	<p>Commission management improve initial licensing processes; simplify requirements; ensure requirements are codified in rule; develop rules for multiyear licenses; and ensure forms and guidance are correctly cited and adopted in rules.</p> <p>Division management improve initial licensing processes; develop strategy and plans; optimize practices, including development of an online application process; discontinue ineffective practices; implement a comprehensive SOP; ensure practices include statutory and rule-based requirements; include multiyear licenses; optimize</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
19 (Continued)	129	No	the utility of the existing licensing database management system; and measure and report on performance.	
20	139	No	Division management improve controls over incomplete annual license applications; rationalization practices with statute and rules; revise the SOP and supporting forms; document all decisions; and consistently process pending applications.	Concur
21	141	No	<p>Commission management comply with statute and review, approve, or deny short-duration applications.</p> <p>Division management improve short-duration license application processes; ensure timely notification to applicants; develop a comprehensive SOP; ensure consistent processing and documentation; and conduct examinations of licensees.</p>	Concur
22	144	No	<p>Commission management revise rules to accurately reflect statute and contain all training requirements imposed on licensees.</p> <p>Division management improve required training processes; improve SOPs; revise SJDs to reflect all training responsibilities and performance measures; establish a relationship between training efforts and desired outcomes; understand trends between course failures and violations; establish return on investment for required training; obtain customer feedback; and monitor compliance.</p>	Concur
23	148	Yes	Division management determine whether seasonal licensure is cost beneficial when compared to alternatives, such as discontinuing the practice; seek necessary statutory and regulatory changes; ensure seasonal licensing inspection practices are risk-based and data-informed; focus seasonal licensing processes on compliance and achieving expected outcomes; implement refined SOPs; and improve efficiency.	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
24	150	No	<p>The Commission improve controls over license renewals; comply with statute and review, and approve or deny, renewal applications; ensure renewing applicants comply with law and rules; and revise rules.</p> <p>Division management improve license renewal processes; ensure practices reflect statute and rule, and achieve outcomes; develop a comprehensive licensing SOP; establish performance targets; develop strategy and plans; ensure statutory and rule requirements are met; maximize the value of the existing licensing database management system; ensure renewal licenses are processed timely and consistently; and regularly solicit input from licensees and stakeholders.</p>	Concur
25	156	No	<p>Division management improve management of license expirations; ensure compliance with statute and rule; develop SOPs; ensure licensing and enforcement staff timely communicate; ensure data accuracy; and monitor and report on performance.</p>	Concur
26	160	No	<p>Commission management revise and monitor licensing-related petition rules and ensure it approves or denies petitions.</p> <p>Division management improve management of petitions; discontinue informal approvals; develop strategy and plans to optimize practices; develop comprehensive SOPs; and ensure examinations are carried out or unenforced requirements are discontinued.</p>	Concur
27	166	No	<p>Commission management improve Direct Shipper Program (Program) controls, monitor Program operations, and develop comprehensive Program rules.</p> <p>Division management improve Program controls; develop strategy and plans; develop goals, objectives, and targets; develop comprehensive SOPs; measure performance; tie employee</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
27 (Continued)	166	No	performance to Program performance; and periodically report on performance.	
28	173	Yes	<p>Commission management ensure proper control of direct shipments; amend rules; consider seeking amendment to statute to remove the 90 day unauthorized direct shipper limitation for unpermitted entities directly shipping into the State; and clarify whether New Hampshire-based licensees and international-based entities should be allowed to directly ship to consumers.</p> <p>Division management ensure the Program properly controls direct shipments; automate controls processes; prosecute noncompliant entities when necessary in concert with the Department of Justice; and ensure all carriers provide monthly reports on direct shipments and comply with requirements.</p>	Concur
29	180	No	Division management ensure pack and ship entities are properly permitted or licensed.	Concur
30	182	No	<p>Commission management improve controls over direct shipments to licensees, determine which division should manage licensee direct shipments, and revise rules.</p> <p>Management of the responsible division develop and implement a rule-compliant SOP; ensure comprehensive analysis of licensee and permittee compliance; simplify recordkeeping; and create performance and consistency measures.</p>	Concur
31	184	Yes	<p>Commission management improve permitting controls; comply with statute and timely render permitting decisions; develop comprehensive rules; and seek amendment to statute to allow multiyear permits.</p> <p>Division management improve permitting processes; comply with statute and rules; develop permitting timeliness, consistency, and disciplinary processes in SOPs; collect reliable data; and monitor and periodically report on compliance with requirements.</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
32	189	Yes	<p>Commission management optimize Program profitability; amend rules to require adequate data be submitted; evaluate whether directly shipped products are offered in State liquor stores; restrict direct shipment of products sold in State liquor stores; and seek amendment to statute to allow direct shippers to file taxes annually and change rules to reflect revised statute.</p> <p>Division management optimize Program profitability; develop strategy and plans; automate control processes; discontinue monthly requirements that are not cost effective; develop and implement SOPs; require all carriers provide monthly reports; and ensure all taxes are filed and examined.</p>	Concur
33	194	No	<p>Commission management improve examination controls, ensure examinations efficiently and effectively achieve expected outcomes, and develop and implement rules covering all examination activities.</p> <p>Division management improve examination-related controls; include examinations in strategy and plans; develop related goals, objectives, and targets; implement SOPs compliant with statute and rules; ensure recordkeeping practices comply with statute; tie employee performance to examination goals, objectives, and targets; and periodically report on performance.</p>	Concur
34	199	No	<p>Division management ensure examination practices ensure proper control of alcoholic beverages; include examination priorities, frequency, and requirements into strategy and plans; ensure all license types comply with examination-related statutory and regulatory requirements; comply with recordkeeping requirements; and develop and implement SOPs.</p>	Concur
35	203	Yes	<p>Commission management determine whether product, packaging, and container approvals contributed to achieving expected outcomes; seek</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
35 (Continued)	203	Yes	<p>legislative changes to remove insufficiently beneficial requirements from statute and remove related requirements from Division practice; seek legislative changes to add consistency to beneficial requirements; rationalize and combine duplicative processes; require all alcoholic beverages undergo approvals; require fees for all approvals or eliminate beer festival registration fees; and implement related rules.</p> <p>Division management improve controls of product, package, and container approvals; develop strategy and plans; ensure processes comply with statute and rules; and implement compliant SOPs.</p>	
36	209	Yes	<p>Commission management optimize examination function profitability; assess risks; seek amendment to statute to eliminate unenforced requirements and adjust the beverage tax rate; monitor and regularly report on revenues; develop risk-based rules; remove unenforced requirements from rules requirements; change tax filing dates to correspond to other Commission and State tax filing dates; and consider whether other State agencies could more efficiently collect alcoholic beverage-related taxes instead of developing a Commission-unique online tax collection system.</p> <p>Division management optimize examination function profitability; automate licensee tax filing, payment, and examining processes; discontinue monthly filing requirements and migrate smaller entities to less frequent filings and examinations; and develop policies and procedures to provide quality control of examinations.</p>	Concur In Part
37	219	No	<p>Commission management improve enforcement controls; monitor enforcement operations to ensure expected outcomes are achieved; and develop comprehensive enforcement rules.</p> <p>Division management improve enforcement controls; demonstrate enforcement operations</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
37 (Continued)	219	No	achieve expected outcomes; develop goals, objectives, and targets tied to expected outcomes; develop comprehensive SOPs; measure performance; manage data and employee performance; and periodically report on performance.	
38	226	Yes	<p>We suggest the Legislature institutionalize the receipt and processing of quarterly reports on Division extra-jurisdictional enforcement activities.</p> <p>The Commission revise rules to accommodate activities that are within the scope of <i>Alcoholic Beverages</i> and demonstrated to be cost effective.</p> <p>Division management constrain enforcement activity to that allowed by statute and rule; migrate extra-jurisdictional activities to a law enforcement agency; implement comprehensive controls properly constrained to reflect the Division’s role as a regulatory agency; refine SOPs covering all enforcement activity to ensure compliance with rule; refine performance measures; and develop, implement, monitor, and refine a system to monitor extra-jurisdictional activity and quarterly report to the Legislature.</p>	Concur In Part
39	233	No	<p>Commission management revise rules to reflect all requirements and procedures available for training, education, and outreach efforts found to be cost-beneficial and produce expected outcomes.</p> <p>Division management improve control of extra-jurisdictional training, education, and outreach efforts; divest from training, education, and outreach efforts not found to be cost-beneficial and produce expected outcomes; include all retained efforts in strategy and plans; measure effectiveness; develop and implement comprehensive SOPs; optimize efficiency and effectiveness; consider establishing training for direct shipper permittees and carriers; and comply with statute, rule, and SOPs.</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
40	237	No	<p>Commission management implement comprehensive, risk-based rules to detect and control unlicensed and unpermitted activity.</p> <p>Division management improve controls over unlicensed and unpermitted activity; assess the risk of unlicensed and unpermitted activity; facilitate rule development; monitor for and prevent unlicensed and unpermitted activity; remedy noncompliance and levy sanctions; implement SOPs to implement rules; undertake comprehensive outreach; and improve knowledge management systems to ensure unlicensed and unpermitted activity is prevented, identified, investigated, sanctioned, and discontinued.</p>	Concur
41	241	Yes	<p>Commission management develop controls, a holistic strategy, and rules addressing adulteration and misbranding. If rationalization of requirements is not possible through rules, seek necessary legislative changes to control adulteration and misbranding.</p> <p>Division management improve control over adulteration and misbranding; develop a strategy and plans; rationalize all package, container, and product approval requirements in statute with adulteration and misbranding requirements in rules and practice; determine which substances, licensees, and permittees should be subject to such requirements; develop and implement goals, objectives, targets, and performance measures; and develop SOPs.</p>	Concur
42	245	No	<p>Commission develop comprehensive premises inspection rules.</p> <p>Division management improve premises inspection controls; regularly conduct premises inspections of all licensees; conduct risk assessments to inform premises inspections; develop and implement performance goals, objectives, and targets; develop comprehensive, risk-based, SOPs; refine, implement, and monitor</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
42 (Continued)	245	No	performance standards; rationalize investigators and examiners duties; improve data entry procedures; undertake comprehensive data collection; and monitor and report on performance.	
43	256	No	Commission management develop comprehensive compliance check rules. Division management ensure compliance checks assure proper control; conduct risk assessments to inform compliance checks; include compliance checks in strategies and plans; develop and implement goals, objectives, targets, and performance measures over compliance check processes; implement rule compliant SOPs; measure performance; and standardize compliance check data entry.	Concur
44	261	No	Commission management develop and implement complaint-related rules. Division management improve complaint management, develop and implement a rule-compliant SOP, incorporate complaint data into intelligence production, timely investigate complaints, and publicly report on complaint resolution.	Concur
45	266	No	Commission management improve the investigative and sanctions framework; develop a comprehensive, risk-based enforcement policy; establish specific determinate penalties; clarify what sanctions require Commission approval; monitor practice to ensure proper rule implementation; assign points to all violations or consider abandoning the concept; and monitor performance and ensure consistency. Division management ensure proper investigation and prosecution of noncompliance; follow statute and rules; discontinue ad hoc rulemaking; develop and implement comprehensive SOPs; measure performance and ensure consistency; and consolidate and streamline information systems.	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
46	273	No	<p>Commission comply with statute and develop comprehensive rules regulating the mode and manner of all investigations.</p> <p>Division management improve investigative controls; develop and implement comprehensive, rule-compliant SOPs; develop goals, objectives, targets, and performance measures; rationalize investigative activities; ensure all noncompliance identified is referred to investigators; ensure timely investigations; and consolidate disparate information systems.</p>	Concur
47	283	No	<p>Commission management develop a control system to ensure sanctions are consistently issued.</p> <p>Division management improve sanctions-related processes, ensure investigators are the Commission’s sanctioning agents, discontinue the practice of non-investigators issuing sanctions, develop and implement comprehensive SOPs, measure performance, evaluate whether sanctions achieve outcomes and are levied consistently, create a single licensee record, and control data quality.</p>	Concur In Part

STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING

CHAPTER ONE
MANAGEMENT

Following the repeal of national prohibition, the Legislature created the Liquor Control Commission in calendar year (CY) 1933 to control the manufacture, distribution, and sale of certain alcoholic beverages in the State. In CY 1934, the Legislature changed the agency's name to the State Liquor Commission (Commission), added liquor to its regulatory purview, provided for the creation of State-run liquor stores, required all wine and liquor sold in the State to first be purchased from the State, and allowed the Commission to employ special agents to conduct investigations into, and make complaints for, violations of State liquor laws. Subsequently, statutes were repealed and recodified, and by CY 1990 they formed the basis of the State's current system of control over alcoholic beverages. In CY 1997, the Commission was assigned responsibility for the regulation of tobacco sales and enforcement of related laws, which was expanded to include the regulation of vaping in CY 2020. Enforcement of alcoholic beverage laws and rules was primarily the responsibility of the Division of Enforcement and Licensing (Division), created in its current organizational form in CY 2009. The Commission's and Division's four primary statutory duties, and expected outcomes, were to:

- optimize profitability,
- maintain proper control,
- effectively and efficiently operate, and
- provide service to customers.

Management Control

Designing, implementing, monitoring, and refining an efficient and effective system of complimentary, cooperating controls could have helped the Commission and Division achieve expected outcomes. Management control is a process that can help an organization achieve its objectives and attain outcomes. It is made up of various systems and subsystems: 1) designed to efficiently and effectively control practices and 2) integrated to cooperate with other controls. Elements of management control include plans, policies, and procedures designed to:

- meet organizational goals, objectives, and targets;
- control risk;
- ensure agency compliance with laws, rules, and other requirements;
- organize, direct, and control operations;
- establish expectations of employee conduct and performance; and
- measure, monitor, continuously improve, and report on performance.

Supporting control systems and subsystems are interrelated and interconnected, underpinning all operations, including:

- an effective operating environment and organizational culture, as we discuss in Observation No. 1;

- strategic management, the process of developing, implementing, monitoring, and refining strategies, plans, goals, objectives, and targets to guide operations, which we discuss in Observation No. 2;
- risk management, the process of identifying, assessing, and mitigating risks that could interfere with achieving outcomes, which we primarily discuss in Observation No. 3;
- compliance management, the process of ensuring compliance with statutory, regulatory, and policy requirements, which we primarily discuss in Observation Nos. 6 through 9;
- performance management, the process of managing organizational and personnel performance to objectively demonstrate operations achieved expected outcomes, which we primarily discuss in Observation Nos. 10 through 13; and
- knowledge management, the process of managing information and ensuring transparency, which we primarily discuss in Observation Nos. 14 through 17.

The Division was responsible for ensuring expected Commission outcomes were achieved, and to do so relied upon four primary functions:

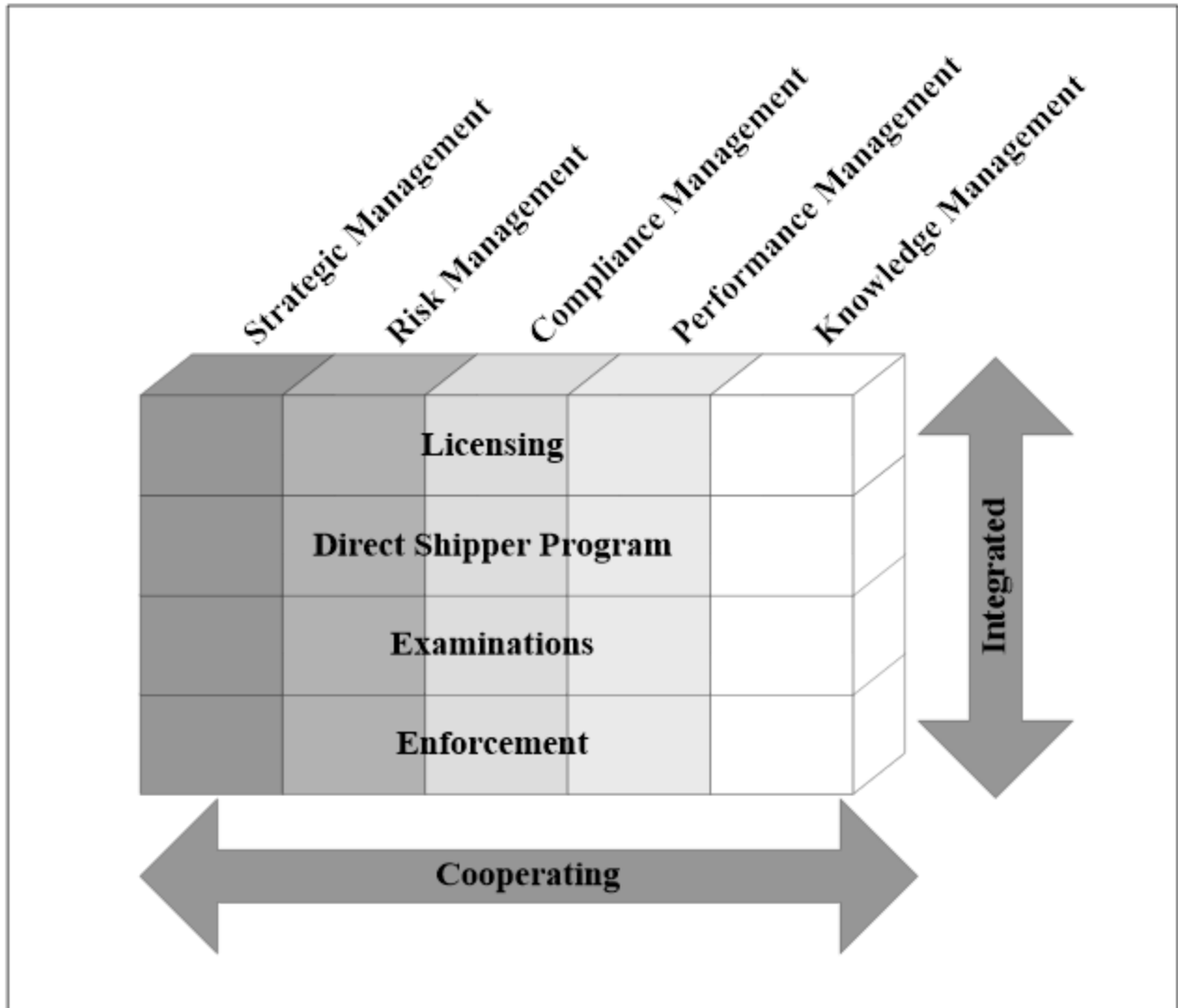
- licensing, to ensure entities were properly licensed and relevant requirements were followed, which we discuss in Chapter 2;
- the Direct Shipper Program, to ensure direct shippers were properly permitted and relevant requirements were followed, which we discuss in Chapter 3;
- examinations, to conduct tax and compliance examinations of licensees to ensure relevant requirements were followed, which we discuss in Chapter 4; and
- enforcement, to monitor compliance with relevant requirements, investigate potential noncompliance, and recommend sanctions, which we primarily discuss in Chapter 5.

To operate efficiently and effectively, these functions relied upon the integration of Division-wide controls and supporting systems and subsystems at the Division, bureau, section, and sub-section levels, as shown in Figure 1. If controls and supporting systems, subsystems, or processes were absent, ignored, poorly designed, incomplete, inconsistently implemented, unmonitored, or unrefined, then efficiency and effectiveness could have been compromised.

Division functions encompassed the lifecycle of an entity engaged in the manufacture, sale, distribution, or service of alcoholic beverages. The Division's licensing and permitting functions were typically the first elements of the Commission a prospective licensee or permittee encountered. The Division's enforcement functions could possibly be the last function encountered if action against a noncompliant licensee or permittee was undertaken. In between, a licensee or permittee would contact the Division to receive training; apply to renew licenses or permits; pay taxes; be subjected to examinations, compliance checks, and premises inspections; and receive sanctions short of license revocation when warranted.

Figure 1

System Of Management Control



Note: Depicts an optimized system of control; Division controls did not fit this model during the audit period.

Source: LBA analysis of management control principles and Division functions.

Maturity Of Management Controls

Division control systems were amenable to the application of a maturity model to help assess how efficiently and effectively controls were developed, implemented, monitored, and refined. The maturity model we applied consisted of six levels, from least to most mature:

- **Undeveloped** – the need for controls was not recognized or controls were absent;

- **Initial** – the need for controls was recognized, but controls were improvised, informal, incomplete, and unmonitored;
- **Repeatable** – formal controls were developed, but were inconsistently implemented and reliant upon high-performing individuals to successfully operate;
- **Established** – comprehensive and consistently implemented controls were in place, and were more reliant on operating processes than high-performing individuals;
- **Managed** – data-informed controls were implemented, monitored, and evaluated; and
- **Optimized** – holistic, continuously monitored, evaluated, and improved controls demonstrated outcomes were achieved.

Additional information on the maturity model is contained in Appendix A.

Understanding maturity of Division management controls can help the public, the Legislature, the Commission, and the Division assess the work potentially needed to optimize Division performance. Elements of management control systems were, at times, absent, ineffectively designed, inconsistently implemented, and unmonitored. Many deficiencies persisted, some for over a decade, despite long-standing related statutory and regulatory requirements, relevant findings in external audits, and, in some cases, management awareness. Many were related to basic management controls with long-standing statutory underpinnings which should have been more mature.

As shown in Table 1, overall, the Commission and Division management control systems and subsystems we distinguished and evaluated, and are encompassed in the report's 47 observations, were at an undeveloped level of maturity. Control systems and subsystems in 22 observations (46.8 percent) were at an initial level of maturity. The systems and subsystems in 25 observations (53.2 percent) were undeveloped. While the Commission and Division developed various elements of control systems, like rules, standard operating procedures (SOP), and practices, management did not coherently design or systematically and consistently implement, operate, monitor, integrate, and refine controls. These activities were essential to increase control maturity. Overall, management control was insufficiently focused on outcomes.

In CY 2014, the Division was accredited by a national nonprofit commission under law enforcement agency standards. Although third-party accreditation was subsequently discontinued, current management reportedly planned to again seek law enforcement agency accreditation in CY 2021. Accreditation could help the Division design, implement, monitor, and refine control systems and subsystems if such a framework was designed to optimally achieve expected outcomes. However, given the lack of any demonstration of outcomes, coupled with an established over-focus on tactical risk arising from sworn employee operations at the expense of addressing risks arising from unsworn employee operations, accreditation alone would not ensure outcome achievement, as we discuss principally in Observation Nos. 1 and 2.

Table 1

Maturity Of Division Control Systems As Of June 2019

Control System	Level Of Maturity
Strategic Management And Planning	Undeveloped
Risk Management	Undeveloped
Compliance Management	Undeveloped
Performance Management	Initial
Knowledge Management	Undeveloped

Source: LBA analysis of Division control system maturity.

Managing The Operating Environment And Organizational Culture

A well-designed system of control that was monitored and measured for effectiveness, and refined when deficiencies were identified or changes occurred, could have helped the Commission and Division efficiently and effectively comply with statute and rule, ensure proper control, optimize profitability, and provide good customer service. However, the Division's operating environment and organizational culture accommodated undeveloped and immature control systems and subsystems, lacking an effective Commission internal audit function or other formal controls to monitor, evaluate, and refine control efficiency and effectiveness. Elements of management control were, at times, absent, ineffectively designed, inconsistently implemented, and unmonitored, allowing known deficiencies to persist or reemerge. Some long-standing, unresolved deficiencies resulted in abuse and waste. Some controls and corresponding actions were unauditable because they were poorly documented and data quality issues compelled us to qualify our use of, and our conclusions resting on, Division records. Overall, the Commission's and Division's management control system was undeveloped.

Observation No. 1**Improve The Operating Environment And Organizational Culture**

The Commission and Division lacked an effective management control system to help ensure Division outcomes were achieved. They lacked an operating environment and organizational culture conducive to the development, implementation, monitoring, and refinement of effective management controls and complimentary systems and subsystems. There was no apparent design to Division management control. Underpinning strategic, risk, compliance, performance, and knowledge management controls were undeveloped or immature. Division licensing, Direct Shipper Program, examination, and enforcement functions were inconsistently efficient and effective in achieving expected outcomes, as we discuss throughout Chapters 2, 3, 4, and 5. Instead, uncontrolled practices and known control deficiencies, noncompliance, ad hoc rulemaking, and inefficiencies, were accommodated. In some cases, control defects were noted in prior audits over several years, but typically remained unresolved or were not durably resolved, allowing inefficiency and ineffectiveness to persist or reemerge. While the Division reportedly

engaged in 22 initiatives to improve various processes, control defects continued during the audit period.

Inadequate Operating Environment And Organizational Culture

The Commission's controls over Division operations, and the Commission's and Division's operating environment and organizational culture were inadequate to ensure the management control system was effective. The Commission lacked:

- an identifiable approach to controlling Division operations;
- an identifiable design to existing controls;
- active operation of key existing controls;
- SOPs integrated with Division controls;
- an internal audit function and reporting system to monitor and measure Division performance; and
- systematic refinement of existing controls.

The Division's system of management control to implement Commission controls depended upon an operating environment and organizational culture conducive to effective management control. Management should demonstrate a commitment to ethical behavior, efficiency, effectiveness, and compliance with statute and rules, and establish controls to ensure employees carry out these objectives. However:

- Commission management inadequately controlled Division operations, contributing to undeveloped and immature control systems that were unmonitored and unmeasured, and consequently Division culture was fungible and significantly affected by individual directors' management approaches;
- the Division's mission was ambiguous, leading to inconsistency in how the Division operated, and Division management focused on tactical risk arising from sworn employee operations at the expense of unity of effort and effectively managing unsworn employee operations, as we discuss in Observation Nos. 2 and 9;
- management was overly focused on third-party accreditation under law enforcement agency standards as its approach to ensure management control, even though accreditation was not deliberately or explicitly tied to statutory or regulatory outcomes, accreditation was not objectively demonstrated to effectively achieve control objectives within the Division's operating environment and considering its status as a regulatory agency, and the Division was not accredited during the audit period, as we discuss in Observation No. 2;
- the operating environment accommodated waste of public resources by not resolving, or not durably resolving, prior audit findings identifying numerous control deficiencies, some identified over a decade ago and in multiple audits, as we discuss in Observation No. 4;
- the operating environment accommodated abusive practices by allowing Division functions to rely upon an overly complex statutory and regulatory framework and known application of ad hoc rules, as we discuss particularly in Observation Nos. 6 and 7;

- Division SOPs were sworn staff focused and at times incomplete, unimplemented, and inconsistently followed, with many ignored upon the ending of accreditation and without substitute means of management control implemented, as we discuss particularly in Observation No. 8;
- the operating environment accommodated some processes and practices that were altogether uncontrolled by SOPs, and some supervisors and employees reported not seeing a need to formally standardize practices or follow SOPs;
- the Division SOP on ethics, which included requirements for annual ethics training and attestations by employees, was inoperative during the audit period, discontinued upon the ending of accreditation, as we discuss in Observation No. 13;
- limitations on the Division's enforcement jurisdiction established in statute and rule were regularly exceeded, with and without management's approval and underpinning SOPs, and attributed to individual exercise of "discretion," as we discuss in Observation Nos. 38, 45, 46, and 47;
- the operating environment accommodated improper control by knowingly and unknowingly allowing pack and ship (P&S) entities and other unpermitted and unlicensed entities to possess and transfer alcoholic beverages within the State, contrary to statute, or transfer amounts in excess of statutory limitations;
- the operating environment accommodated wasteful practices by knowingly and unknowingly allowing employees to engage in excessive, inefficient, extra-jurisdictional, and ineffective practices, at times with the purpose to meet numeric output quotas and not to achieve expected outcomes; and
- management and staff inconsistently cooperated with requests by external oversight entities, including not developing and providing reports to the Legislature on extra-jurisdictional activity and inconsistently responding to audit requests.

Undeveloped And Immature Control Systems

The Division's operating environment and organizational culture accommodated undeveloped and immature control systems and subsystems that led to a variety of adverse consequences.

- Strategic management controls lacked an effective design and formal, systematic strategies, plans, goals, objectives, and targets to guide Commission and Division operations. Consequently, some expected outcomes were not a Division focus while other expected outcomes were inconsistently achieved, compliance was inconsistently ensured, and resources were wasted, as we discuss in Observation No. 2.
- Risk management controls were ineffectively designed, unimplemented, and unmonitored due to a lack of formal, systematic risk identification, assessment, and management, leaving processes and practices without objective risk bases. Systematic risk management could have helped Division operations focus on efficiently and effectively achieving outcomes and resolving prior audit findings. Instead, Division operations subjectively focused on tactical risk arising from sworn employee operations, as we discuss primarily in Observation No. 3, and employees exercised undue discretion when determining what, where, and how they would monitor for, investigate, and sanction noncompliance.

- Compliance management controls lacked a discernable design; formal, systematic processes to ensure Division compliance with statutes, rules, and SOPs; and monitoring to ensure statutes, rules, and SOPs were consistent and cooperated to achieve outcomes. The Division's organizational structure was informal and noncompliant with rules. Consequently, the statutory and regulatory framework was overly complex; operations relied upon ad hoc rules at times; numerous SOPs were incomplete, unimplemented, or inconsistently followed; and the organizational structure was ineffective to meet Division expected outcomes, as we discuss in Observation Nos. 6 through 9. The Division monitoring for and sanctioning noncompliance, while not ensuring its own compliance with statute and rule, was incongruous.
- Performance measurement efforts lacked systematic connection to outcomes, instead monitoring limited subsets of outputs. Output measurement centered on quantifying how many times a task was accomplished, not whether the right task was accomplished, how well it was accomplished, or whether outcomes were achieved. Organizational and personnel performance was also not tied to achieving expected outcomes, and personnel performance was not tied to organizational performance, as we discuss in Observation Nos. 10 through 13.
- Knowledge management controls were ineffectively designed and lacked formal controls to ensure information was collected, recorded, synthesized, and analyzed to produce, report, and use knowledge effectively. Internal and external communications were incomplete and inadequate. The quality and completeness of records was ineffectively managed. Information technology (IT) systems were not optimized or effectively controlled, as we discuss in Observation Nos. 14 through 17. Lack of controls over knowledge management, particularly the lack of knowledge to inform decisions, accommodated bias in employee decision-making, compromising transparency.

Division Functions

Control systems and subsystems underpinning Division functions were poorly designed and immature as shown in Table 2, leading to inefficiency, ineffectiveness, and inconsistency. Undeveloped control systems and subsystems underpinning licensing, the Direct Shipper Program, and examinations were primarily due to:

- a lack of management focus,
- a lack of risk-based strategies and plans,
- reliance on ad hoc rules,
- a lack of formal SOPs,
- inadequate and incomplete performance measurement, and
- unoptimized and uncontrolled knowledge management.

Control systems and subsystems underpinning enforcement had similar deficiencies but were at an initial level of maturity largely due to having a more mature SOP, communication, and supervision construct; narrower spans of control; and increased managerial and supervisory

guidance. Dissimilar maturity levels and control deficiencies for unsworn employee processes compared to sworn employee processes illustrated some effect of management's over-focus on sworn employee operations within its control systems. The lack of an effective internal audit function and other potentially compensating controls also contributed to the absence or immaturity of controls. Outsourcing evaluation of aspects of management's controls to third-party accreditation as planned further underscored an over-focus on general law enforcement operations rather than achieving statutorily expected outcomes.

Table 2

Maturity Of Controls Underlying Division Functions As Of June 2019

Functions	Maturity Of Controls
Licensing	Undeveloped
Direct Shipper Program	Undeveloped
Examinations	Undeveloped
Enforcement	Initial

Source: LBA analysis of Division function maturity.

The many effects of inadequate control systems varied by Division function.

- The ineffectively designed, inoperative, and undeveloped control systems underlying licensing were not systematically monitored, measured, and refined. This contributed to poor customer service due to longstanding, overly complex licensing processes; improper control through licensees operating on expired licenses and training requirements not being adequately monitored; and unoptimized profitability due to longstanding, inefficient practices, as we discuss in Chapter 2.
- Ineffectively designed, inoperative, and undeveloped control systems underlying the Direct Shipper Program were not systematically monitored, measured, and refined. This contributed to improper control through illegal shipments, unoptimized profitability due to unverified direct shipments and tax payments, and poor customer service due to practices such as the Commission's improvised effort to deny retailer direct shippers from obtaining and renewing permits, as we discuss in Chapter 3.
- Ineffectively designed, inoperative, and undeveloped control systems underlying examinations were not systematically monitored, measured, and refined. This contributed to unoptimized profitability and poor customer service due to longstanding, unresolved inefficiencies related to beverage tax collection and contributed to improper control, due in part to licensees not being subjected to required examinations, as we discuss in Chapter 4.
- Control systems underlying enforcement were at an initial level of maturity, being ineffectively designed, inoperative, underdeveloped, and inconsistently monitored,

measured, and refined. Immature control systems contributed to improper control through, at times, inadequate, noncompliant, and incomplete compliance monitoring, complaint processing, premises inspections, compliance checks, investigations, and sanctions. Profitability was not optimized due to inefficiency and excessive, extra-jurisdictional, and ineffective enforcement activities, as we discuss in Chapter 5.

Recommendations:

We recommend Commission management improve the operating environment and organizational culture, and:

- **develop and maintain an operating environment and organizational culture supportive of effective management control;**
- **develop, implement, monitor, and refine strategy and plans to ensure effective management control over Division functions in the short term;**
- **conduct risk and cost-benefit or other analyses to determine the most efficient way to ensure effective management control over Division functions in the long term and develop, implement, monitor, and refine strategy and plans accordingly;**
- **ensure uncontrolled processes and practices upon which the Division depends are adequately controlled through comprehensive, clear rules and SOPs;**
- **ensure existing controls upon which the Division depends are reviewed to ensure they are effectively designed, operated, monitored, and refined to ensure effective control of Division operations;**
- **objectively determine whether obtaining third-party accreditation under law enforcement agency standards for a portion of the Division's activities will efficiently and effectively enhance Division-wide management controls and help ensure expected outcomes are achieved; and**
- **ensure Division management demonstrates the importance of controls through their own development of, and adherence to, controls and by timely addressing deviations.**

We recommend Division management improve the operating environment and organizational culture, and:

- **develop, implement, monitor, and refine an operating environment and organizational culture supportive of effective management control;**
- **develop, implement, monitor, and refine formal, comprehensive controls, compliant with statute, rules, and the Commission's framework;**
- **pursue third-party accreditation only if it is objectively demonstrated to be the most efficient means to implement, operate, and monitor an effective system of management control that produces expected outcomes;**
- **implement controls through comprehensive SOPs; and**
- **develop, implement, monitor, and refine strategy, plans, goals, objectives, and targets to ensure effective control and achievement of expected outcomes.**

Agency Response:

We concur.

The Commission recognizes the importance of effective control systems to achieve organizational objectives and manage risks. Hence, the Commission will create a formal Internal Audit and Compliance Unit to address the findings in this report as well as ensure regular, ongoing and objective assessments of Commission-wide processes and programs. The Commission will hire staff necessary to build out a fully functioning unit, which will be administered by a Chief Internal Audit and Compliance Officer, or similar position, under the guidance and leadership of the Chief Operating Officer. The new unit's first priority will be to conduct a risk assessment of the areas identified in this report and develop a plan for addressing each of the areas. The new unit will also be responsible for monitoring management's implementation of the mitigation measures and for ongoing review to continue to improve the efficiency and effectiveness of the agency's governance, risk management and control processes. In light of the comprehensiveness of the Commission's approach, it expects that it will require three to five years to systematically identify and implement measures to mitigate the risks associated with the LBA's observations.

The above Commission Response applies throughout the audit report where appropriate. At the request of the LBA auditors and for simplicity, it is not repeated for subsequent relevant recommendations.

Prior to this audit commencing, the Division had already identified numerous areas and processes in need of improvement and then brought these to the attention of the auditors. Remediation of a number of these recommendations was complete or underway prior to the publication of this report.

The Division will continue to work to obtain accreditation through the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA®). CALEA® standards and accreditation recognition will support the Division with standardizing its policies and creating a comprehensive control framework. Moreover, its accreditation provides objective evidence of an agency's commitment to excellence in leadership, resource management, and service-delivery, which promotes confidence in the agency's ability to operate efficiently and meet community needs.

LBA Comment:

“CALEA®” referenced in Commission responses is synonymous to our references to “third-party accreditation” throughout our report.

No objective demonstration of how third-party accreditation will address risks arising from unsworn employee operations, how efficiently and effectively accreditation will accomplish desired results Division-wide, or why third-party accreditation will be necessary along with a revised internal audit and compliance function, was provided. Effective controls could be developed without third-party accreditation.

The Commission’s proposed internal audit and compliance function and the Division’s third-party accreditation could help provide management with assurances about the operation of controls, but neither is an effective means of implementing change. The recommendations we made will have to be implemented by Commission and Division management, not by an internal audit and compliance function or third-party accreditors.

Managing Strategy And Plans

Strategy and planning were integral to effective management control and should have served as the foundation for risk management, performance measurement, and demonstration of outcomes. Strategic management includes the plans, methods, policies, and procedures used to accomplish the Division’s mission, implement its strategic plan, and set and achieve goals, objectives, and targets. The control systems and subsystems that underpinned Division operations were developed and managed by the Commission, Division, and components of the Division. Some systems and subsystems were also affected by external entities. The Legislature established expectations for Division performance and operation summarized in the Commission’s four primary duties. The Governor’s Commission on Alcohol and Drug Abuse Prevention, Intervention, and Treatment (Governor’s Commission) set strategy related to aspects of public safety and health. The Office of Highway Safety, within the Department of Safety, set State highway safety strategy.

While management indicated an intent to make operational changes to improve efficiency and effectiveness, there were no formal plans to do so. Management’s system of control over strategic management and planning was undeveloped.

Observation No. 2

Improve Controls Over Strategic Management And Planning

The Commission and Division did not strategically plan and manage operations to produce expected outcomes, lacking necessary strategies, plans, goals, objectives, targets, procedures, and initiatives. The Commission was responsible for efficiently and effectively optimizing profitability of a \$729 million dollar enterprise as of CY 2019; ensuring proper control of alcoholic beverages, including compliance monitoring of 6,866 licensees and permittees; and providing good customer service to a wide variety of stakeholders, including licensees and permittees, industry and interest groups, consumers, and the general public. However, it lacked a formal, comprehensive strategy and implementing plans to achieve expected outcomes. The Division, in turn, did not develop complementary strategies and operational plans to achieve expected outcomes. The Commission and Division also lacked complimentary strategies and implementing plans for achieving outcomes supporting overarching State strategies, such as those related to public health and highway safety. Lacking necessary strategies and plans, the Commission and Division purportedly depended on improvised discussions and meetings to guide operations, increasing the risk that expected outcomes would not be achieved.

No Strategy And Inadequate Or Inconsistently Followed SOPs

The Commission lacked a strategy and implementing plans to inform Division operations and lacked SOPs to guide Division strategic management and planning. In practice, Commission and Division planning was improvised, disconnected, and inconsistent. For the Division to achieve outcomes, Commission management first needed to develop a Commission-wide strategy that identified a mission, goals, objectives, and targets focused on expected outcomes and a resourced, time-phased plan designed to achieve these expected outcomes. Division management was responsible for developing a supporting Division-specific strategy and resourced, time-phased strategic and operational plans to control how the Division would accomplish Commission and Division goals, objectives, and targets. Division plans should:

- reflect external compliance requirements;
- have performance measures;
- be implemented timely, efficiently, and effectively;
- be broadly understood by employees and key stakeholders;
- be tied to employee performance;
- be routinely monitored, measured, and updated; and
- be adequately resourced.

However, no Commission SOP dealt with planning, including when and how plans should be made and how they should be implemented, monitored, and evaluated for effectiveness. We have identified inadequacies in Commission planning and other strategy management controls since CY 1994, but the Commission lacked a strategic plan governing the audit period. The last drafted Commission strategy-like publication appeared to be an internal business plan, which reportedly covered CYs 2011-2015. The document included goals and summarized plans for the Division, some with indirect ties to proper control, profitability optimization, and provision of good customer service. However, the document was obsolete, underpinned by dated information such as population statistics from between CYs 1980 and 1996, licensee and permittee totals from between CYs 1998 and 2002, Commission employee totals from CY 2002, and budget data from CY 2003. The document was also based on the prior organizational structure of three commissioners. We found no indication the plans summarized in the document were implemented as Commission and Division management made no mention of the document during discussions regarding strategic management and planning.

Relevant Division SOPs were incomplete and inconsistently followed, and no strategy or implementing plans were developed. The Division, as part of its effort to obtain third-party accreditation, published an SOP that required development of three-year plans that included long-term goals and objectives, as well as projections of future workload and personnel needs. Another SOP required the annual preparation of Division goals and objectives that would be used to evaluate Division and component elements' performance. Supervisors were required to prepare section goals and objectives, using them as benchmarks to evaluate personnel performance through annual personnel evaluations. The Field Operations Bureau administrator was also responsible for developing a bureau "strategy for long range plans and short-term goals."

Regardless, the Division lacked formal strategies and plans. Management indicated the Division had some formal goals, but the only documented goal for CYs 2018-2019 was to re-attain third-party accreditation under law enforcement agency standards. No Commission-level goals were mentioned by Division management. Management did not tie accreditation to a Commission goal, objective, or an expected statutory outcome. SOP-required multiyear planning was apparently curtailed when the Division previously ended accreditation in CY 2014, and subsequently requirements for annual goal, objective, and target setting were inconsistently followed and not formalized. Multiyear output goals for the Field Operations Bureau, special investigations, Criminal Intelligence Unit (CIU), equipment and inventory control, and training were drafted in CY 2013, but never signed, approved, or implemented, as were CY 2017 examination output goals and undated licensing output goals. All were task-focused, in any case, and none were documented for the audit period or pertained to other subunits or functions. Some supervisors purportedly developed section-level goals during the audit period, but these were not formalized to facilitate performance evaluation. Instead of creating plans, Division management purportedly discussed strategy and goals in meetings without any documentation of such taking place, although the Division did, on request, produce a summary of 22 largely task-oriented initiatives reportedly undertaken during the audit period. Some tactical plans specific to individual community events, such as Bike Week, were documented. Tactical plans, where created, were focused on allocation of investigators and lacked objective connections to expected outcomes.

Lack Of Connection To Stakeholder Needs And Statewide Strategies

Strategic management and planning efforts inadequately incorporated stakeholders. The Division had strategic partners inside and outside State government, but Division and strategic partner efforts were not integrated by strategies and plans. The Division did not systematically obtain stakeholder feedback and make operational changes to continuously improve customer service and achieve relevant outcomes, as we discuss in Observation No. 12. The Division did not develop strategies and implementing plans to complement the numerous statewide public safety and health strategies active during the audit period that were directly or indirectly reliant on the Division achieving expected outcomes, increasing the risk that statewide goals, objectives, targets, and outcomes would not be achieved. External strategy performance targets and measures, where established, were not incorporated into a formal Division performance management system, limiting demonstration that Division operations contributed to meeting statewide objectives and achieving expected outcomes. Further, there was no demonstration that Division practices could achieve the outcomes purportedly associated with Division operations, or how or how much practices might have contributed to achieving outcomes.

- The Governor's Commission, of which the Commission was a member, published a CY 2013-2017 strategy, which included a goal to reduce the percentage of residents misusing alcoholic beverages. The Commission committed to continue and expand public education messages, make available materials on alcoholic beverage misuse, continue extra-jurisdictional Drug Recognition Expert (DRE) and Advanced Roadside Impairment Detection Enforcement activities, provide sobriety checkpoint data on where impaired drivers obtained the alcoholic beverages they consumed, assist with sobriety checkpoints, and monitor compliance with liquor laws. The strategy's CY 2019-2021 update included goals to, by CY 2021: 1) decrease by 15 percent the

number of alcohol-induced deaths, 2) reduce by 10 percent the number of alcoholic beverages misuse emergency medical services cases, and 3) decrease by 2.5 percent the portion of residents ages 12 and older who reported the binge consumption of alcoholic beverages. Though some Division training, education, and enforcement efforts were seemingly directly or indirectly related to its commitments to the Governor's Commission, the Governor's Commission and its overarching goals to reduce alcoholic beverage misuse by CY 2021 were not mentioned in Division plans, in SOPs, or by Commission or Division management.

- The New Hampshire Driving Toward Zero Coalition, of which the Commission was a member, published a CY 2017-2021 strategy with a goal of reducing traffic fatalities and injuries by 50 percent between CYs 2010 and 2030. The strategy included indicators to evaluate performance, such as increasing the number of sobriety checkpoints and DRE patrols, decreasing the number of fatal crashes involving an impaired driver, and identifying the location of the last alcoholic beverage obtained by those arrested for driving under the influence (DUI). Though some Division enforcement efforts were seemingly directly or indirectly related to these goals, there was no mention of the goal to reduce traffic fatalities and injuries by CY 2030 in Division plans or SOPs, or by Commission and Division management. Results of a grant-funded effort to determine where individuals found to be driving under the influence had last obtained alcoholic beverages showed: 24 of 45 individuals (53.3 percent) who took the survey in CY 2017 and 11 of 31 individuals (35.5 percent) who took the survey in CY 2018 obtained their alcoholic beverages from a licensee. However, the Division did not incorporate follow-up into strategy and SOPs and enforcement data did not indicate implicated licensees received follow-up inspections or enforcement action. This effort was discontinued during the audit period when the grant ended, curtailing an activity tied to a statewide strategy that, if effectively done, could have potentially helped the Division ensure proper control.
- The Division of Public Health Services, within the Department of Health and Human Services, published a CY 2013-2020 strategy, which included a goal to reduce binge drinking and listed alcoholic beverage misuse as one of ten priority areas. The Division was listed as a partner in efforts to prevent underage access to alcoholic beverages. Though Division training and enforcement efforts were directly or indirectly related to the goal and priority, there was no systematic mention in Division plans, in SOPs, or by Commission and Division management of the Division of Public Health Services and its goal to reduce alcoholic beverage misuse.

Additionally, other agencies and organizations published data that potentially reflected aspects of Division proper control outcomes, but the Division did not tie strategies and plans to these data, collect these data, or systematically and objectively evaluate how Division operations affected expected outcomes reflected in these data, as we discuss in Observation Nos. 10, 14, and 15.

Inadequately Guided Operations

The Division lacked an adequately clear mission, formal strategies, and implementing plans to guide operations. Management instead focused on sworn employee tactical operations to the detriment of other Division functions, accommodating inefficiency, ineffectiveness, and inconsistency. A clear understanding of management's philosophy, agency mission, plans, goals, objectives, and targets was essential to help ensure consistent operation, particularly given the lack of an effective system of management control and SOPs, as we discuss in Observation Nos. 1 and 8, and the accommodation of substantial employee discretion in decisions affecting the public across all Division functions, as we discuss in Chapters 2 through 5.

Unclear Mission

The scope of the Division's mission was ambiguous, with conflicting boundaries articulated by management and in various SOPs and guides. Management's approach to the scope of its mission, including its enforcement philosophy, varied between directors when it should have been guided by strategy, effectuated by plans, objectively measured for effectiveness, and refined based on performance. One SOP established the Division's mission to:

- serve the State;
- fairly and impartially enforce the law;
- protect life;
- safeguard property;
- instill public confidence by maintaining a high degree of professionalism, dedication, and expertise;
- investigate liquor license applicants to ensure only proper persons are licensed;
- enforce *Alcoholic Beverages* and other laws and Commission rules; and
- function as the internal security arm of the Commission to prevent, investigate, and prosecute thefts and other crimes committed on Commission premises.

The scope of the Division's mission articulated by management was generally similar, but differed in some substantial ways. According to some managers, the Division's scope was to:

- oversee licensees and permittees and ensure they comply with statutes and rules,
- provide customer service to licensees and permittees, and
- provide guidance to licensees and permittees to keep them in business.

However, a member of Division management stated the Division's formal mission statement did not directly reflect statutory responsibilities, and we found Division employees engaged in extensive extra-jurisdictional enforcement activities, with or without management's knowledge and at times accommodated by SOPs, further compounding ambiguity surrounding the scope of the Division's mission. Purportedly, Division investigators had a sound understanding of the scope of the Division's mission, but feedback indicated sworn and unsworn employees did not. For instance, of the six investigators we surveyed or interviewed, two (33.3 percent) reported the Division's enforcement philosophy, an articulation by management on how the mission would be

carried out, was clearly articulated and four (66.7 percent) reported it was somewhat clearly articulated.

Inconsistently Clear Plans, Goals, Objectives, And Targets

Plans, goals, objectives, and targets were inconsistently clear. We interviewed seven supervisors, and when asked if their function was guided by plans, goals, objectives, and targets, four (57.1 percent) reported there were informal plans and goals communicated verbally through meetings; two (28.6 percent) reported there were no formal plans or goals; and one (14.3 percent) reported SOPs functioned as plans. Similarly, when the six investigators we surveyed or interviewed were asked how clear management's plans guiding field enforcement operations were, three (50.0 percent) reported *clear*, one (16.7 percent) reported *somewhat clear*, one (16.7 percent) reported *neither clear nor unclear*, and one (16.7 percent) reported *somewhat unclear*. Separately, Division employees reported there were no formal plans or goals, objectives, and targets to guide licensing, examinations, the Direct Shipper Program, training, or special investigations. The Division's analysts were to assist with knowledge management to inform strategic, operational, and tactical decision-making, and goal and target setting. These efforts were not articulated in any formal plans and predictive, analytically-informed operations were a desired future state with no resourced, time-phased implementation plan.

Tactical Rather Than Strategic Focus

Division strategic management was not holistic, and management tended to have a day-to-day tactical focus and an over emphasis on sworn employee operations. Without strategies and implementing plans; consistently and formally established goals, objectives, and targets; and structured performance management, Division management reportedly used periodic meetings to improvise strategic management efforts. However, management meetings were focused towards day-to-day operations rather than holistically on Division-wide activities, strategy, long-term planning, and achievement of expected outcomes. Management meetings also purportedly tapered-off during the audit period. Dominance of sworn employees in the Division's management structure, which we discuss in Observation Nos. 9 and 13, also increased the risk of overemphasizing sworn employee operations at the expense of understanding and addressing control deficiencies within unsworn employee operations and employing a holistic approach to achieving expected outcomes. Division management suggested increased focus was given to sworn employee operations during the audit period because of perceived higher risk, though no accompanying risk assessments were conducted to demonstrate this was the case, and the over-focus on sworn personnel operations was long-lived, predating the audit period, as we discuss in Observation No. 38.

Adverse Effects Of Inadequate Strategic Management

Inadequate strategic management adversely affected the Division's processes and control systems we examined, undermining achievement of expected outcomes. Expected outcomes did not frame Division controls.

- Neither the Commission nor the Division applied the statutory duty to optimize profitability to Division activities, leading to longstanding inefficiency and waste.
- The Division did not holistically approach proper control. Field enforcement activities carried out by sworn staff were generally viewed to be the means to achieve proper control, to the exclusion of proper control activities carried out by licensing, the Direct Shipper Program, examinations, and training staff.
- Good customer service was inconsistently defined and provided, partially due to a lack of a comprehensive strategy and implementing plans to ensure customer needs were holistically identified, understood, and integrated with operations, and services were satisfactorily rendered.
- Risk management controls were ineffectively designed and risk was not systematically managed through data-informed strategies, plans, goals, and objectives. This increased the risk of noncompliance and incomplete, inefficient, and ineffective achievement of expected outcomes, as we discuss in Observation No. 3. There was no system of control, strategy, or plans to ensure conditions leading to audit findings were durably remediated and related risks mitigated, allowing longstanding control deficiencies to persist and contributing to noncompliance, inefficiency, ineffectiveness, and wasted resources, as we discuss in Observation No. 4.
- Compliance management controls, strategies, or plans to systematically ensure operations complied with requirements of statute, rule, and SOPs were absent. This contributed to undue complexity in the regulatory framework; longstanding ad hoc rulemaking and abuse; incomplete and inconsistently followed SOPs; and Division noncompliance with laws, rules, and policies, as we discuss particularly in Observation Nos. 6, 7, and 8.
- Performance management controls were not systematic or holistic. This led to incomplete, inefficient, and ineffective performance management approaches; a lack of demonstration that resources allocated to Division processes would produce expected outcomes; and inconsistent, inefficient, and ineffective achievement of outcomes, as we discuss in Observation Nos. 10 through 13.
- Knowledge management controls were ineffectively designed and not disciplined by strategy and risk or systematically controlled, leading to incomplete, inefficient, and ineffective knowledge management and inconsistency, inefficiency, and ineffectiveness. There were no systematic stakeholder interactions on strategic directions and plans to achieve outcomes, contributing to issues with compliance and transparency; internal communication was inconsistently effective; records were ineffectively managed, at times incomplete and inconsistently underpinned by reliable data; and existing IT systems were unoptimized and lacked an overarching strategy, leading to development of improvised systems and waste, as we discuss in Observation Nos. 14 through 17.

- Licensing controls were ineffectively and inefficiently designed and managed, as we discuss in Chapter 2. Licensing-related laws, regulations, and processes were unduly complex; timeliness of license application processing was unmanaged; license renewal practices did not consistently ensure compliance, leading to improper control as some entities operated without a valid license; effectiveness of required training was not systematically evaluated, managed, or shown to achieve outcomes; and the Division did not implement multiyear licensing and made no effective efforts to simplify overly complex license practices, fee structures, and initial license durations.
- Direct Shipper Program controls were ineffectively designed and ineffectively and inefficiently managed, as we discuss in Chapter 3. The Commission and the Division did not know the amount or type of alcoholic beverages sent by direct shippers into New Hampshire, nor whether the necessary fees and taxes associated with shipments were collected; an unknown amount of alcoholic beverages were illegally shipped into New Hampshire; and the Commission embarked on an improvised strategy to deny retailer direct shipper permits, leading to inconsistent and improvised investigations, poor customer service, and inconsistent administrative sanctions.
- Examination controls were ineffectively designed and ineffectively and inefficiently managed, as we discuss in Chapter 4. Examiners were allowed to exercise undue discretion with premises inspections and examinations, including choosing who would be examined or inspected and how, without adequate oversight or guidance from rules or SOPs; the Division made improvised changes to examiner geographic assignments and examination frequency without underpinning workload or other analyses, leading to inefficiency and noncompliance, including required examinations not being completed; and the product, package, and container approval process was underpinned by ad hoc rules and the Commission and the Division did not know whether alcoholic beverages for sale were properly vetted and approved.
- Enforcement controls were ineffectively designed and ineffectively and inefficiently managed, as we discuss in Chapter 5. The Commission and the Division did not know whether alcoholic beverages were possessed or transferred only by licensed or permitted entities and were free from adulteration and misbranding; investigators, and sometimes examiners, were allowed to exercise undue discretion with jurisdictional and extra-jurisdictional enforcement activities, including premises inspections, compliance checks, investigations, and sanctions, without adequate management oversight; and investigations were conducted by unsworn employees and sanctions were levied by sworn and unsworn employees, contrary to statute and rule.

Recommendations:

We recommend Commission management improve strategy and planning, and:

- **develop a risk-based, data-informed strategy and supporting plans in concert with relevant strategic partners to ensure expected outcomes are achieved and related efforts harmonized statewide;**

- incorporate into the strategy and plans measurable goals, objectives, targets, and timelines for completion, assigning accountability to the Division or other relevant components of the Commission for implementation and performance;
- ensure the Division develops complimentary strategies and plans focused on achieving expected outcomes;
- incorporate the resolution of prior and current audit findings throughout strategy and plans;
- develop performance measures tied to strategies goals and plans, regularly and formally monitor performance, and refine strategy and plans as warranted; and
- periodically report publicly on performance and attainment of expected outcomes, goals, objectives, and targets.

We recommend Division management improve strategy and planning, and:

- develop a supporting strategy and plans to operationalize the Commission's strategy and plans;
- review, update, and fully implement SOPs related to strategy and plan development;
- ensure subordinate elements conform to strategies, plans, and SOPs;
- tie staff performance measures to organizational performance;
- monitor performance and refine strategies, plans, and SOPs; and
- periodically report publicly on performance and attainment of expected outcomes, goals, objectives, and targets.

Agency Response:

We concur.

Prior to this audit commencing, the Division had already identified numerous areas and processes in need of improvement and then brought these to the attention of the auditors. Remediation of a number of these recommendations was complete or underway prior to the publication of this report.

Managing Risk

Strategy and implementing plans should be risk-informed and systematically manage risks that could affect achievement of organizational objectives and expected outcomes. While management controls could not absolutely ensure organizational effectiveness, an effective risk management process was a core element of effective management control. Effective risk management included:

- establishing measurable goals, objectives, and targets defining what was to be achieved, who was to achieve it, how it would be achieved, and when it would be achieved;
- identifying risks that could hinder the achievement of objectives and outcomes;
- analyzing risks to determine potential exposure frequency and effect;

- defining measurable risk tolerances, or acceptable performance variations;
- implementing controls to mitigate, avoid, or accept risks;
- communicating risk-related responsibilities to managers responsible for implementing controls; and
- monitoring control effectiveness and performance, adjusting controls as needed to ensure continued effectiveness.

However, management's system of control over risk management was undeveloped.

Observation No. 3

Improve Controls Over Risk Management

The Commission and the Division lacked a coordinated, systematic approach to risk management, decreasing the likelihood strategic and operational objectives would be achieved. Commission and Division risk management-related policies were poorly designed, unintegrated, and inconsistently implemented. The Commission had not addressed deficiencies identified during four previous audits, dating to State fiscal year (SFY) 2006, in which we recommended implementing comprehensive risk management controls. Division controls were unstructured, lacking a formal risk management SOP to integrate with the Commission's SOPs, leading to qualitative intuition-based risk management practices that ineffectively managed the broad spectrum of the Division's internal and external risk exposures. Division risk management was overly focused on tactical risk associated with investigator field operations rather than all the Division's risks associated with achievement of outcomes related to its duties. Focus on tactical risks and a lack of holistic analysis meant management knowingly or unknowingly accepted risks associated with not achieving expected outcomes. Without a formal, objective risk assessment, there was no way to determine what risks Division practices were designed to mitigate. Without any cost-benefit or similar analysis, there was no way to determine whether practices efficiently mitigated risks.

Longstanding Incomplete, Unintegrated, And Inconsistent Risk Management

The Commission's inadequate approach to risk management has been recognized since CY 2006. In four prior audits, we recommended the Commission develop comprehensive risk management policies and procedures. The Commission concurred and developed two policies, one dealing with business risk assessment and the other dealing with internal security risks. However, controls can only be effective when developed, formalized, integrated, implemented, monitored, and refined to holistically produce expected outcomes. Commission and Division SOPs were unintegrated, inadequate to address risks inherent in the Commission's and Division's operating environments, and were inconsistently implemented and monitored. There was no connection between the Commission's internal security and strategic business risk assessment policies, or between the committees contemplated by these policies.

- The strategic business risk assessment policy included the formation of a risk assessment committee to annually, or more frequently if needed, develop a risk assessment report to identify external, operational, and information risks. The committee included the Commissioner, Deputy Commissioner, and Division of

Administration managers, but the Division of Enforcement and Licensing Director and representatives from the Commission's other subunits were excluded. Furthermore, the policy was unimplemented and there was no evidence the risk management committee functioned as prescribed, with only one risk assessment report published, in September 2017. The report did not identify any risks associated with achieving expected outcomes or risks related to Division operations, being focused instead on non-Division related commercial business risks.

- The internal security risk policy included the formation of a security committee. The committee was to meet quarterly as needed, and the Division was to conduct risk assessments and develop a comprehensive security and risk management program to protect Commission employees and assets. However, the policy was unimplemented, there were no documented meetings of the committee, and no risk assessment or other documentation was developed. The policy also focused on internal security considerations rather than expected outcomes, and allowed for extra-jurisdictional enforcement activity unrelated to licensees and permittees.
- At the Division level, though there were a number of SOPs with risk-related elements, no comprehensive risk management policies were created. Division SOPs, primarily developed in an effort to obtain third-party accreditation under law enforcement agency standards, mostly dealt with tactical risk rising from investigator field operations rather than more holistic risk considerations, such as achievement of expected outcomes. There were no connections between Division SOPs and the Commission's strategic business risk assessment and internal security policies.
- The Division's sole strategic objective formalized during the audit period, obtaining accreditation, was not included in any risk framework and was not demonstrated to efficiently and effectively mitigate risks.

Risk Management Not Connected To Outcomes

Division risk management was improvised and disconnected from outcomes. Since at least CY 2017, management deemed tactical risk arising from investigator field operations as the highest, most immediate risk Division-wide and implemented improvised practices believed to address certain risks, expecting to address other aspects of Division operations at some undefined future date. However, the Division was a regulatory agency responsible for the holistic regulation of an expansive industry. Both sworn and unsworn employee operations directly affected achievement of expected outcomes, not only those related to public safety aspects of proper control, but also other aspects of expected outcomes and compliance with statutes and rules. It was not a law enforcement agency with only sworn-employee related activities focused on criminal prosecution after individual instances of noncompliance had occurred. The Division did not systematically fulfill statutory and regulatory requirements, including those related to licensing, the Direct Shipper Program, examinations, and premises inspections, but did engage in extra-jurisdictional, excessive, elective, inefficient, and ineffective enforcement activities not tied to expected outcomes.

Functions lacked adequate management oversight, monitoring, and refinement. Whole functions operated by unsworn, and at times sworn, employees, including examinations, the Direct Shipper Program, and licensing, were left with either limited or no formal controls for years. SOPs were either absent, inadequate, or not followed. Division management was composed of sworn employees, except for two first-line supervisors, and the Division's ratio of sworn employees to unsworn employees was not optimized, as we discuss in Observation Nos. 9 and 13. When control deficiencies were found within unsworn functions during our audit, management purported that they had not been able to adequately address issues with unsworn employee operations because sworn employee operations were higher risk and more pressing, but they expected to address each function.

Lacking holistic, integrated, systematic risk management, the Division engaged in operations without a sufficient understanding of whether relevant risks were identified and knowingly accepted, prevented, or mitigated. At times, this led to noncompliance, improper control, inefficiency, and ineffectiveness.

- The operating environment and organizational culture engendered by Commission and Division management was not adequately focused on effective management control to manage risk, as we discuss in Observation No. 1.
- The Commission and Division did not develop strategies, plans, goals, and objectives to ensure outcomes were achieved and risks were managed, as we discuss in Observation No. 2.
- The Commission and Division inconsistently remediated prior audit findings, allowing unmitigated risks within the longstanding control deficiencies to persist, as we discuss in Observation No. 4.
- Compliance management risks were unidentified or ineffectively managed, leading to a longstanding unduly complex statutory, regulatory, and procedural framework; persistent use of ad hoc rules and resulting abuse; and incomplete and inconsistently implemented SOPs and other guides, as we discuss in Observation Nos. 6, 7, and 8.
- Performance was ineffectively managed, leading to incomplete, inefficient, and ineffective performance management approaches and unaddressed risk, as we discuss in Observation Nos. 10 through 13.
- Knowledge was ineffectively managed, leading to incomplete, inefficient, and ineffective knowledge management and unaddressed risk, as we discuss in Observation Nos. 14 through 17.
- Licensing was not risk-based and was ineffectively managed and unduly complex, and licensing-related compliance monitoring was inconsistent, as we discuss in Chapter 2.
- Direct Shipper Program operations were not risk-based and were ineffectively managed, as we discuss in Chapter 3. The Commission and the Division did not know

the amount or type of alcoholic beverages sent by direct shippers into New Hampshire, or whether the necessary fees and taxes were collected.

- Examinations were not risk-based and were ineffectively managed, as we discuss in Chapter 4. Examiners were geographically assigned and examinations were limited to once a year for each licensee without evaluations of risks or costs and benefits. Most licensees with examination-related requirements were not examined.
- Enforcement was not risk-based and was ineffectively managed, as we discuss in Chapter 5. Compliance monitoring efforts were at times inefficient, ineffective, and incomplete; and examiners and investigators at times engaged in extra-jurisdictional, excessive, and ineffective enforcement activities.

While we identified numerous risks during the course of our audit, our scope did not include development of a comprehensive inventory of Division strategic, operational, and tactical risks, a proper role for management.

Recommendations:

We recommend Commission management improve risk management, and:

- **refine, implement, and monitor formal agency-wide risk management policy and processes tied to strategy and plans to help ensure the Commission recognizes, evaluates, and effectively responds to risks that could affect its ability to achieve expected outcomes;**
- **develop appropriate, clear, and measurable risk tolerances;**
- **implement, monitor, and refine SOPs to control risk; and**
- **holistically review operations on a regular basis for indicators of risk and changes to risks, and establish and monitor controls to address those risks, refining SOPs as needed.**

We recommend Division management improve risk management, and:

- **adapt and implement the Commission's risk management policies and practices to help ensure operations are risk informed and expected outcomes are achieved;**
- **discontinue relying upon informal, qualitative, and intuition-based risk management practices focused at the tactical level and migrate to holistic, formal, data-informed, objective, and quantitative risk management practices; and**
- **develop, implement, monitor, and refine holistic strategic, operational, and tactical risk management SOPs and integrate them with other SOPs to help control risk.**

Agency Response:

We concur.

The Division will continue to work to obtain accreditation through CALEA®. CALEA® standards and accreditation recognition will support the Division with standardizing its policies and creating a comprehensive control framework. Moreover, its accreditation provides objective evidence of an agency's commitment to excellence in leadership, resource management, and service-delivery, which promotes confidence in the agency's ability to operate efficiently and meet community needs.

Remediating Previously Identified Management Control Deficiencies

External evaluations, such as audits, can help management identify risks, including inefficiency, ineffectiveness, and noncompliance. The Commission was the subject of several prior LBA performance audits, and we have annually issued management letters addressing Commission financial operations since, and intermittently before, CY 2013. We also undertook a financial audit during the period covered by this audit. It would be useful for readers to consult the resulting *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2019*, to obtain a broader view of Commission and Division management controls. Some of the management control deficiencies identified during our current audit were previously brought to the attention of Commission management by prior LBA audits.

Appendix G contains a summary of the status of each observation from prior LBA performance and financial audits or management letters examined during the course of our current audit.

As a component of a control system, management had a responsibility to:

- implement a system to ensure prompt resolution of findings and recommendations,
- assign responsibility to resolve deficiencies,
- take appropriate follow-up action to resolve findings, and
- investigate underlying causes contributing to findings and recommendations to prevent or address additional, related deficiencies.

Despite the Commission's repeated and public commitments not only to generally make improvements, but also specifically to resolve audit findings and management control deficiencies, we found few improvements during our current audit. The Commission's system of controls over remediating the conditions leading to audit findings was undeveloped.

Observation No. 4

Develop A System Of Control To Ensure Timely And Durable Remediation Of Audit Findings

The Commission did not resolve management control deficiencies identified in prior LBA audits and management letters. We have long noted numerous management controls did not provide sufficient assurances against waste, fraud, and abuse. We identified some deficiencies which were either unresolved or ineffectively resolved and reemerged, sometimes repeatedly over decades. The Commission generally concurred with audit recommendations, but inconsistently followed

through on its reported remediation efforts to address deficiencies. Further, the Commission inconsistently complied with Executive Orders requiring publication of a plan to resolve deficiencies and periodic progress reporting since SFY 2015 through SFY 2020. Unresolved, untimely resolved, and temporarily resolved audit findings contributed to ongoing, and in some cases worsening, management control deficiencies. This unnecessarily exposed operations to risk, inhibited the achievement of expected outcomes, allowed inefficiency and statutory noncompliance to persist, led to waste, and compromised transparency. Additionally, the Commission's system of controls over timely remediating the conditions leading to audit findings also was identified by the Legislative Performance Audit and Oversight Committee as a specific concern because of a lack of progress in resolving conditions leading to audit findings. Given the focus the Commission's management control systems have received over the years, we expected a mature system to address audit findings.

Unresolved, Persistent Defects And Waste

There was no SOP or other formalized controls designed to remediate conditions leading to audit findings and to monitor remediation to ensure efforts were effective and lasting. Without a strategy, plans, or a formal risk assessment system, it was impossible to ascertain what priority the Commission and Division assigned to addressing the conditions leading to audit findings and ensuring they remained resolved. We found many prior findings and recommendations relevant to the current audit were not fully resolved, despite some managers' knowledge of prior LBA audits. This led to repeated findings on several control systems that continued to generate observations including:

- risk management, as we discuss in Observation No. 3 and which we discussed in four prior audits dating to CY 2006;
- rules, as we discuss in Observation No. 7 and which we addressed in seven prior audits dating to CY 1994;
- the beverage tax, as we discuss in Observation No. 36 and which we discussed in four prior audits dating to CY 2006;
- the Direct Shipper Program, as we discuss in Chapter 3 and which we discussed in two prior audits dating to CY 2006;
- SOPs, as we discuss in Observation No. 8 and which we discussed in six prior audits dating to CY 2006; and
- cash and check handling, as we discuss in Observation No. 5, elements of which we discussed in four prior audits in six observations dating to CY 1989.

Additionally, we readdress numerous other topics on which we less frequently commented in the past, including:

- planning, as discussed in Observation No. 2, the organizational structure, as discussed in Observation No. 9, completing annual personnel evaluations, as discussed in Observation No. 13, and multiyear licenses as discussed in Observation No. 19, all of which were initially addressed in CY 1994; and
- premises inspection frequency, as discussed in Observation No. 42 and initially addressed in CY 2006.

If the Commission had an effective system of control, carried out remediation activities, and monitored the durability of its revised controls, many of our current observations might have been unnecessary.

Further, audits imposed a cost upon the Commission, in terms of Commission staff time needed to respond to audit inquiries and direct charges for financial audits, and funding performance audit teams were a cost to the State General Fund. Not remediating audit findings resulted in the waste of the State's substantial and decades-long investment in LBA audits of the Commission and wasted Commission resources invested in participating in audits. Additionally, Commission statutory and regulatory noncompliance persisted, allowing inefficient and ineffective practices to compromise achievement of expected outcomes.

Inadequate Transparency

The Commission inconsistently complied with transparency and reporting requirements. Since CY 2014, the Commission was required to: 1) develop a remedial action plan within 30 days of an LBA audit, 2) report on progress semiannually until all deficiencies were fully remediated, and 3) provide plans and progress reports for posting on the State's transparency website. We apprised the Commission of its noncompliance in our *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2018 (2018 Management Letter)*. In September 2019, the Commission published a single status report addressing findings from the *2018 Management Letter*. However, no time-phased plans for complete resolution of *2018 Management Letter* and prior audit findings dating to CY 2014 were published through SFY 2020.

Inaccurate Resolution Reporting

The Commission inconsistently provided accurate information on resolving prior audit findings. Accurate management communication with auditors and disclosure of known management control problems, including unresolved audit findings, underpins transparency and ethical behavior. During the current audit, we requested the Commission provide resolution statuses for 12 recent audit findings closely related to the Division's operations. The Commission reported mixed remediation of the conditions leading to findings related to this audit. The reported statuses were inconsistent with the conditions we found based on available evidence, as depicted in Table 3.

Table 3

Commission-reported Prior Audit Status And LBA Assessment, Through SFY 2019

Status	Commission Reported	LBA Assessment
Resolved	5	1
In Process	4	2
Unresolved	0	6
Not Reported or Other Status	3	3

Source: LBA analysis of Commission-reported prior audit status and demonstrated resolution.

Recommendations:

We suggest the Legislature consider increasing its oversight of Commission efforts to address the conditions leading to prior and current audit observations.

We recommend Commission management improve remediation of prior audit findings, and:

- **improve transparency and comply with Executive Orders requiring development, submittal, and posting of remedial action plans, as well as semiannual progress reports, for each audit, monitoring resolution observation-by-observation;**
- **develop, implement, monitor, and refine a system of control to ensure audit findings are timely and fully remediated, and underlying processes remain controlled;**
- **develop, validate, and implement policy and procedures to ensure responsibility for resolving audit and assessment recommendations is clearly assigned; and**
- **incorporate audit resolution processes into strategy and plans to ensure continuous monitoring and evaluation of the adequacy of its management controls.**

We recommend Division management improve remediation of prior audit findings, and:

- **incorporate remediation of audit findings into strategy;**
- **develop a resourced, time-phased plan to timely remediate audit findings;**
- **monitor implementation and effectiveness of remediation to ensure remediation is effective and lasting; and**
- **publicly report on plan execution.**

Agency Response:

We concur.

However, as stated in the Commission's response to Observation No. 1, the Commission is committed to a multi-year plan to address the audit findings. Therefore, the Commission does not agree that increased legislative oversight is necessary.

Controlling Checks And Cash

Effective management controls can help safeguard assets. Generally, payments were to accompany license and permit applications and tax returns. The Division accepted checks, credit cards, electronic transfers, cash, and other forms of payment. Receipt processing was decentralized throughout the Division. The Commission was required to: 1) immediately record revenue; 2) secure cash and checks, and endorse checks, to ensure proper control and maximize earned interest; and 3) deposit receipts of more than \$500 in a bank account. The Commission was also required to return and *not* deposit any payment when:

- the amount of the payment was incorrect;
- a required application was not submitted, improperly submitted, or incorrectly submitted; or
- an applicant did not comply with statutory requirements.

Decentralization of check and cash handling exposed the Commission and Division to unnecessary risks. Even though proper fiscal control was a basic expectation and this weakness was previously identified, the Division's system of controls over checks and cash was undeveloped.

Observation No. 5

Improve Controls Over Check And Cash Management

Division management of cash and checks was inconsistent with statute, State policy and procedures, and its own SOPs. SOPs and other written guidance were inconsistent with one another, and with statute and State policy and procedure. Audits dating to CY 1989 identified inadequate controls over cash and checks, including insufficiently restricted access, no restrictive endorsement, and inconsistently timely entry of payments into the licensing database. We recommended controls be improved and the Commission generally concurred, reporting it would obtain point-of-sale cash machines and a safe, and change procedures. However, deficiencies persistently reemerged, demonstrating management controls, in particular monitoring and oversight, were inadequate.

Inconsistent SOPs And Procedures

At least five SOPs or procedural guides established cash and check handling and revenue reporting procedures. They often provided for restrictive endorsement and one provided for daily deposits, but SOPs were inconsistent with one another in their requirements and inconsistent with statute and other requirements. One SOP detailed a narrow set of conditions under which cash or checks could have been withheld from processing for one sub-function, even though the practice was widespread and affected every major Administrative Bureau function. A written guideline provided for "pending," or holding and not processing, short duration license applications, but did not provide for deviation from payment management SOPs. SOPs lacked adequate design, oversight mechanisms, and means to monitor and determine long-term operating effectiveness.

Noncompliant Practices

The Division published a new payment control SOP in July 2019, which required daily deposits of cash and checks, but the practice of retaining checks persisted. In October 2019, we found practices did not address the conditions leading to prior audit findings and, over the long term, exacerbated noncompliance. Checks were inconsistently processed, with some being processed according to SOP and transferred to the Commission's main accounts receivable function daily for deposit. Others were not entered into licensing and accounting databases, not deposited for extended periods, not restrictively endorsed, or not inventoried or logged. On-hand checks were stored on shelves, in file cabinet drawers, or in safes.

- Of 21 applications for short duration licenses pending Commission action stored in a drawer in a secured office, 17 (81.0 percent) contained checks totaling \$2,700. The oldest check had been on hand for 58 days on the day of our review.
- One defective annual license application awaiting applicant action was stored in a drawer in a secured office and contained a \$480 check that had been on hand for 518 days on the day of our review.
- Beverage tax checks were held in a safe until discrepancies were resolved.
- The Direct Shipper Program retained checks either in a safe or in work areas. This included: 1) complete permit applications awaiting Commission action, with one containing a \$500 check held for at least 10 days; 2) inaccurate monthly tax payments, held until discrepancies were resolved; 3) defective initial and renewal permit applications, held until discrepancies were resolved; and 4) eight permit renewal applications awaiting statutory changes which never occurred that had checks totaling \$2,800 which were held for up to 56 days during a three-month period in CY 2018.

We did not inventory all the Division's checks and cash on hand, instead apprising management of the issue for their action.

Recommendations:

We recommend Commission management durably remediate deficiencies in cash and check handling, and:

- **centralize check, cash, and credit card payment processing;**
- **effectively segregate business office and operational duties; and**
- **develop, implement, monitor, and refine an SOP compliant with statute and State policy.**

We recommend Division management develop, implement, monitor, and refine a single Division-wide cash and check handling SOP compliant with statute, State policy, and revised Commission SOP.

Agency Response:

We concur.

Managing Compliance

Commission and Division compliance with laws and rules was a basic expectation. These obligations included substantive program elements based in *Alcoholic Beverages* and Commission rules, and elements of other laws and rules. Effective compliance management controls relied upon a coordinated framework of statutes, rules, and policies, as well as an organizational structure

designed, implemented, monitored, and refined to efficiently and effectively achieve expected outcomes. The legislatively-created statutory framework delegated to the Commission significant rulemaking authority and latitude in creating criteria affecting license and permit approvals, investigations, and administrative sanctions. To operationalize the complex statutory framework within *Alcoholic Beverages*, the Commission developed 11 chapters of administrative rules, and issued declaratory rulings, which it called industry circulars, and orders to clarify its interpretation of statute and rules. The Division also published fact sheets and other materials to further clarify laws, rules, and requirements. However, management's system of control over compliance management was undeveloped.

Statutory And Regulatory Framework

Rules should implement and build on statute where authorized and required, incorporating all requirements imposed on the public and controlling Division external operations. Policies and procedures should then build upon rules to control Division internal operations. Management should monitor the regulated industry for changes that might affect agency programs and operations, proposing changes in laws and adopting needed changes to rules, policies, and processes to help ensure regulatory programs operate as intended. However, controls to help ensure the statutory and regulatory framework facilitated effective and efficient outcome achievement were undeveloped.

Observation No. 6

Improve Controls Over The Statutory And Regulatory Framework

Commission and Division Management lacked controls to ensure the statutory and regulatory framework underpinning Division operations was optimized to help ensure efficient achievement of expected outcomes. Statute and rules were notably complex, and in many instances unduly complex. We did not review every provision in *Alcoholic Beverages* or Commission rules, but our work demonstrated statute and rules were at times outdated, complex, and inconsistent, and rules were incomplete and did not keep pace with statutory and practice changes. SOPs were also at times absent, incomplete, inconsistently implemented, and inadequate, as we discuss in Observation No. 8. Complexity increased from statute to rule, rule to SOP, and SOP to practice. The Commission and Division did not adequately or systematically incorporate compliance management controls into strategic and risk management practices, at times leaving statutory and regulatory framework inadequacies unidentified and unaddressed, or changes in statute designed to improve operations not reflected in rule and unimplemented in practice. In some cases, inadequacies persisted for decades. Consequently, practices outpaced requirements specified in rule, leading to ad hoc rulemaking and increasing complexity, as we discuss in Observation No. 7. The statutory and regulatory framework was also inadequately and inconsistently understood by the Division and the regulated community. Complexity reportedly could create a barrier to entry for entities seeking licenses or permits, as well as increase the cost for at least some entities in the regulated industry.

Outdated And Complex Statutory Framework

Some provisions of *Alcoholic Beverages* were dated, and legislative bodies, Commission and Division staff, licensees, and external stakeholders found the statutory framework to be complex. This resulted in inconsistency, inefficiency, waste, and, for some, confusion. It formed a potential barrier to entry or otherwise inhibited the industry, and led to poor customer service and improper control. Key elements of statute dated to CYs 1933 and 1934, the original statutes enacted immediately following the end of national prohibition. Some were unchanged since. Others were augmented sporadically, resulting in inconsistencies. At least one stakeholder and two Division managers described these as “carve-outs,” and led to the breakdown of the traditional three-tiered system of: 1) producers and manufacturers, 2) wholesalers and distributors, and 3) retailers. Certain terms, definitions, and requirements in statute were inconsistent. Statute provided for more license types and subtypes than were needed.

Discrepancies In Terms, Definitions, And Requirements

Some statutory requirements were discrepant, and certain terms and definitions in statute were inconsistent, leading to inconsistency in practices when some definitions were inconsistently interpreted by Division employees and the industry.

- Statute imposed limits on the alcohol content of beverages, seemingly with an intent to help ensure proper control. However, changes in definitions may have compromised achievement of this end. Definitions of alcoholic beverages that established allowable alcohol by volume (ABV) content for different beverages overlapped and were inconsistent, as shown in Figure 2, increasing complexity. Basic definitions, like “liquor” and “beverage,” were grounded in CY 1933 and 1934 statutes, but were repeatedly compromised by subsequent statutory changes, such as through creation of the definitions of “specialty beer” or “domestic” and “fortified” wine. “Beverage” was originally defined as “any beer, lager beer, ale, porter, wine” in CYs 1933 and 1934, but statute later referenced and controlled “beer” and “wine” separately and differently. The lower ABV limits for “beer,” “specialty beer,” and “cider” were established without corresponding upper limits, allowing for higher ABV percentages for these alcoholic beverages to overlap with liquor. Requirements for Commission approval of these beverages were inconsistent, as specialty beer with an ABV of 12 percent or higher were allowable with Commission approval, while no such approval requirements existed for “beer” and “cider” at any ABV percentage level. Statute defined three different kinds of wine, “domestic wine,” “fortified wine,” and “table wine,” but ABV percentages for all three overlapped. These discrepant and overlapping definitions created complexity and unnecessary distinctions without substantive differences among license types, particularly related to what alcoholic beverages each license type was allowed to possess or transfer. These definitions were also not rationalized with other requirements, such as licensing, which, for example, allowed licensees with a “beer” or “wine” only license to sell or serve beverages with “liquor” levels of alcohol.

- Statute inconsistently required product, bottle, package, and container approvals, leading to improper control and poor customer service, as we discuss in Observation Nos. 35 and 41.
- Statute allowed beer festivals to temporarily register beverages and specialty beer not currently registered for sale in New Hampshire. Other licensees, such as wine and liquor manufacturers who were allowed to conduct wine and liquor festivals, were not allowed to temporarily register for sale previously unregistered products.
- Statute allowed for multiyear licenses, but not multiyear permits, and, while the Commission requested multiyear licenses to improve efficiency, multiyear licenses were not implemented and multiyear permitting was never requested by the Commission, as we discuss particularly in Observation Nos. 23 and 31.
- Statute allowed wine manufacturers, nanobreweries, and brewpubs to sell their products at farmers' markets, but inconsistently required sales be conducted pursuant to Commission rules.
- Statutory permissions for samplings and tastings by licensees were inconsistent, with requirements to obtain permission to provide samplings and tastings varying by license type.
- Statute inconsistently required taxes from different licensees. Taxes on wine and liquor were exacted as a percentage of retail sales at five and eight percent, respectively. The tax on beverages was exacted by volume of product sold and transferred at \$0.30 a gallon, as we discuss in Observation No. 36. Direct shipper permittees were taxed at eight percent of value regardless of the type of alcoholic beverages imported.
- Statute inconsistently provided for sanctions for noncompliance, specifying that *any* noncompliance with *Alcoholic Beverages* or Commission rules was a misdemeanor, but also specifying certain statutory noncompliance, such as nonpayment of required fees, was a felony, while other noncompliance was a violation. Additionally, the Commission was required to establish rules on administrative sanctions for specific violations, complicating the sanctioning framework, as we discuss in Observation No. 45.

Unnecessary Distinctions Between License Types

Statutory provisions defining license types were unduly complex. Complexity contributed to improper control and poor customer service through inefficiency, and added a burden to the regulated community.

- License types were more often a distinction without a difference than requirements clearly designed to ensure proper control. The 44 license types at times were duplicative and overlapped, and many license types had up to six subtypes, each with different fees and at times unique requirements. Additionally, 18 of the 44 license types

(40.9 percent) had ten or less licensees each, out of the 5,448 total licensees listed in the Division's licensing database. This included one license type that had no active licensee. Some of these infrequently used license types dated to CYs 1933 or 1934. Some distinctions between license types were not clearly linked to proper control, such as the five types of clubs that were essentially regulated the same way, and regulations which complicated manufacturer licensee efforts to provide food and sell alcoholic beverages like restaurants and caterers. Meanwhile, enforcement requirements related to adulteration and misbranding, service to underage or intoxicated individuals, and possession or transfer of alcoholic beverages applied irrespective of license type, making the distinctions between license types and their expansion unnecessary at some level.

- Statute allowed several license types to produce, sell at retail and wholesale, and sometimes transport alcoholic beverages, not only compromising the three-tier system but also increasing the complexity of licensing requirements. Requirements were inconsistent, for instance, with wine manufacturers allowed to apply for wine manufacturer retail licenses to sell wine at a separate location than their licensed manufacturing location. However, retail licenses were not allowed for manufacturer licensees of other types of alcoholic beverages, like beer and liquor.
- Requirements in statute, amplified by Commission rules and Division practices, were at times unnecessarily prescriptive of business practices for certain license types, such as clubs and some manufacturer licensees, while other license types were not similarly affected, as we discuss in Observation Nos. 34 and 36.
- Statute inconsistently required examinations for certain license types, and rule increased the number of examination-related requirements, yet in practice the Division infrequently conducted required examinations, making compliance with record creation and retention requirements by licensees both burdensome and unmonitored, rendering the requirements ineffective, as we discuss in Observation No. 34.

Complex Regulatory Framework

Rules did not ensure expected outcomes were achieved efficiently and effectively, and did not fully implement statutory requirements or codify numerous Division practices affecting the public. Rules were the sole means the Commission and Division had by which they could generally require the public to do something not specifically required by statute, provided the rule was within the scope of the Commission's statutory authority. Rules should implement statutory requirements, filling-in gaps to provide additional clarification where authorized so relevant requirements could be effectively implemented, and codify practices affecting the public. However, as the Commission used rulemaking to operationalize statute, rules at times amplified statutory complexity or created their own complexities, and the lack of comprehensive rules led to ad hoc rulemaking. Rule inadequacies persisted for several decades. Complexity amplified by rules burdened licensees and Division employees, delayed licensing, and compromised achievement of expected outcomes.

- Unduly complex application rules for initial licenses created an unnecessarily complex, multi-step licensing process, as we discuss in Observation Nos. 18 and 19. The process encompassed three chapters of rules directly regulating licensees; required an applicant submit a *pre-application* to obtain an actual license application; allowed for initial license durations of between four to 15 months, with as many as 530 different possible fees, without any statutory basis and created unique licensing requirements for many licenses, none of which clearly helped achieve expected outcomes.
- Rules inconsistently implemented statutory provisions allowing wine manufacturers, nanobreweries, and brewpubs to sell their products at farmers’ markets, as we discuss in Observation No. 26.
- Direct Shipper Program rules inadequately covered carrier and direct shipper reporting requirements, leading to inconsistent information reported, limitations in compliance monitoring, improper control, and unoptimized profitability, as we discuss in Observation Nos. 28 and 32.
- Rules did not implement multiyear licenses allowable by statute, even though such licenses were requested by the Commission to improve efficiency, as we discuss in Observation No. 18.
- Examination-related rules were unduly complex, went beyond statutory provisions, repeated statutory requirements without clarifying them, were internally inconsistent, and created requirements for some license types that were not examined in practice, unnecessarily burdening licensees. For example, various club license types were required to file monthly financial statements that were subjected to examination by the Division, while other license types were not similarly regulated. Rule required these monthly filings include details on operating expenses, assets, and liabilities, information other licensees subject to examinations were not required to provide.
- Sanction-related rules inconsistently reflected statute, were fragmented, were inconsistently complied with, and lacked a systematic process for application of improvised sanctions purportedly implemented by the Division, as we discuss in Observation No. 45.
- Rules increased the complexity of food-related requirements, including interpretations of what constituted “groceries” for combination licensees, what constituted a “full course meal” for on-premises licensees, and whether licensees could have a third-party vendor provide food for their establishment. This increased the cost of compliance for licensees through imposition of an unnecessary burden and through inconsistent sanctions levied by the Division.
- Rules provided licensees could not allow illegal gambling on their premises, contradicting statute which provided no gambling at all was allowable.

Complexity Amplified Through Ad Hoc Rules

To fill in gaps in the statutory and regulatory framework, the Division undertook ad hoc rulemaking, some knowingly and some unknowingly, further increasing complexity as the regulated industry sought to comply with improvised requirements. When stakeholders found rules complex, informal clarifications, industry circulars, or orders were sometimes issued for guidance. Uncodified practices were developed in other cases. Ad hoc rules affected each Division function.

Recommendations:

We recommend Commission management improve controls over the statutory and regulatory framework, and:

- **include in its strategy elements to ensure the Division continually rationalizes practice and the industry environment with its control framework to identify gaps, make changes to practice, request changes to rules, and suggest changes to statute to efficiently and effectively achieve expected outcomes;**
- **develop, implement, monitor, and refine a simplified regulatory framework controlling Division functions and clearly tied to efficiently and effectively achieving expected outcomes;**
- **seek legislative changes needed to simplify the statutory framework to focus on achieving expected outcomes, and rationalize it with the current industry environment and Division practices; and**
- **develop, implement, monitor, and refine an SOP designed to help ensure the statutory and regulatory framework remains efficient and effective, and does not become overly complex.**

We recommend Division management improve controls over the statutory and regulatory framework, and:

- **include in its strategy and plans an element to continually monitor statute and rules, the industry environment, and Division practices, and identify changes that will simplify the statutory and regulatory framework, recommending changes to Commission management;**
- **review practices and internal forms, identify changes that will simplify operations, and incorporate simplified procedures and internal forms, and changes to statute and rules, into SOPs; and**
- **implement, monitor, and refine implementation of simplified statutes, rules, and SOPs to ensure expected outcomes are achieved.**

Agency Response:

We concur.

Prior to this audit commencing, the Division had already identified numerous areas and processes in need of improvement and then brought these to the attention of the auditors. Remediation of a

number of these recommendations was complete or underway prior to the publication of this report.

For instance, new Liq 700 rules and associated forms governing licensing were being promulgated to simplify the regulatory framework and ensure compliance with statutes. The new rules were approved and adopted in September 2020, and the change included a new digital platform for prospective licensees. Earlier, in January 2020, the Liq 1100 rules related to the Direct Shipping program underwent a number of revisions as well. New SOPs in support of these recent rule changes are currently under development.

Control Of Rules

An essential component of compliance management was complying with the *Administrative Procedure Act (Act)*. Properly adopted rules have the force of law and rulemaking is lawmaking. A rule is any regulation, standard, form, or generally-applicable statement adopted by the Commission to implement, interpret, or make specific a statute it enforces or administers, or to prescribe or interpret a Commission policy, procedure, or practice requirement binding on anyone other than an employee. This includes all formal and informal procedures, other rules of practice and procedure, and external forms, including the format in which information must be submitted, imposing requirements upon anyone outside the Commission. However, the Commission's controls over rules and associated practices affecting the public were inadequate to effectively ensure compliance, and management's system of controls to help ensure compliance with the *Act* and prevent ad hoc rulemaking was undeveloped.

Observation No. 7

Improve Compliance With The *Administrative Procedure Act*

Commission rules amplified the complexity in the statutory framework, as did a general inattention to developing and maintaining rules to ensure they reflected current statutes and current practice. This observation is the eighth related to inadequate controls over rules we have issued since CY 1994, and the fifth since CY 2006. Prior audits found required rules were not developed and rules had expired. Continued issues with rules demonstrate inadequate control over rules. No Commission or Division system of controls was designed to detect or prevent noncompliance with the *Act*. While the Division had a "rules" SOP, it did not control for compliance with Commission rules or related regulations. Forms management was addressed by another Division SOP, but it was not designed to help ensure forms complied with the *Act* or related regulations. A reported CY 2006 Commission effort to implement an internal administrative rules review committee to address rule expiration and amendments never materialized. Another effort to conduct a "complete, end-to-end review of all administrative rules and laws associated with [Commission] operations" to "update, simplify and revise all rules to facilitate compliance and commerce among our licensees" was to have concluded during CY 2009. This effort either produced no results or produced results that were not durable. Given the depth and breadth of rules-related issues we identified while conducting our current audit, which was not scoped to examine rules in detail for compliance with law, we cannot conclude we have identified every instance where rules were

noncompliant with laws and related regulations. Management was obligated to ensure it complied with applicable laws.

During the audit period, the Division:

- engaged in extralegal activities when it undertook ad hoc rulemaking by requiring the public comply with expired rules, requiring the use of unadopted or improperly adopted forms, augmenting rules and forms with unadopted requirements in guidance documents, and imposing requirements upon the public without valid underpinning rules;
- did not fully remediate rule-related prior audit findings and implement controls to ensure remediation was durable, leaving long-standing deficiencies in place or allowing legacy defects to reemerge;
- added additional complexity to the regulatory framework the public faced when interacting with the Commission through improvised practices; and
- used certain forms and rules which were out-of-date and inaccurate.

Division compliance with laws and rules was a basic expectation. That some rules were not followed or were incomplete, leading to ad hoc rulemaking, was known to some staff. Management recognized it imposed ad hoc requirements on the public but did not timely develop rules to implement uncodified requirements or discontinue improperly enforcing uncodified requirements, making the practice abusive. Abuse is contextually imprudent behavior and occurred through the known imposition of uncodified requirements on the public. Management did report an ongoing initiative to redesign Division forms in concert with updating rules. Certain rules were expected to be updated by the end of CY 2019, but through SFY 2020 these efforts were incomplete.

Ad Hoc Rulemaking

Division staff enforced requirements not included in statute or rule, or that were included in expired licensing-related rules. Enforcing these requirements was referred to as oral or ad hoc rulemaking. Uncodified or expired rules do not have the force of law and must not be enforced. Nonetheless, ad hoc rulemaking occurred and the opportunity for ad hoc rulemaking was widespread, affecting every Division function. The SOP controlling rules and regulations provided little guidance on complying with statute and rules, and did not control for ad hoc rulemaking. Ad hoc rulemaking further exacerbated the complexity in the statutory and regulatory framework as employees and external stakeholders tried to comply with ad hoc requirements, and led to subjectivity.

Uncodified And Partially Codified Processes And Practices

Some processes, portions of processes, and practices affecting the public were absent from rule, such as those related to:

- examinations;
- beverage festival product registration and additional fees;
- liquor and wine festivals;

- complaints about licensees and permittees, and complaints against the Division or its employees;
- product, package, and container approvals;
- the Direct Shipper Program, including permit reinstatements, unauthorized direct shipper list procedures, and P&S entity permitting;
- importation of alcoholic beverage for personal use;
- aspects of licensing, including statutory processing time limits;
- training;
- temporary and verbal approvals of extensions of service;
- petitions for retail sales of beverages at farmers' markets; and
- investigations and sanctions.

Furthermore, the content of certain SOPs conflicted with statute and rules or supplanted rules, while other SOPs were created to cover extra-jurisdictional activities, allowing employees to undertake activities outside the Division's statutory and regulatory scope.

Uncodified External Forms And Uncodified Requirements

Requiring the public use forms and imposing requirements not codified in statute or rule using external forms constituted ad hoc rulemaking. Most of the Division's public-facing forms were not adopted or were not properly adopted in rule and contained numerous uncodified requirements, including forms related to:

- examinations and tax reporting;
- license applications;
- beer, wine, and liquor festivals;
- complaints against licensees and permittees, the Division, and Division employees;
- direct shipper permit applications, monthly tax reporting, and permit reinstatements;
- importation of alcoholic beverage for personal use;
- club monthly financial statements;
- product, package, and container approvals;
- sanctions;
- corkage fees; and
- affidavits.

Uncodified Supplemental Guidance Materials And Requirements

Augmenting forms and rules with checklists and other guidance documents containing substantive requirements compounded ad hoc rulemaking and complexity. Supplemental guidance materials provided to external customers or used internally but affecting the public contained numerous ad hoc rules, and included:

- initial license inspection requirements for certain entities;
- the Direct Shipper Program unauthorized direct shipper list and related processes;
- all aspects of P&S entity regulation;

- package and container label and size approval processes;
- interpretations of statutory changes and existing rules providing instructions to licensees and permittees without amending rules to clarify requirements;
- the establishment complaint brochure;
- wine and liquor festival licensing requirements and processes;
- examination requirements; and
- compliance check operations.

Ambiguity

Rules must be specific. Rules requiring clarification or interpretation, such as through declaratory rulings, orders, or other clarifications, can lead to ad hoc rulemaking. However, Commission rules included ambiguous terms and procedural ambiguity by not including criteria for discretionary decision-making and improperly constructed elements.

Dated rules added to the lack of clarity. Several rules referenced statutes that were amended or repealed. For example, rules related to package and container approvals for beverages purported to implement a statute repealed in CY 1990, but the requirements were enforced through rule since. Following recodification of the licensing and fee related statute, *Liquor Licenses and Fees*, in CY 2003, corresponding rules were not holistically updated to ensure rules reflected current statute. Outdated rules inconsistently referred to the Division, which was formalized by statute in CY 2009, as the “bureau of enforcement” and other terms; SOPs and other internal documents referred to Division components as units, instead of sections as statute provided; and the Division referred to itself as the “Division of Enforcement, Licensing and Education,” contrary to statute, undermining the basic language of the Division’s organizational construct.

Declaratory Rulings, Orders, And Fiats Outside Rules

The Commission and Division issued rule-like guidance without formal rulemaking. The Division published seven “industry circulars” and the Commission issued an order expanding regulation over licensing, prohibiting products or ingredients, and authorizing packaging. Also, at least one administrative hearing concluded with an industry-wide notice being issued by the administrative hearings officer, and the Commission proclaimed new label approval requirements during an enforcement meeting. The proclamation, notice, and order were issued with no underpinning authority cited, while the Division-issued circulars were issued as declaratory rulings, but that authority belonged to the Commission, not the Division. Each was effectively a rule. While some stakeholders reportedly liked Division-issued circulars, their use, and the use of orders, notices, and other fiats, in lieu of developing rules was inconsistent with statute. Each added to the complexity of the regulatory framework facing applicants, licensees, and permittees, as well as staff. Additionally, none were filed as required, exacerbating complexity.

Other Rule And External Form Inadequacies

Rules and external forms were inconsistently accurate. Accurate rules and external forms were important to limit ambiguity or potential confusion among the public and employees. However, we found rules:

- inaccurately cited the statute being implemented, referencing in one case a nonexistent statute;
- contradicted statutory provisions, including improperly delegating rulemaking authority to the Division;
- exceeded their statutory underpinnings;
- lacked required elements related to certain external forms;
- did not keep pace with changes in statute, containing, for example, legacy language related to the Commission's former construct as a three-member body;
- were internally inconsistent, with certain rules incorrectly referring to other rules; and
- were not adopted as required, including the Division's organization which was never codified in rule.

Additionally, external forms were:

- inconsistent with rules, with some missing relevant provisions of rules;
- inconsistently adopted in rules and improperly referenced in rules;
- dated, with at least five forms dating to the 1970s in routine use;
- inaccurate, providing incorrect citations to laws, rules, and guidance;
- untimely updated, referencing outdated guidance;
- uncontrolled, with multiple informal edits made, placing multiple versions of the same form in circulation at the same time, sometimes after relevant rules were finalized but without amending rules, and with inconsistencies among versions of the same form;
- incomplete, lacking basic control features such as requiring applicants provide the date of submission or requiring dates with signatures; and
- not suited to practices and disused or only partly used.

Finally, there was no complete inventory of Division external and internal forms, so our analysis cannot comprehensively enumerate all form-related deficiencies.

Recommendations:

We recommend Commission management comply with the *Act*, and:

- **develop, implement, monitor, and refine an SOP designed to ensure compliance with the *Act*, and monitor Division compliance;**
- **incorporate declaratory rulings and any other generally applicable requirement binding on the public into properly adopted rules, and discontinue ad hoc rulemaking;**
- **ensure external forms comply with the *Act* and corresponding Commission rules;**
- **develop, implement, monitor, and refine the control structure over external form versions to ensure only the current, proper version is utilized;**
- **ensure employees with duties and responsibilities related to *Act* compliance consistently perform those duties; and**
- **adopt required rules.**

We recommend Division management ensure practice complies with law and rules, and:

- **discontinue ad hoc rulemaking;**
- **include in its strategy and plans elements to review its practices, identify and seek to codify each practice affecting the public, with accompanying external forms properly incorporated;**
- **develop, implement, monitor, and refine SOPs designed to ensure *Act* compliance and that ad hoc rulemaking does not occur, and review and minimize the external forms inventory; and**
- **develop, implement, monitor, and refine an organizational culture focused on statutory compliance.**

Agency Response:

We concur.

Controlling Practice

Effective compliance management depended upon comprehensive and consistently followed SOPs building on requirements in statute and rule. SOPs can help control operations and identified risks to ensure efficiency and effectiveness. SOPs were necessary to define how the Division would consistently implement strategies and plans, comply with statute and rule, and achieve outcomes. SOPs should be formalized, vetted, approved by management, and monitored in operation for proper implementation and expected outcome achievement. SOPs were to be clear, concise, and thorough; avoid duplication; and be useful to the intended user. SOPs should include detailed procedures controlling operations; not contradict other SOPs or applicable laws and rules; provide employees a clear understanding of the constraints and expectations relating to the performance of their duties; and be regularly reviewed and refined. We noted in the past that the Division led the Commission in developing SOPs to operationalize rules and control Division operations. The Division developed many SOPs to meet accreditation requirements, but when accreditation was ended, the value of existing SOPs was compromised when management discontinued systematically following them. Management's system of controls over SOPs was at an initial level of maturity.

Observation No. 8

Improve Controls Over Internal Procedure Documents

The Division's controls over internal procedure documents, such as SOPs, supporting internal forms, and other procedural guides, were inadequate to efficiently and effectively achieve outcomes. There were numerous SOPs which provided a management control construct for many aspects of Division operations. However, SOPs and other guidance documents were at times absent, leaving several processes or subprocesses uncontrolled. When present, some SOPs were incomplete; unimplemented; unmonitored for compliance with law, rule, and practice; inaccurate; and inconsistent. Many SOPs were developed for the Division to obtain accreditation from a third-

party nonprofit commission under law enforcement agency standards, and were inconsistently tied to expected outcomes. Consequently, some SOPs were unnecessary, facilitated extra-jurisdictional activity, or were never adapted to the Division's operating environment, and some were discontinued when the Division subsequently ended its accreditation. Forms were inconsistently codified in SOPs, and at times forms constituted the only element of control for a process or subprocess. In other instances, forms were used for task-level activities, rather than a process-wide control, resulting in several forms, sometimes with duplicate requirements, being required for one transaction. Some SOPs, internal forms, and guides were overly complex, had the effect of imposing ad hoc rules upon the public, or facilitated operational inconsistency.

Prior Audit Recommendations Unresolved

Several prior audit recommendations related to SOPs remained unresolved during the audit period. Since CY 1994 we have identified a need for the Division to document and standardize its processes. In our *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2006 (2006 Management Letter)*, we recommended, and the Commission agreed, that the Division should develop comprehensive SOPs for risk assessments, unsworn employee operations, and premises inspections. However,

- risk assessment SOPs were incomplete and inadequate to mitigate risk, as we discuss in Observation No. 3;
- SOPs over unsworn employee operations were either nonexistent, incomplete, or were not followed, as we discuss particularly in Observation Nos. 18, 27, and 33; and
- SOPs over premises inspections were incomplete and inadequate to ensure efficiency and proper control, as we discuss in Observation No. 42.

SOPs Inconsistently Tied To Outcomes

SOPs were inconsistently tied to expected outcomes and overly focused on sworn employee operations to the detriment of control over other operations. SOPs should facilitate achievement of outcomes through helping ensure compliance with requirements from statute, rule, strategy, and plans. However, strategies and plans were not developed and the Division was inconsistently compliant with requirements of statute and rule. The SOP on written directives, which should have guided SOP development and dissemination, lacked provisions for ensuring statutory and regulatory requirements were accommodated in SOPs, complicating Division efforts to ensure compliance. Absent such underpinning controls, SOP development related to sworn employee activities was largely driven by the Division's effort to attain third-party accreditation under law enforcement agency standards, while SOP development for unsworn employee activities was not emphasized. The effort to attain accreditation, an endeavor which placed unnecessary emphasis on activities unrelated to Division outcomes, purportedly involved a manager with no Division field experience taking SOPs from a law enforcement agency and introducing them to the Division's operating environment. SOPs over sworn employee operations were at times inconsistent with actual practice and the Division subsequently discontinued some SOPs when it ended accreditation. Meanwhile, SOPs controlling unsworn employee operations, already incomplete and inadequate to help ensure expected outcomes were achieved, were not updated or followed and, as a result, those that existed during the audit period were obsolete. Abandonment or lack of

SOPs exposed the Division to avoidable risk, and no substitute controls were systematically implemented. In place of SOPs, unsworn employees developed a series of forms, checklists, and guides to control practice, but these efforts were primarily employee driven with inadequate managerial involvement and were focused on task-level procedures rather than achieving expected outcomes.

Efforts to refine practices and identify SOP changes purportedly occurred during the audit period, and management noted struggling to maintain SOPs due to decreased staffing and competing demands. The Division reportedly was also planning to regain third-party accreditation, which would include updating and reimplementing some SOPs. Since underlying control deficiencies remained, such as a lack of a strategy, holistic risk assessment, and resourced, time-phased plans, nothing demonstrated how accreditation would help the Division achieve expected outcomes.

Inadequate SOPs

SOPs were at times absent, incomplete or ambiguous, inaccurate or inconsistent, or unimplemented, and were inadequate to help the Division efficiently and effectively achieve expected outcomes. SOPs lacked adequate design, oversight mechanisms, and means to monitor and determine operating effectiveness. While auditing every requirement of every SOP was not the scope of our audit, we nonetheless identified widespread issues.

Absent SOPs

SOPs did not address all processes or subprocesses, for example, the Division lacked SOPs for:

- the Direct Shipper Program, including P&S entities;
- examinations and product, package, and container approval requests;
- management of complaints related to licensees and permittees and matters regulated by the Commission under *Alcoholic Beverages*;
- information systems, including the licensing database management system (DBMS), the enforcement DBMS, the Commission enterprise DBMS, ancillary databases, records, and data reliability;
- identifying and monitoring licensees with training requirements, and monitoring and following-up on noncompliance with requirements;
- developing Division of Enforcement and Licensing Meeting (Division Meeting) agendas for Commission review;
- sanctions management;
- several licensing-related subprocesses, including purging pending but inactive applications, and obtaining approval for importation of alcoholic beverages for personal use; and
- obtaining approval for temporary product registrations for festivals.

Incomplete Or Ambiguous SOPs

Some SOPs incompletely addressed the process or subprocess covered, leading in some cases to improvised practices and, in a few instances, the drafting of supplemental guidance documents to

provide staff the actual procedures to be applied to specific processes and subprocesses. Other SOPs contained ambiguous requirements imposed on applicants. Incomplete or ambiguous SOPs included those over:

- licensing,
- premises inspections,
- compliance checks,
- internal and external forms management,
- training, and
- the agency's structure.

Inaccurate Or Inconsistent SOPs

Some SOPs were inaccurate and others were inconsistent, including SOPs that:

- conflicted with statute and rules or supplanted rules;
- had inaccurate citations to rules or other SOPs;
- had conflicting scope or distribution statements, with some specifying an SOP applied only to sworn personnel, but the content included all staff while others claimed general applicability, but the content was narrowly focused on sworn or unsworn personnel;
- inconsistently described the same matter covered in other SOPs; and
- were dated, containing legacy references or procedures.

Unimplemented Or Not Followed SOPs

SOPs were inconsistently followed during the audit period, with many being discontinued when the Division ended accreditation, while others remained only partially implemented. Unimplemented and partially implemented requirements affected SOPs on:

- rules and regulations, which provided little guidance on complying with statute and rules, leading to ad hoc rulemaking;
- ethics, which was inoperative, as were requirements for regular training and attestations regarding ethical conduct, and which lacked ties between ethics requirements and personnel performance;
- the agency's role and authority, which was inconsistently followed in practice, with regular planning and goal setting requirements inconsistently completed;
- premises inspections, which was inconsistently followed in practice, with the 24 premises inspections per 40-hour work cycle standard (24/40 standard) not followed;
- investigation reporting, which was inconsistently followed in practice, with some investigations undocumented;
- the organizational structure, which was inconsistently followed and included unmet requirements for staffing analyses and orders, leading to an inefficient and informal organizational structure and distribution of personnel;

- special investigations, which was not followed, leaving three investigators without comprehensive guidance, while accommodating extra-jurisdictional enforcement operations;
- special services, which was not followed, leaving required citizen surveys uncompleted; and
- licensing, which was unimplemented, and employees inconsistently knew of SOPs addressing their areas of responsibility and used an informal guide instead.

Ad Hoc Rules And Extra-jurisdictional Activity

Some SOPs went beyond what was provided in statute and rule, constituting ad hoc rules or facilitating extra-jurisdictional activity. SOPs that had the effect of imposing ad hoc rules on the public included:

- requirements that licensee training participants take exams, and including information from the exams in licensee files;
- complaints against the Division or its employees; and
- compliance check requirements for local jurisdictions.

Other SOPs were created to cover extra-jurisdictional activities, which allowed employees to comply with SOPs while undertaking activities outside the Division's statutory and regulatory scope, including:

- DRE activities,
- special investigations not related to licensees or permittees,
- identity theft investigations not related to licensees, and
- traffic operations and DUI-related enforcement not related to licensees.

Inadequate Forms Management

External forms were rules and internal forms were another version of SOP, and were used for many processes and subprocess to obtain data from the public and control internal practices. However:

- the Division lacked a complete inventory of its internal forms;
- most external forms were not adopted or not adopted correctly in rules;
- some internal and external forms were not referenced in corresponding SOPs;
- internal and external forms were inconsistently used without correction, raising questions as to whether the data or forms were needed at all;
- internal and external forms lacked version control, sometimes having multiple versions of the same form, with inconsistencies among them, in use at the same time;
- some internal and external forms did not accommodate actual practice; and
- some internal and external forms were disused altogether.

Undue Complexity

SOPs were to clarify and standardize practices, but practice deviated in many cases leading to undue complexity. Changes to SOPs were also made on an improvised basis, complicating potential efforts to codify and standardize practices. For example:

- investigators did not follow the 24/40 standard in SOP, instead relying upon their own improvised standards, complicating managerial oversight;
- licensing employees did not follow the licensing SOP and instead developed a procedural guide based on a retiring employee's practices, which introduced requirements beyond what was provided in rule and SOP;
- Direct Shipper Program employees did not follow the governing but incomplete SOP, and instead developed an internal procedure guide; and
- the Division lacked an inventory of internal or external forms, and individual forms also lacked utility and proper design to ensure efficiency.

The SOP on written directives facilitated unduly complex procedural practices, for instance by allowing both "standard operating procedures" and other, apparently non-standard, "procedures" be developed, when just using one type of directive could effectively control operations and simplify internal communication.

Recommendations:

We recommend Division management improve management of SOPs, and:

- **include in strategy and plans an element to review, validate, and revise all procedural documents and ensure they are needed, accurate, internally and externally consistent, and conform to law and rules;**
- **divest the Division from unneeded procedural documents;**
- **simplify remaining procedural documents, relying on SOPs instead of multiple means to establish procedures;**
- **implement, monitor, and refine validated SOPs;**
- **revise, implement, monitor, and refine the SOP managing policy and procedure development to ensure it controls for compliance, consistency, efficiency, and effectiveness of SOPs;**
- **monitor operations and effectiveness of SOPs to ensure relevance and accuracy and that all operations are regulated by SOPs;**
- **rationalize forms and processes to ensure forms reflect practices codified in SOPs and are used; and**
- **divest the Division from unused, inconsistently used, or otherwise unneeded forms and elements of forms.**

Agency Response:

We concur.

Prior to this audit commencing, the Division had already identified numerous areas and processes in need of improvement and then brought these to the attention of the auditors. Remediation of a number of these recommendations was complete or underway prior to the publication of this report.

The Division will continue to work to obtain accreditation through CALEA®. CALEA® standards and accreditation recognition will support the Division with standardizing its policies and creating a comprehensive control framework. Moreover, its accreditation provides objective evidence of an agency's commitment to excellence in leadership, resource management, and service-delivery, which promotes confidence in the agency's ability to operate efficiently and meet community needs.

Controlling The Organizational Structure

The Division's organizational structure was a component of compliance management and directly and indirectly affected each of its five primary systems of control and every Division function. The Division's organizational structure should contribute to achieving objectives. The Division was created in CY 2009 as the Commission's licensing and enforcement arm, and consisted of two major subdivisions, or bureaus. Both bureaus held responsibilities for enforcing statute and rules, monitoring compliance, investigating potential noncompliance, and initiating corrective actions. The Division also had an analysis unit, responsible for data collection and analysis, and other staff not assigned to the bureaus.

An effectively designed organizational structure, formalized in rule and SOPs and reflected in supplemental job descriptions (SJDs) and practice, could help the Division manage risk, control complex operations, comply with statute and rules, and achieve outcomes. However, management's system of controls of the organizational structure were at an initial level of maturity.

Observation No. 9

Improve Controls Over The Division's Organizational Structure

The Division's organizational structure in practice was informal, unoptimized, and inefficient. Controls over the organizational structure were inadequate to ensure compliance and achieve expected outcomes. The Division's organizational structure was not reflected in rules, SOPs, SJDs, or supporting documents leading to unclear reporting relationships and inefficiency, as well as ineffective personnel management, as we discuss in Observation No. 13. Since CY 1994, we have identified inefficiency, ineffectiveness, complexity, and redundancy in the Division's organizational structure compromising optimization of profitability, and the basic organizational construct of the Division was fundamentally unchanged since at least CY 1994. During the current audit period, the organizational structure was not optimized, lacking risk- and data-informed bases, efficient spans of control, balanced ratios of sworn to unsworn staff, formal delegations of authority, and adequate cost-benefit or other analyses underpinning organizational changes. Division functions operated within a legacy organizational construct and there was no time-phased, resourced plan to reengineer the organizational structure to more efficiently and effectively achieve outcomes, despite longstanding claims of insufficient staffing with purported deleterious

effects. Additionally, the Division lacked strategies, plans, goals, objectives, targets, performance measures, knowledge management systems, or initiatives to ensure the organizational structure was efficiently and effectively aligned to achieve outcomes.

The Division Organizational Chart

According to the Division's formal organizational chart, as of June 2019, it consisted of 44 full- and part-time positions, 38 (86.4 percent) of which were filled. The Division was overseen by the Director through the Deputy Director. The Administrative Bureau and the Field Operations Bureau, as well as three additional positions—a senior management analyst, an investigative paralegal, and a legal secretary that was unfilled during the audit period—reported to the Deputy Director. Additionally, an administrative assistant position reported to the Director and a program specialist reported to the senior management analyst.

Administrative Bureau

The Administrative Bureau was depicted as consisting of 12 positions, two sworn and ten unsworn, in three sections: Auditing, Licensing, and Special Services. It was responsible for licensing, the Direct Shipper Program, training, examinations, and other tasks. The bureau was overseen by sworn staff: a staff sergeant who was supervised by an administrator, referred to as a lieutenant.

- The Auditing Section, responsible for aspects of licensing, tax collection, examinations, and compliance monitoring, consisted of three examiners and a program assistant, and was supervised by an Examiner III. One examiner and the program assistant were dedicated to permitting, collecting fees and taxes, and conducting compliance monitoring for the Direct Shipper Program, but only the examiner position was filled as of June 2019.
- The Licensing Section, responsible for staffing the licensing help desk, processing licenses and related applications, and conducting related compliance monitoring, consisted of three licensing specialists, was overseen by the senior specialist, and these positions were inconsistently filled during the audit period.
- The Special Services Section, responsible for various tasks including licensing-related training efforts, equipment management, and tobacco-related grant program management, consisted of four employees overseen by a training specialist.

Field Operations Bureau

The Field Operations Bureau was depicted as consisting of 22 sworn positions in four sections—A, B, C, and Special Investigations—overseen by an administrator, referred to as a lieutenant, and was responsible for most field enforcement, investigations, and compliance monitoring, among other tasks.

- Section A, responsible for Rockingham and Stafford counties, consisted of four investigator positions supervised by a sergeant. Three of the investigator positions were

filled as of June 2019, and two investigators were assigned geographic regions. The sergeant reportedly covered the section's third geographic area.

- Section B, responsible for Cheshire, Grafton, Hillsborough, and Sullivan counties, consisted of four investigator positions supervised by a sergeant. However, one of the investigator positions was unfilled as of June 2019, and as a result, investigators throughout the Division were required to help cover responsibilities in the section's fourth geographic area.
- Section C, responsible for Belknap, Carroll, Coos, and Merrimack counties, consisted of three full-time and three part-time investigator positions supervised by a sergeant. However, one full-time and the three part-time investigator positions were inconsistently filled during the audit period.
- Special Investigations Section, responsible for investigations of State liquor store-related offenses and other duties statewide, consisted of one senior investigator and three part-time investigators, with a second senior investigator supervising.

Actual Division Organizational Structure In Practice

The Division's organizational structure in practice was informal, not risk-based or data-informed, and differed significantly from its documented structure. Inconsistencies compromised the control construct and compromised Division compliance with laws, rules, and its own SOPs. SJDs, SOPs, supporting structure-related documents, and the internal reporting and communications structures were misaligned. Some spans of control were broad while others were narrow, and some management layers were excessive, likely leading to inefficiency. The Division's organizational structure should rely on relevant data, be designed to efficiently and effectively achieve outcomes, and address relevant risks. The organizational structure should have been formalized in rule and in a current, accurate organizational chart, and been implemented by provisions in SOPs and SJDs. We have noted organizational inadequacies and inefficiencies as far back as CY 1994. The then-fractionalized organizational structure translated into management problems, compromising efficiency and effectiveness, and diminished optimization of profitability. We recommended a more efficient, effective, and economical organization, with the Commission concurring. However:

- controls to resolve the conditions leading to prior findings and provide ongoing stability to the Division's organization and ensure efficiency were not implemented;
- the organizational structure was not reflected in rules, with organizational rules only containing broad Commission functions, none of which defined a Commission or Division organizational structure;
- SOPs addressed how the Division would be managed in general terms, without specifics about the organizational structure other than simplified staffing totals;
- SJDs were inconsistent, with 18 of 44 positions (40.9 percent) listing reporting relationships that were not reflected in the Division's published organizational chart;
- no formal staffing analysis or other organizational design was developed as SOP required; and

- improvised organizational changes, accommodated by SOP but not by rule, were made.

Consequently, the organizational chart generated during the audit period inaccurately depicted actual practice, and was reliant, in part, on a dated map assigning geographic areas to certain field investigators. The chart depicted three sections that did not exist in practice—the “Licensing Section,” the “Special Services Section,” and the “Special Investigations Section”—and reporting relationships were incorrectly depicted for nine of 44 positions (20.5 percent). Additionally, SOPs and SJDs were outdated due to improvised Division organizational changes that did not result in corresponding updates in SOPs and SJDs, or a formal order temporarily reorganizing the Division. Outdated SJDs also meant employee responsibilities and scopes of work were inconsistently reflected in their SJD. Finally, rules were outdated, inconsistently referring to the Division, which was formalized by statute in CY 2009, as the “bureau of enforcement” and other terms, and SOPs and other internal documents referred to units, instead of sections as statute provided, undermining the basic language of the Division’s structure.

Improvised Organizational Changes

The Division made organizational changes, sometimes informally, without conducting cost-benefit or other analyses to help ensure outcomes were efficiently and effectively achieved. The Division, dealing with personnel changes and turnover, regularly moved employees to new positions and responsibilities. Larger-scale organizational changes also were made but lacked cost-benefit or other analyses, and the Division could not demonstrate the need for these changes. Personnel and organizational changes inconsistently followed the SOP-established directive process whereby management would formally inform employees of a change in their position or responsibilities. Changes inconsistently resulted in corresponding updates to SOPs and SJDs. Improvised organizational changes reportedly included:

- new employee assignments;
- geographic reassignments for certain field investigators;
- a February 2019 internal memorandum that assigned examiners geographic areas and placed them under partial supervision of sergeants in Sections A, B, and C; and
- re-creation of the “Special Investigations Section” and the CIU.

Improvised Spans Of Control And Managerial Layers

The improvised organizational structure and loosely controlled change management without analytical underpinnings led to inefficiency. Spans of control, the number of subordinates reporting to a supervisor or manager, were inconsistent, with some being narrow and others broad. Some managerial layers, the number of intermediate supervisors between line staff and senior management, were excessive. Effective spans of control and managerial layers, facilitating efficient achievement of outcomes, reporting, and internal and external communication, depended on the size of an organization, the complexity of subordinate work tasks, the number of subordinates, and the appropriate level of supervisory authority, among other factors. However, spans of control were at times overly narrow or broad, and were not rationalized with the complexity of employee tasks and risks incurred. Additionally, without a formal analysis, the Division could not demonstrate that its overall supervisor-to-staff ratio, about one manager for less

than every four employees, or individual spans of control, ranging from one-to-one to one-to-eight, were efficient and effective.

- Three managers—the Director, the Administrative Bureau Administrator, and the senior management analyst—had narrow, one-to-one reporting relationships with subordinates. The Director’s and Administrative Bureau Administrator’s spans of control were particularly inefficient since their respective subordinates, the Deputy Director and the Staff Sergeant, were assigned overly broad spans of control over diverse tasks.
- The Deputy Director had an overly broad span of control of up to five employees, two of whom were the two bureau administrators who oversaw the vast majority of Division operations.
- The Staff Sergeant had eight one-to-one supervisory relationships with subordinates involved in diverse tasks such as examinations, licensing, training, and equipment and grants management, creating a complex, overly broad span of control. Complexity was exacerbated by additional responsibilities, and in practice some subordinates reported directly to the Administrative Bureau Administrator, complicating the reporting structure and compromising unity of command.
- The Field Operations Bureau Administrator had eight one-to-one supervisory relationships with subordinates involved in statewide field enforcement operations, creating an overly broad span of control.
- Field Operations Bureau sergeants had, at times, narrow spans of control as low as one-to-two due to extended vacancies, but were nominally responsible for sections of up to between four and six investigators conducting similar tasks.

Imbalanced Allocation Of Sworn And Unsworn Staff

The Division could not demonstrate its ratio of sworn and unsworn employees was optimized. Allocations of personnel should be risk- and data-based. In a one-to-one comparison, sworn employees were more expensive than unsworn employees due to factors such as overtime and retirement benefits. Decisions on whether to use sworn or unsworn employees for different tasks should be based on cost-benefit and other analyses to ensure efficient and effective use of resources, and ultimately optimization of profitability. However, no formal personnel analyses were conducted, and the Division could not demonstrate that the mix of 17 unsworn positions to 27 sworn positions was optimal. Further, that the Division could commit one of its 11 full-time field investigators (9.1 percent) completely to extra-jurisdictional tasks, and an indeterminate amount of additional investigator time to other extra-jurisdictional, excessive, or ineffective tasks, indicated an overreliance on sworn employees was unnecessary and costly, as we discuss in Observation No. 13.

Delegation Of Authority Inconsistently Formalized

The system to control delegation of authority was inadequate, and the improvised nature of control led to inconsistently formalized delegations, resulting in noncompliance with statute and rule and unachieved expected outcomes. All agency authority was assigned to the Commission's Chairman and formal delegations of authority to employees were required. While some delegation was likely necessary for efficient and effective operations, the Chairman inconsistently delegated authority formally to Division staff, including:

- some initial license and permit decisions, most renewal license and some permit renewal decisions, and some license-related petition decisions which were made by Division employees, as we discuss in Observation Nos. 19, 24, 26, and 31;
- examiner investigations into potential licensee and permittee noncompliance, as we discuss in Observation No. 46;
- sanctions levied by staff against licensees and permittees, as we discuss in Observation No. 45;
- decisions on product, package, and containers approval requests rendered by examiners, as we discuss in Observation No. 35; and
- extra-jurisdictional activities, including investigations and sanctions, which were conducted by investigators and examiners, as we discuss in Observation No. 38.

While it was plausible some of these improvised assignments of authority resulted in efficiency, they lacked a clear legal basis. It was also plausible, given the inadequate approach to management control prevalent Division wide, that "delegations" were made informally through practice and employees accumulated authority without any delegation.

Recommendations:

We recommend Commission management improve control over the Division's organization, and:

- **ensure the Division's optimized organizational structure is reflected in rule,**
- **ensure the Division inventories its operations and identifies every instance where Commission authority is exercised by staff, and**
- **either provide formal delegations of authority to ensure staff properly exercise authority or retain authority the Commission does not wish to delegate.**

We recommend Division management improve control over the Division's organization, and:

- **conduct analyses and risk assessments to optimize the organizational structure and help achieve expected outcomes;**
- **identify every instance where Commission authority is exercised by staff;**
- **ensure staff are provided formal delegations of authority to ensure they properly exercise Commission authority or discontinue exercising authority retained by the Commission;**
- **update and maintain an accurate organizational structure to reflect practice, and publish it periodically; and**

- **rationalize, implement, and refine SOPs and SJDs to reflect the actual organizational structure and timely update them as changes occur.**

Agency Response:

We concur.

Regular reviews will be conducted regarding the organizational structure and relevant policies and SJDs will be amended to ensure alignment.

Managing Outcomes And Performance

The system of control over performance management required connecting operations to achievement of expected outcomes. Effective performance management involves using resources, called inputs, to provide immediate services, called outputs, which lead to desired impact, called outcomes. Management of Division performance, and measuring and demonstrating outcomes, provides a basis for making data-informed, objective, and strategic decisions. These decisions support the efficient achievement of goals, objectives, and targets, and help ensure compliance with requirements, accountability for performance, transparency, and mitigation of risk. Performance management includes ongoing, systematic:

- establishment of performance expectations connected to goals, objectives, and targets;
- assignment of responsibilities to achieve outcomes;
- monitoring and measurement of performance;
- evaluation of performance, and ensuring compliance and accountability;
- assurance of reliability, accuracy, and timeliness of performance measurement, monitoring, and reporting; and
- revision of expectations.

Management should periodically evaluate:

- its effectiveness in achieving outcomes and complying with laws and rules;
- the progress made toward the attainment of goals, objectives, and targets;
- the nature and volume of complaints and violations;
- the adequacy and consistency of all functions; and
- changes needed to attain outcomes.

The Commission and Division were obligated to achieve expected outcomes to ensure proper control, optimize profitability, provide good customer service, and efficiently and effectively operate. The Division further proclaimed a commitment to help ensure public safety, ensure fair and uniform enforcement of laws, work toward the elimination of underage drinking, reduce incidents of drinking and driving, and provide prompt and courteous service. While the Division collected some relevant output data, it lacked quantified objectives, targets, and metrics to assess its performance in achieving expected outcomes. It did not benchmark performance to illustrate changes in performance over time. Other State agencies developed strategies focused on one or more elements of alcohol's deleterious effects on members of society and collected some relevant

information which indicated the State inconsistently achieved outcomes related to Division goals and its primary statutory duties. Division management did not tie its operations or performance management efforts to these strategies.

Efficiency and effectiveness were reported by management and employees to be concerns, and efforts to improve both were reportedly undertaken. The Division reported collecting a substantial amount of data, but there was no inherent value in the data without translation into relevant, useful knowledge. The Division's analysis unit, the CIU, was inoperative during the audit period, and the Division had no time-phased, resourced plans to return the unit to full operation. Despite the lack of active performance measurement during the audit period, components of a performance measurement system appeared to exist, but required changes to controls and associated practices. Management's system of control over performance management was at an initial level of maturity.

Achieving Proper Control

Proper control of alcoholic beverages was intended to achieve public safety and health outcomes. Proper control should have positively affected several State public safety and health strategies. Alcoholic beverage use was a key population health risk and changed alcohol use behaviors reportedly could modify health risks. Excessive alcohol use was reported to be the third leading cause of preventable deaths in the United States, and New Hampshire reportedly ranked sixth highest among states in the rate of binge drinking for those 18 through 25 years old. To limit misuse of alcoholic beverages, recommended actions included increasing compliance checks and limiting the density of alcoholic beverage outlets. The Department of Health and Human Services collected extensive data sets on alcohol's effect on population health, including statistics on alcohol-related hospital visits and fatalities, public perception of underage and binge drinking, and pregnancy risk assessment monitoring. The Division did not utilize these metrics to inform strategic planning nor did they appear to be familiar with data being collected by other State agencies.

The complete elimination of alcohol-impaired driving was a strategic public safety goal, with the reduction of fatalities and serious injuries by 50 percent by CY 2030 a formalized target. Strategies to improve safety included targeting the location where those arrested for DUI obtained their last drink, increasing sobriety checkpoints, and promoting public education programs about the risks and consequences of impaired driving. Division management reported recognizing a need for investigators to have a greater presence in the community, purporting that such activity correlated with higher rates of compliance.

Prevention of underage consumption of alcoholic beverages was presented as a key goal. The Division suggested there was a direct relationship between underage consumption and other crimes. Department of Safety data reflecting arrests of persons under 18 years of age for alcohol-related offenses statewide indicated changes in the number of arrests were mixed, but down overall reflecting general arrest data for all ages. Department of Safety data further indicated arrests for other crimes by individuals under 18 years of age decreased for this same period by 18.6 percent, while arrests for crimes by individuals 18 years old and over decreased by 4.4 percent. Strategies recommended increasing the frequency of compliance checks as a means to reduce the availability of alcoholic beverages to those who were underage.

The Division's operations should have contributed to the Commission achieving and maintaining proper control. As the regulatory arm of the Commission, the Division was central to maintaining proper control of alcoholic beverages through licensing, permitting, examinations, the Direct Shipper Program, training, and enforcement. However, management's system of control over performance management to ensure proper control was at an initial level of maturity.

Observation No. 10

Ensure Proper Control

Division controls over performance management were incomplete and inadequate to ensure proper control of alcoholic beverages. There was no formal Commission or Division performance management framework, and:

- licensing, permitting, examination, Direct Shipper Program, training, and enforcement efforts were reactive, internally disconnected, inefficient, incomplete, and inconsistent;
- the Division lacked strategies, plans, goals, objectives, targets, and performance measures designed to ensure proper control;
- risk, cost-benefit, or other analyses to determine whether resources were expended effectively to mitigate risks were not conducted even though the Division collected significant volumes of relevant data, which, if properly controlled for reliability, might have helped demonstrate performance;
- measurement practices focused on quantifying certain outputs, and sometimes relied only on anecdotes, to evaluate performance instead of monitoring operations, measuring performance, and focusing on expected outcomes; and
- longstanding but unresolved control deficiencies, some identified in multiple prior audits dating back over a decade, contributed to longstanding improper control.

Management reported undertaking initiatives potentially related to ensuring proper control, including hiring analysts and planning to reinstitute the CIU to process information and help identify threats to public safety. However, no resourced, time-phased, risk-based plan was created to develop a holistic performance measurement system tied to outcomes.

Incomplete Performance Management

Division performance management controls were incomplete, lacking a controlling strategy or connections to State strategies, expected outcomes, and relevant data published by other State agencies. Lacking an objective, outcomes-focused system to monitor performance, management instead relied upon qualitative assessments and anecdotes for much of its performance assessment and management practices, and otherwise focused on readily counted outputs, which only quantified aspects of internal activity. These quantifications usually amounted to how often a task was completed and lacked objective demonstration of how well tasks were accomplished. Furthermore, the Division did not demonstrate that tasks accomplished contributed to achievement

of outcomes and mitigated risks, personnel performance evaluations were not connected to organizational performance, and communication on performance was inadequate.

Lack Of Strategy And Focus On Outcomes

The Commission did not develop a strategy to guide Division priorities and operations, or operate a performance management system tied to expected outcomes. The Division did not develop its own strategy or develop a system to use available data to demonstrate outcomes resulted from Division activities. Unaudited Division data indicated that 54 employees were employed during the audit period, at a two-year budgeted cost of \$9.1 million. These inputs allowed the Division to generate outputs, including issuing 6,866 initial or renewal licenses and permits, conducting 8,707 premises inspections of 3,067 licensees and 737 examinations of 438 licensees, issuing 1,206 liquor law violation citations, and conducting 616 arrests. Additionally, the Division collected \$38.3 million in taxes and \$14.7 million in licensing fees during CYs 2017-2019 and \$1.8 million in direct shipper permit fees and taxes during SFYs 2018-2019. However, nothing demonstrated these outputs produced expected outcomes, or how well the Division performed in producing these outputs. SOPs and performance measurement practices were inadequate and unreliable data made even the output measurements we identified suspect.

While the Division retained a substantial inventory of SOPs to attain third-party accreditation and some required measurement of, and reporting on, operational effectiveness, primary Division functions, including licensing, the Direct Shipper Program, examinations, and enforcement, lacked comprehensive, integrated SOPs and other controls over relevant processes. Terms and conditions of various contracts and grants also required effectiveness measurement through post-event surveys and attendance monitoring. However, organizational performance measurement was inconsistently undertaken during the audit period. While some outputs were quantified, performance measurement was qualitative, leaving processes informally regulated and performance assessment at risk of being influenced by bias. For example, performance measurement requirements in enforcement SOPs were output focused and inconsistently followed, and many requirements and processes were discontinued when the Division ended accreditation. Management believed that the few performance metrics embedded in SOPs were accomplished while their own data indicated they were not. Meanwhile, the Administrative Bureau was excluded from performance measurement SOPs altogether and, while some outputs were quantified, statutory requirements were unmet. Certain SOPs provided for time limits and other standards of performance, but lacked accompanying performance measurement controls or data collection to assess compliance. Statute and rule-based timeliness requirements were not included and were either inconsistently met or unmet. Concurrently, some Division operations were directed toward, and resources expended on, unnecessary extra-jurisdictional, excessive, and ineffective activities.

While monitoring outputs was necessary, outputs did not demonstrate performance or effectiveness. Although the Commission recognized in CY 2011 that there was a need for greater analytical capacity to conduct performance measurement and implement activity-based costing systems to provide useful management information, no such controls were implemented at the Division level through the audit period. Weekly Division internal reports contained only rudimentary field investigator outputs. It was not until January 2019, when the Division made changes to standardize aspects of enforcement-related data collection and improve internal

reporting, including the creation of a monthly report, that non-sworn employee outputs were included on routine, internal management reports. Measurement efforts were nonetheless still focused on outputs, and during the audit period the Division:

- totaled and reported on attendees at training, education, and outreach events, conflating mere attendance with individual attendees actually benefitting from the events, and lacking an objective way to determine whether attendees obtained and retained knowledge or events achieved expected outcomes;
- reported weekly and, after January 2019, monthly on field investigator activities, but made no ties to how their efforts led to increased compliance and achieved expected outcomes;
- after January 2019, reported monthly on certain licensing activities, but made no ties to how licensing ensured compliance and achieved expected outcomes;
- after January 2019, reported monthly on the number of examinations and enforcement actions conducted by examiners, but did not include information on whether compliance issues identified were resolved or how expected outcomes were achieved; and
- after January 2019, reported monthly on the number of direct shipper permits issued and enforcement actions conducted, but did not include information on whether compliance issues identified were resolved or how expected outcomes were achieved.

Lack Of Ties To Other Agency Outcome Data

The Division did not tie operations to potential outcome data collected by other agencies, such as data on alcohol-related traffic accidents, arrests, illness, and misuse, nor did it collect these data. Alcoholic beverage regulation was intended to protect the public and the Division reported reducing underage drinking and drunk driving were underpinning purposes of many activities. Analysis of other agencies' unaudited data, which purportedly encompassed the results of Division operations, indicated positive and negative trends. Other factors also likely contributed to the trends in reported outcomes.

- Statewide arrest data showed arrests of all ages for: 1) liquor law violations decreased 32.9 percent, 2) DUI violations decreased 1.0 percent, and 3) drunkenness increased 23.1 percent from CY 2013 to CY 2017.
- Statewide arrest data showed arrests of individuals under age 18 for: 1) liquor law violations decreased 41.3 percent, 2) DUI violations decreased 33.3 percent, and 3) drunkenness increased 42.1 percent from CY 2013 to CY 2017.
- Statewide highway safety data showed the number of alcohol-impaired fatal crashes decreased 42.9 percent from CY 2013 to CY 2017.
- Statewide health data showed the number of alcohol-induced deaths increased 9.9 percent and the number of alcohol-related deaths decreased 40.0 percent from CY 2013 to CY 2018.

- Statewide health data showed the number of emergency department visits due to acute alcohol-related disease decreased 10.6 percent and the number of emergency department visits due to chronic alcohol-related disease increased 24.3 percent from CY 2013 to CY 2016.
- Statewide health data showed the percentage of New Hampshire adults identifying as binge drinkers increased 3.0 percent from CY 2013 to CY 2017.
- Statewide health data showed the percentage of New Hampshire minors who reported they had consumed an alcoholic beverage on at least one day in the previous 30 days decreased 3.3 percent from CY 2013 to CY 2017.
- Statewide health data showed the percentage of pregnant women who reported consuming an alcoholic beverage in the three months before pregnancy increased 2.8 percent from CY 2013 to CY 2017.

Primary Proper Control Requirements Unmet

The Division's performance management efforts to ensure proper control of alcoholic beverages were inconsistently effective. Commission and Division management and Division employees purported that proper control efforts were effective, while stakeholder feedback was mixed. State strategies rested, in part, on proper control to achieve effects, but the Division did not systematically follow through with State strategies. As summarized in Table 4, statute established many elements of proper control, but Division data and records indicated performance management efforts were incomplete, inefficient, and inconsistently effective. The causes, condition, and effect of inefficient, ineffective, and incomplete performance management efforts differed by activity during the audit period.

- Licensing was unduly complex, uncoordinated, inefficient, and inconsistently effective, undermining proper control, as we discuss in Chapter 2.
- The Direct Shipper Program was inefficient and inconsistently effective, and could not determine the amount and type of alcoholic beverages directly shipped into the State, leading to improper control, as we discuss in Chapter 3.
- Examinations were inefficient and inconsistently effective, with numerous requirements unmet, undermining proper control, as we discuss in Chapter 4.
- Training was inefficient, incomplete, and inconsistently effective, and the Division could not consistently determine whether licensees obtained necessary training, undermining proper control, as we discuss in Observation Nos. 22 and 39.
- Enforcement was inefficient and inconsistently effective, lacking consistent compliance monitoring, investigation, and sanction practices that complied with statute and rule, undermining proper control, as we discuss in Chapter 5.

Table 4

Division Performance Management Of Primary Proper Control Requirements

Requirement	Division Activity	Responsibilities¹
Possession and transfer of alcoholic beverages conducted only by licensed or permitted entities in compliance with statute and rule	Licensing	Ensure individuals and entities are properly licensed
	Training	Provide applicant and licensee training and monitor compliance
	Examinations	Conduct examinations, premises inspections, and investigations
	Enforcement	Conduct training, premises inspections, compliance checks, and investigations
	Direct Shipper Program	Ensure individuals and entities are properly permitted Conduct compliance monitoring of direct shipments
Licensees and permittees were prohibited from selling alcoholic beverages under certain circumstances and to certain individuals, including underage and intoxicated persons	Enforcement	Conduct premises inspections, compliance checks, and investigations
	Examinations	Conduct examinations, premises inspections, and investigations
	Direct Shipper Program	Conduct compliance monitoring and investigations of direct shipments
	Training	Provide remedial licensee training
Ensure alcoholic beverages sold were not adulterated or misbranded	Examinations	Review packaging and containers Conduct examinations, premises inspections, and investigations
	Enforcement	Conduct premises inspections and investigations
	Direct Shipper Program	Conduct compliance monitoring and investigations of direct shipments

Note:

^{1.} Rules did not allow non-sworn employees to conduct investigations.

Source: LBA analysis of statutes, rules, SOPs, guidelines, and practices.

Recommendations:

We recommend Commission management exercise oversight of Division performance in ensuring proper control.

We recommend Division management ensure proper control of alcoholic beverages, and:

- **develop, implement, and refine a performance management system with measures tied to proper control outcomes and risk tolerances;**
- **develop a resourced, time-phased plan to reengineer operations to ensure proper control outcomes are efficiently and effectively met, and include goals, objectives, and targets;**
- **review SOPs regulating organizational performance measurement that are relevant after reengineering and validate requirements and revise, implement, monitor, and refine SOPs as necessary;**
- **review contract and grant requirements for performance measurement requirements and include them in SOPs; and**
- **monitor and regularly report on proper control-related activities.**

Agency Response:

We concur.

Optimizing Profitability

While retail operations were the Commission's primary revenue source, the Division was also responsible for revenue by collecting license and permit fees; beverage, wine, liquor, and direct shipper taxes; and fines. Revenues were aggregated to the Liquor Fund, an enterprise fund. Liquor Fund appropriations were provided to cover costs associated with the operation and administration of Commission functions, including the Division's non-grant funded operations. The Division's expenditures were over \$3.9 million in SFY 2018, and nearly \$4.6 million was budgeted for the Division in SFY 2019. According to audited CY 2019 Commission data, revenue from beverage taxes was over \$12.8 million and licenses and permits was nearly \$4.3 million. Revenue from fines was not explicitly reported.

Understanding revenue and expenditures for each Division function and operation was important to permit performance benchmarking and assessment of cost-benefit ratios. The Commission should develop a holistic strategy, identify key performance indicators tied to optimization of profitability, and monitor results. The Division should develop and implement complimentary strategies and plans, systematically analyze program-related information, adjust operations to improve effectiveness and efficiency, and periodically report on program results and outcomes to the Commission and the public. However, there was no clear revenue-to-expenditure analysis to inform cost-benefit or other analyses by Division function and issues with optimizing profitability existed across all Division functions. Management's system of control over performance management to optimize profitability was at an initial level of maturity.

Observation No. 11

Optimize Profitability

Division controls over performance management were incomplete and inadequate to ensure profitability was optimized. There was no formal Commission performance management framework and:

- the Division lacked a performance management system, strategies, plans, goals, objectives, targets, performance measures, and initiatives designed to help ensure optimization of profitability;
- profitability was not optimized, a condition identified in multiple previous audits during the past two decades but not remediated, and the cost of Division activities was directly affected by inefficient operations and practices that decreased profitability and led to waste; and
- performance was unmeasured, inconsistent, and inefficient, and there were no means or efforts to measure profitability or assess whether profitability was optimized.

No Standard For Optimization Of Profitability

The Division lacked performance standards to determine whether profitability was optimized. Optimization meant obtaining the greatest return on investment possible within resource constraints. Optimizing profitability meant not only collecting more revenue than operational costs, but also maximizing and continually improving efficiency to further increase revenue and decrease costs. However, the Division lacked any system to monitor bureau, section, or function expenditures or process optimization. Though the Commission concluded Division operations were profitable simply based on revenues exceeding expenditures, it lacked a means of determining whether profitability was optimized. The Division reportedly collected \$17.1 million in taxes and fees in CY 2018 and its SFY 2018 operating budget was \$4.5 million, for a ratio of 1:3.8, but nothing demonstrated this was the optimal ratio. Given the numerous inefficiencies we identified throughout the Division, some of which management allowed to long persist, profitability and optimization were undermined for decades in some cases, constituting waste.

Tax And Fee Collection Not Optimized

The Division did not manage the tax and fee collection processes to ensure profitability was optimized. As illustrated in Table 5, the Division's collection of taxes and fees was inefficient and inconsistent, relying on legacy, manual practices. The Division lacked any monitoring and reporting on taxes and fees collected and revenue to expenditures comparisons to guide performance management efforts. Though the Division allowed for various payment options, including cash, check, and credit cards, it often required payment by mail or in-person. Electronic payment options, which we have recommended the Division implement for over a decade, were only provided for certain license renewal applications. Examiners, the collectors of beverage, direct shipper, liquor, and wine taxes and permit fees, purportedly spent several hours every month manually processing payments, detracting from regulatory responsibilities.

Other practices and inefficiencies differed by tax and fee, and the section responsible for collecting the associated revenue.

- Beverage, liquor, and wine tax collection was inefficient and inconsistent. The value of inflation-adjusted beverage tax revenue decreased 27.2 percent between CYs 1998 and 2018, from \$11.4 to \$8.3 million, while actual beverage tax revenue increased 12.3 percent from \$11.4 to \$12.8 million during the same time period, as we discuss in Observation No. 36.
- The Division could not determine what type and amount of alcoholic beverages were being directly shipped to in-State consumers—including licensees, unlicensed businesses, and individual citizens—and consequently had no way to verify whether direct shipper taxes paid reflected actual shipments, as we discuss in Observation No. 32.
- The Division’s licensing and permitting practices were not formalized in SOPs, and licensing and permitting decisions were inconsistent, potentially leading to the issuance of licenses and permits of the wrong type and the charging of incorrect fees, as we discuss in Observation Nos. 19 and 31.
- The Commission was to recoup costs of processing and investigating applications through the license investigation fee, but nothing demonstrated full costs were recovered.
- The Division inconsistently levied fines for noncompliance, resulting in lower revenue than should have been collected and transferring costs of specific enforcement activity to the general fee-paying community instead of making noncompliant entities pay for the costs of remediating their noncompliance.

Other Operational Inefficiencies

Other practices were inefficient, also resulting in waste and unoptimized profitability. Many inefficiencies were previously identified, some decades ago. The Commission committed to addressing inefficiencies, but had not through SFY 2019.

- Division knowledge management systems were inefficient and uncoordinated. They relied on manual practices, redundant record handling and data entry, hardcopy and electronic records, and numerous databases, as we discuss in Observation Nos. 15, 16 and 17.
- The Division lacked efficiency-related performance measures to continually optimize profitability, and no employees were held accountable in personnel evaluations for optimizing profitability, as we discuss in Observation No. 13.

Table 5

Division Tax And Fee Collection Practices

Tax Or Fee	Amount Or Rate	Collection Period	Collection Entity	Payment Methods Allowed	Payment Delivery Options
Taxes					
Beverage	\$0.30 per gallon transferred	Monthly	Examinations	Check	Mail, hand deliver
Direct Shipment	Eight percent of retail beverage, wine, or liquor sales	Monthly	Direct Shipper Program	Check	Mail
Liquor	Eight percent of retail liquor sales	Monthly	Examinations	Check	Mail, hand deliver
Wine	Five percent of retail wine sales	Monthly	Examinations	Check	Mail, hand deliver
Fees					
Direct Shipper Permit	Manufacturers: \$100 Retailers, importers, wholesalers: \$500	Initial permit and annually thereafter	Direct Shipper Program	Check	Mail
Pre-application Processing And Investigation	\$25 or \$100 ¹	Upon pre-application submission	Licensing	Check, cash, credit card	Mail, hand deliver
Initial License	Varied among 530 possibilities, from \$33.33 to \$15,000 ²	Upon application submission	Licensing	Check, cash, credit card	Mail, hand deliver
Renewal License	Varied among 47 possibilities, between \$100 and \$12,000 ²	Annually, after initial license duration ³	Licensing	Check, cash, credit card	Mail, hand deliver, online ⁴

Notes:

1. The license processing and investigation fee for a one-day, beer festival, or liquor and wine representative license was \$25. The fee for all other license types, with minor exception, was \$100.
2. Over 100 license types and subtypes based on scale of operation, which dictated the fee paid. Initial annual license fees were prorated for the duration of the initial license, which ranged from four to 15 months. Seasonal licensees paid half the annual license fee. Other license types had varying, non-prorated fees.
3. Initial licenses, except for seasonal; supplemental; State fair; beer, wine, or liquor festival; or one-day licenses, were issued for periods of between four and 15 months without statutory basis.
4. Only a subset of retail annual licensees could apply and pay for renewal online, all others had to rely on legacy, manual practices.

Source: LBA analysis of statutes, rules, and practices.

- Examiners relied on manual practices to examine tax returns and determine whether the correct amount of taxes were paid, leading to errors in calculations and unoptimized profitability. Recordkeeping practices, including generation of examination reports and records to ensure ongoing licensee compliance with taxation requirements, relied on individual memory and informal practices, as we discuss in Observation Nos. 33 and 36.
- The Direct Shipper Program's compliance monitoring practices were time-consuming, and more time spent with data entry and management left less time for examining direct shipments to ensure the correct revenue was collected, as we discuss in Observation No. 32.
- Division employees engaged in a significant amount of extra-jurisdictional, elective, and excessive enforcement activity, wasting Division resources and leaving less time to accomplish responsibilities like conducting required premises inspections and other licensee and permittee oversight, as we discuss in Observation Nos. 38, 39, 42, and 45.

The Division indicated reengineering business practices was a future objective, but it lacked a resourced, time-phased plan to implement structured improvement practices.

Recommendations:

We recommend Commission management exercise oversight of Division performance in optimizing profitability.

We recommend Division management optimize profitability, and:

- **develop, implement, and refine a performance management system with measures tied to its optimization of profitability strategy and achievement of expected outcomes;**
- **develop a resourced, time-phased plan to reengineer operations to ensure profitability is optimized, and establish goals, objectives, and targets;**
- **review SOPs regulating organizational performance measurement that are relevant after reengineering and validate requirements and revise, implement, monitor, and refine SOPs as necessary; and**
- **monitor and regularly report on all optimization of profitability-related activities.**

Agency Response:

We concur.

Providing Good Customer Service

Providing good customer service was a basic Division duty. The Commission should develop a holistic strategy, identify key performance indicators tied to customer service outcomes, and

monitor results. The Division should develop and implement complimentary strategies and plans, systematically analyze program-related information, adjust operations to improve effectiveness and efficiency, and periodically report on program results and outcomes. Additionally, statute, rules, and internal policies established expectations for consistency, timeliness, clarity, and transparency of Division decisions and services. However, management's system of control over performance management to provide good customer service was at an initial level of maturity.

Observation No. 12

Provide Good Customer Service

Division controls over performance management were incomplete and inadequate to ensure good customer service was rendered. There was no formal Commission performance management framework and:

- the Division lacked a performance management system, strategies, plans, goals, objectives, targets, and performance measures designed to define customer service expectations and ensure good customer service was provided;
- while the Division recognized some stakeholders and sought feedback, efforts were incomplete, informal, and inconsistent; and
- measurement focused on quantifying outputs, or sometimes just anecdotes, instead of outcomes to evaluate performance.

Complex Operating Environment

The diverse nature of Division stakeholders created a complex operating environment. The Division provided services to a wide array of stakeholders, including licensees and permittees, industry and related special interest groups, consumers, the general public, and law enforcement and other agencies. Interests among and within these groups varied depending on the services provided by the Division, complicating customer service efforts. For instance, licensees interacted with all functions of the Division, and the level of interaction changed based on the license type and the nature of licensee's possession and transfers of alcoholic beverages. Manufacturers and wholesale distributors, among other licensees, were subject to examinations; some licensees that sold alcoholic beverages directly to the public were subject to compliance checks; and all licensees were to be subjected to premises inspections. To effectively regulate the industry and comply with laws, Division management had to understand, monitor, and periodically report on industry trends and conditions. The Division should have systematically obtained customer feedback, but instead relied on improvised, informal, qualitative means. The lack of a performance management framework for rendering effective customer service hindered the Division's ability to accomplish goals and achieve expected outcomes. Without a formal, consistent, and comprehensive approach to customer service, the Division risked not understanding its operating environment, not knowing where to focus improvement efforts, alienating stakeholders, and inefficiently and ineffectively providing services.

No Formal Customer Satisfaction Standards, Feedback, And Analysis

The Division lacked a formal, comprehensive process to obtain and analyze stakeholder feedback, then make necessary changes. An SOP provided for conducting a citizen survey every three years to obtain feedback regarding juvenile and adult concerns related to alcohol, community knowledge of the Division, investigator interactions with licensees and the public, and Division successes and areas needing improvement. However, no surveys were conducted, and improvised efforts were substituted. These were limited to anecdotes and obtaining feedback on licensing-related topics from over 100 attendees of the Management Training Seminar (MTS) in CYs 2017-2018. Furthermore:

- no other stakeholder group was subjected to a formal input collection process,
- the interval between surveys prescribed in SOP was too infrequent to monitor a highly changeable industry, and
- the citizen survey's objectives were neither connected to outcomes nor comprehensive, excluding licensing, examinations, the Direct Shipper Program, and training, among other activities.

Multiple SOPs contained allusions to various qualitative customer service-related standards, but they were not defined and quantified, and there was no integration to measure whether these standards were achieved. Instead, Commission and Division management relied upon anecdotal information gleaned from interactions with certain stakeholders to evaluate customer satisfaction, as shown in Table 6. While such information may have held value as potential indicators of performance, it was anecdotal without systematic efforts to objectively establish customer satisfaction with Division performance. Management noted surveying licensees might be in order, but no time-phased, resourced plan was developed to do so.

Inconsistent Customer Service Provided

The Division inconsistently provided good customer service. The Division reported, and our analyses indicated, stakeholders, including State and local law enforcement agencies, industry groups, special interest groups, and licensees, were generally satisfied with Division operations. However, some stakeholders were not familiar with the Division while others were dissatisfied, and stakeholder feedback identified room for improvement. For example, licensees and stakeholders were inconsistently satisfied with:

- licensing, including the time and effort required, the forms and processes used, and the confusing nature of licensing-related regulations and fees, as we discuss in Observation Nos. 18, 19, and 24;
- examinations and premises inspections, including the lack of standardization, efficiency, and transparency, as we discuss in Observation Nos. 33, 34, and 42;
- the unautomated and inefficient nature of tax filing, as we discuss in Observation No. 36; and
- the unautomated, inefficient, and confusing nature of the product, package, and container approval process, as we discuss in Observation No. 35.

Table 6

Customer Satisfaction Requirements In SOP And Feedback Sought

Stakeholders	Customer Service Standard Specified In SOP	Customer Satisfaction Feedback Required In SOP	Feedback Obtained In Practice
Licensees	None	No	Anecdotal Limited surveys conducted of select MTS participants
Permittees	None	No	No
Law Enforcement Agencies	None	No	Anecdotal
Industry Groups	None	No	Anecdotal
Special Interest Groups	None	No	Anecdotal
Consumers	Yes, adults	Yes	Anecdotal
General Public	Yes, adults and juveniles	Yes	Anecdotal

Source: LBA analysis of unaudited Division data and SOPs and practices.

Separately, law enforcement agencies were inconsistently satisfied with Division communication. Relationships with law enforcement agencies, facilitated by effective communication, were important to help ensure noncompliance with *Alcoholic Beverages* was monitored, remedied, and sanctioned when necessary. In CY 2019, we surveyed an indeterminable number of law enforcement stakeholders online and received 95 complete responses. Of the 95, 92 (96.8 percent) responded when asked how effectively the Division communicated with their agency and:

- 32 (34.8 percent) reported the Division communicated *effectively*,
- 17 (18.5 percent) reported the Division communicated *somewhat effectively*,
- six (6.5 percent) reported the Division communicated *somewhat ineffectively*,
- nine (9.8 percent) reported the Division communicated *ineffectively*,
- 17 (18.5 percent) were *unsure* how effectively the Division communicated, and
- 11 (12.0 percent) had no opinion.

Complete results of our survey of the State law enforcement community are included in Appendix D and indicate areas of satisfaction and dissatisfaction.

Recommendations:

We recommend Commission management exercise oversight of Division performance in providing good customer service.

We recommend Division management provide good customer service, and:

- **develop, implement, and refine a performance management system with measures tied to a customer service strategy, risk tolerances, and expected outcomes;**
- **develop a resourced, time-phased plan to reengineer operations to ensure customer service outcomes are met efficiently and effectively and include goals, objectives, and targets;**
- **review SOPs regulating organizational performance measurement that are relevant after reengineering and validate requirements and revise, implement, monitor, and refine SOPs as necessary;**
- **ensure collection of customer satisfaction data is comprehensive and sufficiently frequent to ensure the Division obtains relevant input on the industry and stakeholder views to allow for timely refinement of practices; and**
- **monitor and regularly report on customer service-related activities.**

Agency Response:

We concur.

The Commission strives to provide exceptional customer service in all facets of its operations. To the extent the budget will allow, the Commission will develop a means to regularly collect customer satisfaction data and use it to continuously improve business practices.

Managing Personnel Performance

Effective strategic and performance management and achievement of expected outcomes depended on the efficient and effective allocation and management of personnel. Personnel implement and operate management's control structure and individual performance contributes to organizational performance. Effective personnel management, a component of performance management, depended upon:

- hiring and retaining personnel with the necessary skills;
- providing personnel with training, tools, policies, procedures, guidance, and information to efficiently and effectively fulfill job responsibilities;
- conducting regular managerial oversight and performance evaluations to ensure personnel performance met standards;
- evaluating performance data and workloads regularly to ensure outcomes were achieved; and
- making changes necessary to continually improve efficiency and effectiveness.

However, management's system of control over personnel performance was at an initial level of maturity.

Observation No. 13

Improve Controls Over Personnel Management

Division controls over personnel management were inadequate to ensure expected outcomes were achieved. The Division lacked a holistic personnel management system, operating without strategies, plans, goals, objectives, targets, and individual performance measures tied to organizational performance. No staffing, cost-benefit, or other analyses were conducted to objectively allocate personnel and ensure efficiency and effectiveness. Management was overly reliant on individual performance evaluations as the means to demonstrate Division performance and ensure objectives were met. However, evaluations were inconsistently conducted and were not tied to organizational performance and outcomes. Improvised delegations of authority were allowed during the audit period for certain licensing-, investigation-, and sanction-related decisions. Allocation of employees was inefficient and skewed towards the use of sworn personnel rather than unsworn personnel, including using sworn personnel for numerous administrative tasks, increasing costs and contributing to inefficiency, inconsistency, and ineffectiveness. To make personnel performance data collection valuable, data must be analyzed, and knowledge produced; however, while the Division collected substantial amounts of potentially relevant data, inadequate data control limited the value of data, which went largely unanalyzed.

Effective Personnel Management

Division personnel management lacked a risk-based, data-informed strategy tied to outcomes to guide personnel decisions and manage personnel and organizational performance, leading to inefficiency and inconsistency, and no clearly demonstrated outcomes. Division management instead relied upon individual personnel evaluations, output measurement, SOPs, SJDs, and staff meetings to evaluate and manage performance. However:

- staff meetings were informal and purportedly irregularly conducted after accreditation was ended,
- personnel evaluations were not always conducted and were not tied to outcomes,
- SJDs were dated and at times inaccurate,
- output measurement was limited,
- SOPs were inconsistently implemented and effective, and
- benchmarks set in SOPs used to quantify certain outputs and assess organizational performance were not systematically used to evaluate personnel performance.

Personnel Evaluations Inconsistently Conducted And Not Tied To Outcomes

Personnel evaluations were inconsistently conducted. Immediate supervisors were long required to evaluate employees at least annually. Probationary personnel, including employees who were newly hired, rehired, promoted, or transferred, were to be formally evaluated at least quarterly. Sworn personnel were to be formally evaluated at least semiannually. While we noted inconsistent completion of annual evaluations in CY 1994, a condition which was subsequently remediated, annual evaluations were again inconsistently completed during the current audit period, and other

evaluations required by SOP did not occur or were undocumented. We reviewed redacted excerpts of personnel files for 30 Division personnel employed during the audit period and:

- 21 employees (70.0 percent) received the necessary annual evaluations,
- six employees (20.0 percent) did not receive the necessary annual evaluations, and
- three employees (10.0 percent) lacked adequate documentation in their files to determine if necessary annual evaluations were received.

Additionally, the Division Director was purportedly not subject to any formal evaluations, despite a Commission SOP requiring annual evaluations, and another employee's personnel file was unavailable for review. File review results have to be qualified due to significant limitations we encountered accessing Commission records, which we discuss in Appendix A.

Personnel evaluations, when conducted, were not tied to outcomes and were ineffective to systematically evaluate overall personnel and organizational performance. Achievement of outcomes required tying individual employee performance to organizational goals and objectives through performance standards and measures objectively demonstrated to produce expected results. However, personnel evaluations lacked connection to outcomes, and were instead output related and compartmentalized, specific to each employee. Discussions of goals, when they occurred, were employee-generated, personal goals, and were not focused on outcomes or followed-up on by supervisors in subsequent evaluations. Our review of the 30 redacted personnel files demonstrated:

- one employee (3.3 percent) was evaluated on expected outputs and partially on expected outcomes,
- 14 employees (46.7 percent) were evaluated based only on expected outputs, and
- 15 employees (50.0 percent) were not evaluated based on expected outputs or outcomes.

Personnel evaluations were also inconsistently used to ensure SOP requirements related to performance were followed. Not addressing SOP compliance in personnel evaluations meant SOPs were not tied to actual performance and invalidated the SOP's value as a management control, increasing the risk the Division would be unable to ensure employee compliance with Division standards and objectives were achieved. For example:

- sworn employees were to be tested monthly on their knowledge of SOPs, but these tests, if they occurred, were not mentioned in personnel evaluations;
- sworn employees were to achieve the 24/40 premises inspection standard, a standard which none consistently achieved during SFY 2019 and which was not systematically mentioned in personnel evaluations; and
- all personnel were to receive ethics training at least once every two years, but there was no mention of such training in any personnel evaluations.

Staff Meetings Inconsistently Conducted And Training Not Provided

Division staff meetings, purportedly a control used to ensure expectations were communicated and performance assessed, were inconsistently conducted, undermining management's assertions that information was communicated and performance assessed because such meetings were held. Section meetings were to occur biweekly and general staff meetings periodically, and some managers suggested that weekly meetings occurred. Meetings were also to include training on SOPs. However, staff meetings inconsistently occurred in practice and section meetings were not required for the Administrative Bureau. Instead, some sections held meetings on an improvised basis. Expectations arising from meetings and results of training were inconsistently documented in personnel evaluations.

Personnel Allocations Inconsistent

The allocation of Division personnel was not based on formal workload, cost-benefit, or other analyses. Personnel should be allocated to efficiently and effectively achieve outcomes. However, the Division did not conduct necessary analyses to ensure objective, efficient workload distributions. It instead operated an improvised and outdated organizational structure overly reliant on sworn employees, lacking proper delegations of authority, and having longstanding embedded inefficiencies.

Inconsistent And Ineffective Workload Analysis

The Division lacked an effective, holistic, formal staffing analysis for at least a decade, undermining personnel and workload allocations during the audit period. The underlying SOP required: 1) data-driven personnel allocations be based on service demands documented in the enforcement database and 2) a workload assessment be conducted at least every three years. The SOP's workload analysis methodology was focused on outputs and required analyses of timeliness, time of year, and geographic location of services provided. However,

- since unsworn employees inconsistently had access to the enforcement database and the Division lacked data management procedures to ensure data reliability, any analysis based on enforcement data could not represent actual workload;
- the SOP did not specify how the Division would evaluate workloads of sworn versus unsworn employees, spans of control, or management layers and consequently the Division had no formal method for reallocating workload to optimize workloads, spans, or layers;
- analyses were not completed every three years, and instead the Division published operational reviews in CYs 2013 and 2017, which were inadequate due to, among other things, methodologies used to evaluate workload, unreliable and outdated data, and lack of ties to outcomes;
- triennially conducting workload assessments as specified in SOP was inconsistent with the State's biennial budget cycle, indicating an SOP provision adapted from accreditation standards was not adapted to the Division's operating environment;

- the CY 2013 and CY 2017 operational reviews focused on outputs and lacked the required evaluations of timeliness, time of year, and geographic location of services; and
- whole sections of the CY 2017 operational review were obsolete because they were copied from the CY 2013 operational review, including figures on total licensees and sworn employees employed.

Unoptimized Allocation Of Employees

The Division could not demonstrate the distribution of staff across different functions, and the allocation of sworn versus unsworn employees, was optimized, was efficient, and effectively achieved outcomes. Sworn employees cost more than unsworn employees of a similar labor grade, turnover and succession planning was purportedly an issue with sworn personnel, and the Division spent a significant amount of resources to train sworn employees. However, the SOP did not require, and the CY 2013 and CY 2017 operational reviews did not include, evaluations of whether personnel were allocated efficiently and effectively or the ratio of sworn to unsworn employees was optimized. Spans of control and managerial layers were inefficient and unanalyzed, and such analyses were also not required by SOP.

Additionally, the Division was overly focused on using sworn personnel to perform tasks rather than unsworn personnel, with 27 of 44 positions (61.4 percent) being allocated to sworn personnel, increasing the cost of operations and compromising achievement of outcomes. We have previously noted this propensity and recommended moving sworn administrative staff to field duties. While management may have deemed using investigators to accomplish administrative tasks formerly accomplished by unsworn employees to be an effective practice, doing so without conducting risk, cost-benefit, and other analyses meant the Division could not objectively demonstrate that these changes more efficiently and effectively produced expected outcomes. For example:

- excluding the Division Director from the total number of employees being supervised within the Division, eight of ten supervisory positions (80.0 percent) were sworn employees and directly supervised 38 of 43 positions (88.4 percent), while the two unsworn supervisors (20 percent) directly supervised the five other positions (11.6 percent);
- the Division lacked adequate controls to ensure effective management of the Administrative Bureau's unsworn personnel and functions, but two sworn employees promoted from the Field Operations Bureau oversaw the 17 unsworn employees in the Administrative Bureau, leading to inadequate management of licensing, the Direct Shipper Program, examinations, and training, as we discuss in Chapters 2, 3, and 4;
- investigators, sometimes at management's direction, engaged in a significant amount of extra-jurisdictional, excessive, and ineffective activities, as we discuss in Observation Nos. 38, 39, and 42, while some managers purported the Division was understaffed;
- investigators, at management's direction, were involved in initial licensing by conducting final inspections, duplicating similar activities conducted by examiners and formerly conducted by licensing specialists, while some employees purported field

enforcement and licensing duties were imbalanced, as we discuss in Observation Nos. 18 and 19;

- Division management hired a retired sworn employee as a part-time sworn licensing specialist, even though other licensing positions, including two part-time licensing specialist positions, were unsworn; and
- 2,360 of 2,613 licensees (90.3 percent) with relevant examination requirements, some required by statute or rule, were not examined during the audit period, yet Division management allocated three examiner positions to examinations versus 27 sworn employees allocated to managerial, supervisory, administrative, and field enforcement duties, as we discuss in Observation No. 34.

Inefficient Workload Distribution

Workload across employees conducting similar activities was inconsistent, and the Division could not objectively demonstrate workload was efficiently and effectively distributed to help achieve outcomes.

- Regions assigned to investigators and examiners were not risk-based or data-informed, as we discuss in Observation Nos. 42, 46, and 47. Investigators, under the supervision of a sergeant, and after February 2019, examiners involved in examinations, were assigned a geographic area. These geographic areas, in place since at least CY 2013 and primarily divided along county lines, were not reflective of the distribution of licensees and risk of potential noncompliance. The regional distribution of the 5,448 in-State licensees ranged from a high of 813 (14.9 percent) in one area to a low of 181 (3.3 percent) in another.
- The distribution of investigations and investigator workloads was inconsistent, as we discuss in Observation No. 46. For instance, the four-member Section B—which contained 31.8 percent of the total licensees and permittees but the most investigator areas—recorded a majority of investigations during the audit period, with 135 of 265 investigations (50.9 percent). The nine field investigators assigned geographic areas during the audit period were assigned investigation caseloads of between 10 and 41 as of July 2019, though four investigators were either employed for only part of the audit period or were a supervisor with investigator duties.
- Examiners and investigators duplicated efforts conducting premises inspections of the same licensees without adequate coordination. Examiners also separately visited some licensees subject to premises inspections to conduct examinations, as we discuss in Observation No. 42. Because there was no system to control workload allocation, determining and comparing the workloads assigned to individual examiners versus investigators was not possible.
- The Division did not optimize its allocation of sworn personnel. Investigators, particularly the nine investigators assigned geographic areas, conducted the majority of premises inspections, yet the Division failed to inspect or examine 2,252 of 5,448 licensees (41.3 percent), including 1,740 in-State entities (77.3 percent) representing

51 of 56 license types and seasonal license subtypes (91.1 percent) active during the audit period. Of those uninspected or unexamined, 94 (4.2 percent) also had instances of noncompliance. Meanwhile, 18 of 27 sworn positions (66.7 percent) were not assigned a geographic area, instead conducting managerial, supervisory, administrative, special investigations, elective, and extra-jurisdictional duties, as we discuss in Observation Nos. 38, 39, and 42.

Recommendations:

We recommend Commission management ensure the Division develops controls over personnel management to efficiently and effectively achieve expected outcomes, and complete annual evaluations for the Director.

We recommend Division management improve management of personnel performance, and:

- **ensure staff receive performance evaluations as required by statute, rules, and SOPs, and evaluations are tied to expected outcomes and reflective of actual duties;**
- **develop, implement, monitor, and refine strategies, plans, goals, objectives, targets, and performance measures to ensure personnel management practices are aligned with expected outcomes;**
- **revise, implement, monitor, and refine employee performance SOPs and SJDs to ensure personnel management practices are aligned with expected outcomes, including performance evaluations, retention, and succession planning;**
- **revise the staffing analysis SOP to include analyses of all personnel and related duties, spans, layers, sworn-unsworn ratios, delegations, and other efficiency and effectiveness measures, and to require such analyses be conducted when its operating environment changes and the validity of existing analyses are undermined;**
- **conduct risk assessments and cost-benefit and other analyses to determine how efficiently and effectively Division resources are allocated to achieve expected outcomes, including whether the ratio of sworn to unsworn employees is optimized and authority is properly and efficiently delegated;**
- **based on analyses conducted, make personnel changes to improve efficiency and effectiveness, including returning sworn positions to field enforcement activities and relying on unsworn staff for administrative functions; and**
- **hold staff accountable for their performance obtaining their individual and organizationally related goals.**

Agency Response:

We concur.

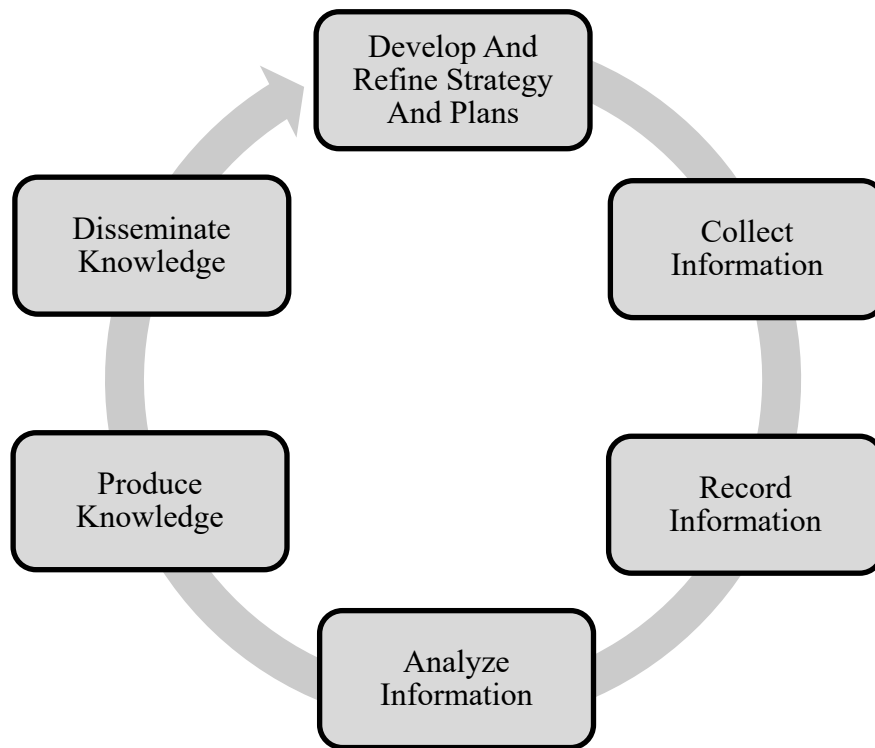
The Division understands the importance of conducting annual performance reviews and providing timely feedback for all of its personnel. To be more successful, the Division is working with the Commission's Human Resources personnel to improve the Division's process.

Managing Knowledge

Knowledge is information identified by management as needed to help achieve outcomes. Knowledge management is the control system over collecting, recording, and analyzing quality data, and producing, disseminating, and using knowledge, as shown in Figure 3.

Figure 3

Knowledge Management Process



Note: Depicts one model, not actual Division controls operating during the audit period.

Source: LBA analysis of knowledge management principles.

Effective knowledge management can help managers: 1) disseminate and retain critical knowledge, 2) facilitate data-informed and objective decision-making, 3) achieve objectives, 4) improve efficiency and effectiveness, and 5) ensure transparency, accountability, and compliance. Knowledge management was especially important for the Division to achieve outcomes and address risk, given operating complexity, the frequency of unclear or informal requirements, and the subjectivity of decision-making. The Division should identify internal and external information requirements, process data into quality information, and convey quality information internally and externally. Identified information requirements should be timely satisfied with reliable, unbiased data from internal and external sources.

Knowledge management depended upon developing, implementing, monitoring, and refining controls over:

- strategic, risk, compliance, and performance management, to guide operations;
- data, to ensure availability and reliability;
- records, to ensure records were complete, integrated, and easily accessible;
- IT systems, to ensure optimization;
- internal communications, to ensure necessary data was collected, recorded, analyzed, and used to produce knowledge; and
- external communications, to ensure transparency and demonstrate compliance.

However, Division knowledge management practices lacked a cohesive design, and in the aggregate knowledge management controls were undeveloped.

External Communications

To manage risk, ensure transparency, and help achieve expected outcomes, agencies must continually obtain and share information externally. Management should design, implement, operate, and monitor a system to identify external information requirements; collect relevant, reliable data; process data into quality information; and communicate externally to achieve objectives. The Commission was required to externally report on its operations biennially and report on its efforts to remediate conditions leading to audit findings at specified intervals. However, reporting requirements were not complied with during the audit period, and management's system of control over external communications was undeveloped.

Observation No. 14

Improve Controls Over External Communications

The Division's system of control over external communications was fragmented, incomplete, and inconsistent, compromising transparency and customer service and contributing to inefficiency and ineffectiveness. The Division should routinely monitor the alcoholic beverage industry for changes potentially affecting public safety and welfare, or changes affecting its regulatory programs, licensees, and permittees. Division management should publicly report on operations and achievement of expected outcomes, regulation of the industry, and industry trends and conditions. However, the Commission and Division lacked comprehensive strategies, plans, goals, objectives, performance measures, and initiatives to ensure efficient and effective external communications. The Division's approach to external communications involved a complex, disconnected, and incomplete knowledge management framework only partially reflected in SOPs and reflected more in improvised practices. Deficiencies with the Division's internal communications, records management, and IT management further limited external communications. External reporting requirements were inconsistently met, and the Division did not rationalize and implement SOPs to ensure reporting was integrated and effective and lacked a comprehensive approach to communicating externally. Management reported working to make Division operations more transparent, increase communication, and improve some specific

communications practices. However, there was no strategy or resourced, time-phased plan to establish a framework to achieve these desired results.

Inadequate External Communication

Communication with external stakeholders, including licensees, permittees, industry groups, law enforcement and other government agencies, and the general public, was inconsistently compliant with external reporting requirements and inadequately guided by SOPs.

Inconsistent Compliance With External Reporting Requirements

Division performance was inadequately communicated to external stakeholders, undermining transparency. The Commission was long required to biennially report publicly on operations. Biennial reports were to include an outline of functions and its organization, an organizational chart, significant accomplishments, and significant legislation directly affecting its responsibilities. While the Commission annually published comprehensive annual financial reports, these reports detailed fiscal activity, and the Commission lacked operational reporting reflecting Division operational accomplishments, conditions on which we have commented since at least CY 1994. There was no formal requirement for the Division to provide performance data to the Commission through regular reporting on operations. The Commission also inconsistently reported on progress for remediating audit findings since CY 2014, several with direct or indirect implications for the Division.

In addition to routine reporting requirements, the Commission also agreed in CY 2018 to provide quarterly reports to the Legislature detailing Division extra-jurisdictional enforcement activity due to persistent concerns with scope creep. However, extra-jurisdictional activity was not systematically monitored and analyzed, and reports were not developed and provided to the Legislature, as we discuss in Observation No. 38.

We noted Division management did generate some output-centric, grant-required reports, and management reported working on the design of an annual report in CY 2019.

Fragmented, Incomplete, And Inconsistently Followed SOPs

External communications requirements in SOPs were fragmented, incomplete, and inconsistently followed. SOPs provided for annual reports summarizing Division activities and accomplishments, profiling-related enforcement action, intelligence, sworn personnel use of force, grievances filed by Division employees, and juvenile-focused elective education efforts, all by quantifying outputs. None focused on performance or achieving expected outcomes. Only reports on the use of force and juvenile-focused elective education efforts were consistently generated during the audit period. The annual report summarizing Division-wide, output-related activities and accomplishments was inconsistently generated. Other reports were discontinued when the Division ended accreditation.

SOPs also required development of two types of weekly reports on sworn employee operations, but only one was published, and after January 2019, monthly reports encompassing aspects of both

bureaus' operations were also generated. Weekly and monthly reports were not systematically connected to annual reports through SOP or practice, and no performance measures were created to tie weekly, monthly, and annual reporting together to evaluate outcomes. Additionally, at least 19 SOPs as well as guides and practices contained an indeterminable amount of inconsistently collected metrics, but these were neither aggregated into weekly, monthly, and annual reporting nor were they systematically tied to expected outcomes. Other reporting requirements were not contained in SOPs, including reporting regularly on Division outcomes and performance, as well as complaints against licensees, permittees, or the Division and its employees. Finally, the reports the Division did generate were not published.

Inadequate External Communication With Stakeholders

The Division lacked a strategic, systematic approach to communicating externally with stakeholders. Communicating with and obtaining feedback from stakeholders was essential to Division operations, but the Division did not systematically identify stakeholder needs and survey stakeholders to determine whether needs were met. SOPs provided for a citizens' attitudes survey every three years, which was not completed. No other formal means to collect stakeholder input existed. Our interviews and surveys of stakeholders indicated stakeholders held inconsistently favorable opinions of Division external communication, for example:

- six of eight representatives from stakeholder groups (75.0 percent) had no concerns with Division external communications while two of eight (25.0 percent) expressed concerns with the Division's ability to effectively disseminate information on law and rule changes to the regulated community;
- individuals associated with State and local law enforcement agencies expressed overall positive opinions of the Division, but were inconsistently satisfied with Division communication; and
- licensees and applicants at times found the initial and renewal licensing and examination processes confusing, with some obtaining contradictory or incorrect guidance from Division employees.

Complete results of our surveys of the State law enforcement community, new licensees, and renewing licensees are included in Appendices D, E, and F.

Important documents were not shared externally, including Commission strategy-level plans, the Division's organization chart, and certain forms needed for licensure and examinations. Complaints were also inadequately managed, with no process to report on establishments subject to public complaints, as we discuss in Observation No. 44. The Division used industry circulars to communicate interpretations of requirements, and while some industry representatives thought this was a positive practice, the substance of these interpretations was not properly adopted in rules.

The Commission and Division inconsistently and inadequately communicated with partner State agencies responsible for strategies or managing data relevant to Division outcomes. Commission and Division strategies did not support or operationalize relevant external strategies and plans. The Division similarly did not connect its measurement of outcomes to data managed by partner agencies and related to ensuring proper control. Consequently, potential partner agencies were at

times unfamiliar with the Division or lacked any substantive communication with the Division. Additionally, effective investigations depended, in part, on access to quality information, often held by other agencies, and while the Division contributed to the national crime database, it lacked ready access to another key State law enforcement database.

Inconsistent Enforcement Agendas And Minutes

Division Meeting agendas and minutes were an important means of external communications. Controlling the development of Division Meeting agendas and minutes was essential to ensure licensing, permitting, and sanctioning decisions were properly reviewed by the Commission and followed-up on by the Division, directly and indirectly affecting stakeholders. The Commission retained authority for rendering most licensing and permitting and all sanctions decisions, though in practice Division employees exercised undelegated discretion to render some of these decisions. Division Meeting agendas were used to bring many final licensing, permitting, sanctioning, and other actions before the Commission for acknowledgement, approval, or disapproval. Meetings were held weekly and involved dozens of agenda items requiring decisions. Decisions were then recorded in minutes and reportedly used by Division employees to conduct necessary follow-up, such as sending approved licenses and permits to applicants or subjecting licensees or permittees to sanctions.

However, development and use of Division Meeting agendas and minutes was inadequately controlled, affecting outcomes through inconsistently reliable data and records. The Division lacked an SOP governing Division Meeting agendas and minutes, and the reliability of these documents was uncontrolled. As a result, the Division could not demonstrate that Division Meeting agendas and minutes were complete and accurate. We did not audit Division Meeting agendas and minutes to determine the extent of inconsistent data reliability, but, among other inconsistencies, found:

- the alcoholic beverages registered for a special one-day license listed in Division records did not consistently correspond to those listed in Division Meeting minutes for Commission approval; and
- data in Division records that were to reflect information from Division Meeting minutes was inconsistently reliable, and known to be inconsistently reliable, excluding certain Division Meeting minutes completely, listing some decisions incorrectly, and containing inaccurate license numbers, violation dates, and offense numbers.

Recommendations:

We recommend Commission management improve external knowledge management, and:

- **report externally on operations biennially;**
- **report on audit remediation routinely; and**
- **incorporate into strategy and plans an element to ensure reliable, comprehensive operational information is regularly reported externally.**

We recommend Division management improve external knowledge management, and:

- incorporate into strategies and plans elements to conform to statute, executive orders, agreements, and Commission strategic external communication requirements and automate business and stakeholder facing processes, including licensing, permitting, tax and fee payment, and reporting;
- rationalize, implement, monitor, and refine SOPs to ensure data collection requirements are comprehensive and focused on informing strategy, plans, and outcome achievement;
- rationalize, implement, monitor, and refine SOPs to ensure reporting requirements are comprehensive and focused on outcome achievement, and rely on accurate data and information;
- develop, implement, monitor, and refine quarterly external reporting on enforcement activity at unlicensed establishments and provide it to the General Court; and
- communicate with and analyze feedback from relevant stakeholders, including licensees, permittees, industry groups, other government agencies, and the general public, using feedback to refine operations.

Agency Response:

We concur.

The Commission provides status updates on audit remediation in accordance with executive orders and publishes comprehensive reports on its financial status and operations annually.

LBA Comment:

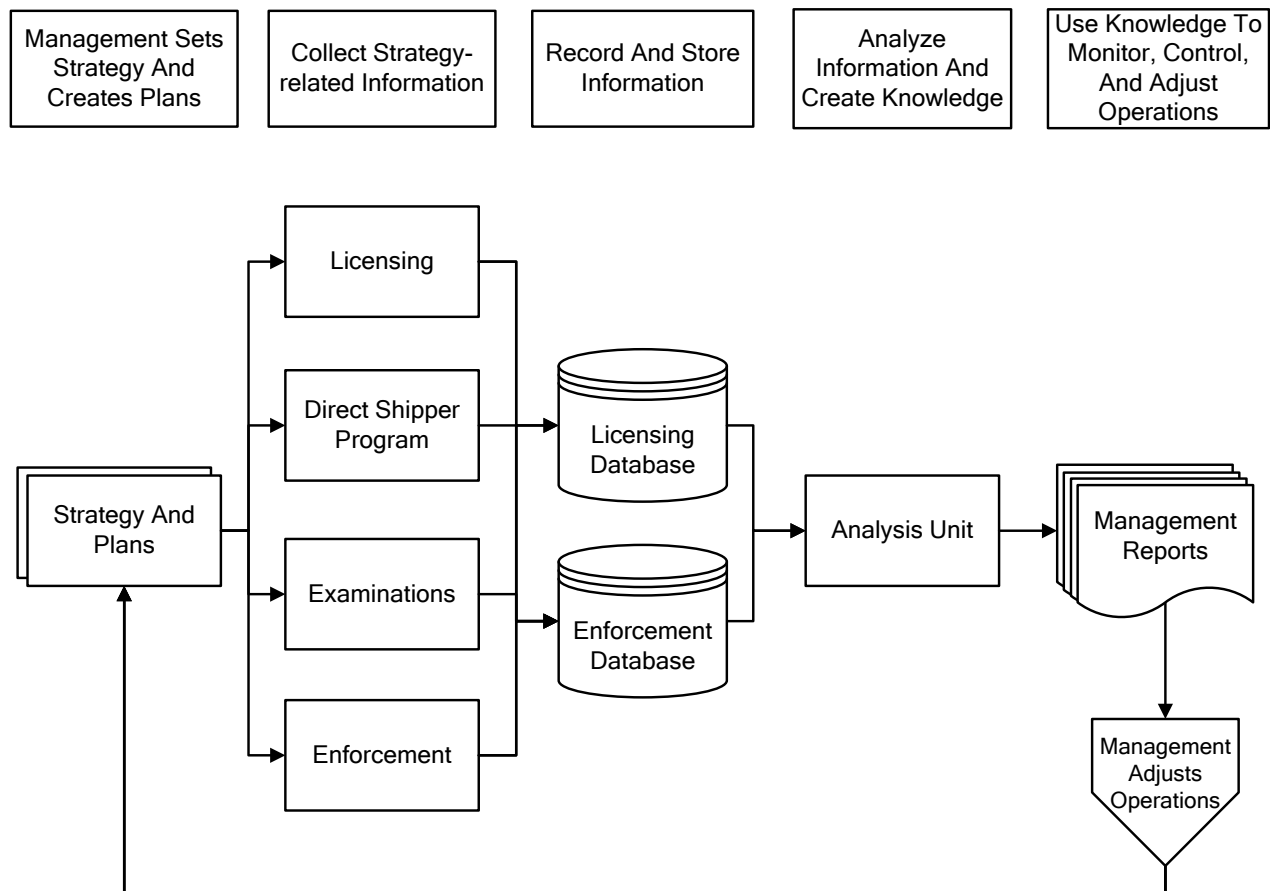
While the Commission concurred, its response did not recognize or address inconsistencies in complying with Executive Order reporting requirements we detailed in Observation No. 4 and inadequacies in publicly reporting on operations biennially as required.

Internal Communications

The system of control over knowledge management relied upon effective internal communications. Effective internal communications can help managers: 1) effectively manage knowledge; 2) optimize performance; 3) ensure proper stewardship of resources and minimize waste; 4) facilitate data-informed and objective decision-making; 5) achieve objectives and manage risks; and 6) provide transparency. Internal communications included information communicated at, and across, all organizational levels of the Division. To manage risk, ensure transparency, and achieve expected outcomes, management should design, implement, operate, and monitor a system to identify information requirements; collect relevant, reliable data; process data into quality information; and effectively communicate internally the necessary quality information to achieve objectives. Effective internal knowledge management can enable external knowledge management. Internal knowledge management should have been guided by strategy, plans, goals, objectives, and targets. As shown in Figure 4, processes should have been integrated, and information collected should have been reliable and recorded and stored in well-defined databases.

Figure 4

Model Division Internal Knowledge Management Process



Note: Depicts one possible model with functions and other features of Division practice, but not actual Division controls operating during the audit period.

Source: LBA analysis of knowledge management principles and Division practices.

However, management's system of control over internal communications was undeveloped.

Observation No. 15

Improve Controls Over Internal Communications

The Division's system of control over internal communications was fragmented, incomplete, and inconsistent, contributing to inefficiency and ineffectiveness, and inhibiting external communications and achievement of expected outcomes. Management lacked comprehensive strategies, plans, goals, objectives, and performance measures to ensure efficient and effective internal knowledge management. Information used internally was inconsistently reliable, a cohesive structure to systematically translate information into knowledge and disseminate knowledge to inform decision-making did not exist, standardized practices in many SOPs were

unintegrated or inoperative, and practices controlling many processes were improvised and informal. Deficiencies with records and IT management further limited internal communication. Decisions were based on data of unknown, and at times insufficient, quality. Management recognized at least one internal communications limitation, revising certain practices in February 2019, but these revised practices were not integrated into SOPs or measured for effectiveness. Reportedly, an analytical system to better inform Division operations was to be formed based on the inoperative CIU; however, no resourced, time-phased plan existed to achieve this desired result.

Inadequate Internal Knowledge Management

The Division did not efficiently or effectively manage knowledge internally to achieve outcomes. Information was inconsistently identified, integrated, and analyzed to produce knowledge, inhibiting achievement of expected outcomes. The Division lacked a holistic system to identify needed data and collect, record, synthesize, and analyze quality information to produce, disseminate, and use reliable knowledge. In particular:

- the Division, and its data generation and collection, were not guided by strategy, plans, goals, objectives, or targets;
- strategic, operational, and tactical decisions, assessments of risk, and external communications relied upon intuition rather than knowledge derived from reliable data;
- information deriving from practices was fragmented and siloed based on legacy practices without holistic integration, analysis, and reporting;
- internal communication was inefficient and improvised, often relying on manual procedures instead of existing IT systems or established reporting relationships;
- data reliability was inconsistent and inadequately controlled;
- IT systems were not optimized;
- the Division and its functions used a variety of hardcopy and electronic records and databases that were inconsistently accessible across the organization;
- licensees and permittees inconsistently had a single master record, with the Division instead allowing for multiple repositories of records on a single licensee or permittee focused on individual processes or a Division organizational component;
- the Division's analysis unit, the CIU, was inoperative during the audit period, and despite purporting to have an initiative to return the CIU to operation, there was no time-phased, resourced plan to do so;
- internal and external reporting was fragmented, incomplete, and inconsistent, limiting access to necessary knowledge to inform decisions; and
- substantial amounts of data and information were collected, with and without formal requirements, and were inconsistently used to create knowledge, constituting waste.

Lacking comprehensive formal knowledge management controls, internal communications relied on informal practices. For example:

- recordkeeping practices and related hardcopy and electronic records management systems used differed by function;
- employee access to IT systems was not optimized;

- reporting and meeting requirements in SOPs were inconsistently followed;
- licensee training requirements were inadequately communicated, and consequently the Division could not consistently demonstrate licensees obtained required training;
- investigators and examiners conducted similar compliance monitoring activities, but activities were inadequately coordinated, lacking consistent practice and leading to inefficiency;
- licensing specialists and investigators inadequately communicated regarding license expirations, leading to inefficiency and improper control; and
- reporting practices, as well as the development and use of Division Meeting agendas and minutes were inadequately controlled, leading to incomplete transfer of knowledge, unreliable data, and inadequate transparency.

Inadequate Internal Reporting

Formal Division internal reporting was incomplete, unintegrated, and inadequate to ensure knowledge produced was reliable and was disseminated across the Division and to management to inform decisions and help achieve expected outcomes. While SOPs required weekly and annual reporting, the requirements were inconsistently followed, and the SOPs were inadequate. Two different weekly reports were required by separate SOPs, but only one SOP was actively followed during the audit period. The resulting report solely dealt with outputs of sworn employees assigned to the Field Operations Bureau's three field sections and special investigations. The Division developed new reports, not governed by SOPs, to meet information requirements. A monthly report was developed and first published in January 2019 to detail select outputs of certain Field Operations and Administrative Bureau operations, but without a regulating SOP or overarching strategy. Information in both the weekly and monthly reports were sourced from the enforcement database, and the monthly report additionally relied on licensing and improvised databases, all of which were subject to data limitations, as we discuss in Observation Nos. 16 and 17. Output measures reported in weekly and monthly reports were not systematically connected in SOP or practice, and there was no connection to annual reporting requirements or outcomes.

Disconnected, Inconsistently Followed, And Incomplete SOPs

Numerous SOPs affected internal communications, but they were inadequately designed, disconnected, or incomplete and resulting practice was inconsistent, compromising transparency and effective external communications. SOPs should be coordinated and useful, structuring an orderly flow of information which could have helped the Division understand its internal and external operating environment. However:

- at least 19 SOPs and an indeterminate number of rules, augmenting practice guides, and uncodified practices provided for the generation of one or more sets of enforcement-related data, but were unintegrated and inconsistently followed;
- the Division did not develop practices to ensure reliable data was transferred to relevant external databases managed by other State agencies;
- at least two dozen processes generating licensing-related data, in addition to innumerable examination-, Direct Shipper Program-, and training-related datasets were unintegrated and underpinned by improvised practices;

- certain SOPs contained generic language suitable for obtaining accreditation under law enforcement agency standards, but were not adapted to the Division's actual operating environment;
- reporting SOPs were sworn staff focused and inconsistently followed, and reports were inadequately connected to data generated and performance measures and outcomes;
- no SOP regulated development and quality control of Division Meeting agendas and minutes, even though all Division functions contributed to agenda development, and no one employee was tasked with managing agenda development or follow-up; and
- no SOP regulated classifying the sensitivity of records, making it unclear what records should or should not be published internally or externally.

Recommendations:

We recommend Division management improve internal knowledge management, and:

- **incorporate into long-term strategy and plans an element to optimize internal communications and obtain a holistic IT system or integrate existing IT systems;**
- **incorporate into short-term strategy and plans an element to improve efficiency and effectiveness of the current internal communications, intelligence, and analysis construct that reengineers practices to optimize the value of the systems in use and the data collected and discontinues collection of data not supporting outcome achievement;**
- **develop, implement, and monitor new, or integrate, monitor, and refine existing SOPs; and**
- **migrate decision-making away from intuitive, partially data-informed practices towards data-driven decision-making based on reliable data and objective analyses to guide employment of Division resources to achieve objectives and attain outcomes.**

Agency Response:

We concur.

Records Management

An effective system of control over knowledge management required effective records management. The Commission was long-required to establish and maintain an efficient records management system for hardcopy and electronic records, and make and maintain records containing adequate and proper documentation of the Commission's organization, functions, policies, decisions, procedures, and essential transactions. To manage strategy, plans, and risk, control operations and make operational decisions, and monitor and report on performance, management should:

- accurately, completely, and timely record the lifecycle of transactions and events;

- ensure information is appropriate, current, complete, accurate, accessible, and timely available;
- organize records and control access;
- ensure records facilitate tracing a transaction or event through its lifecycle, and allow others to evaluate and analyze operations; and
- process data into reliable information to report internally and externally.

Effective and efficient records management can help protect the legal and financial rights of the State and the public, ensure transparency, and provide the greatest possible public access to the Division's actions, discussions, and records. However, the Division's systems of control over records contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, and its system of control over records management was undeveloped.

Observation No. 16

Improve Controls Over Records Management

The Division's management of records was inadequate and did not consistently achieve statutory expectations. The Division was required to operate an effective and efficient records management system to protect the State's and the public's rights, ensure transparency and maximize public access, and inform decision-making. While SOPs addressed aspects of records, there were no data-informed, risk-based strategies; time-phased, resourced plans; or performance goals, objectives, or targets governing records management processes or their contributions to helping achieve expected outcomes and ensure compliance. Prior audits commented on deficiencies with data and records management, identifying instances of missing, misplaced, and incomplete records, but the prevailing conditions were not durably remediated, allowing deficiencies to persist. The Division reported efforts to migrate hardcopy records to electronic form and refine numerous records management-related practices, and, as part of seeking reaccreditation, it would review SOPs and expected to reengineer business processes.

However, there was no resourced, time-phased plan to do so. Improvised practices resulted in: 1) records of unknown quality, with some records containing inaccuracies; 2) some records that were incomplete; 3) inconsistency between hardcopy records and corresponding electronic records; and 4) unmonitored processes without relevant data collected. Record quality was not an organizational focus. Records were inadequate to inform strategy, planning, and risk management, and ensure internal and external communications were accurate. Inaccuracy affected proper control and customer service. Inconsistencies limited transparency and led to unauditible transactions. Practices were inefficient, relying upon manual procedures; numerous unintegrated, improvised, process-specific databases; and duplicate hardcopy records, compromising optimization and wasting resources.

Inadequate Control Structure

The Division lacked an adequate records control structure. Control systems were incomplete, were not systematically monitored for effectiveness, and inconsistently conformed to governing

statutes. No one dataset would consistently describe the lifecycle of various transactions. The Division lacked:

- a current, comprehensive, and integrated SOP regulating records throughout their lifecycle or system- or record-specific SOPs, user manuals, data dictionaries, or other fundamental control documents;
- a comprehensive inventory of operational records, with records residing in structured and unstructured databases without any mapping connecting databases to one another to identify gaps and duplication;
- integrated record repositories, which resulted in separate records of individual licensees and permittees among different components of and databases within the Division;
- processes to assess and control record quality, relevant record quality standards, and reconciliation of records on the same entity or transaction between databases;
- a classification system to properly ascribe sensitivity or confidentiality to records to ensure transparency while properly protecting records;
- processes to determine whether data collected were needed, and discontinue the collection of unneeded data and generation of unused records;
- an adequate retention schedule and compliant retention practices;
- relevant operational or individual performance measures and adequate oversight mechanisms; and
- a definition of what a complete record included, or which record system should contain a complete licensee, permittee, or other record.

Additionally, the Division's records SOP was predicated upon, in part, an inapplicable statute and a retention period inconsistent with statute. Other process-specific SOPs were inconsistently integrated with the records SOP; some SOPs allowed staff to determine retention schedules, leading to some records being disposed of upon completion of a transaction; some controls were reliant upon improvised procedural guides; changes were managed informally, with practices codified in informal guidelines, memoranda, or email, but not appended to SOPs; and there were undocumented changes to practice. Sections and individuals managed many of their own records, often in isolation from other elements of the Division. Sometimes records of a similar nature, such as records on licensee or permittee noncompliance, were separately maintained and inconsistently included in the Division's enforcement database. Depending upon the license or permit type and its individual history, multiple hardcopy and electronic records maintained within numerous Division sections would have to be accessed to obtain the full record of a licensee or permittee. In some cases, a complete history did not exist between hardcopy and electronic records. Furthermore, without a properly adopted records retention schedule, records were inconsistently retained for the statutory minimum of four years.

Without adequate controls, management and staff misperceived reliability. The six investigators we interviewed or surveyed reported information systems helped achieve Division goals and objectives, but noted some issues with certain systems. Of the six, two (33.3 percent) reported data were reliable, three (50.0 percent) reported data were somewhat reliable, and one (16.7 percent) was unsure how reliable the data they used was. Meanwhile, senior management viewed data to be reliable.

Inconsistent Records And Corresponding Electronic Data

Division records and corresponding electronic data were inconsistent and unreliable. Consistency was essential for reliability, and effectively managed records were inherently reliable. Data control was essential if DBMS were to be valuable management tools. However, management lacked controls to ensure consistency and reliability, or to identify and remediate inconsistency and unreliability within and among databases. While we did not establish consistency rates for every field within every database or audit records for inconsistency, our work nonetheless demonstrated: 1) hardcopy and electronic databases were internally inconsistent, 2) data were inconsistent between databases, and 3) key records rested in databases that were dynamic and could be overwritten without preservation of individual transactions or edits, subjecting them to alteration without management control or auditable record. Records were insufficient to consistently determine whether essential transactions occurred or occurred timely, rendering some unauditably.

Inconsistency Between Databases

Inconsistencies between databases included:

- unauditably transactions;
- inconsistent licensee names and license numbers;
- annual licenses were typically entered into the enforcement database but Direct Shipper permits were not, residing instead in improvised databases;
- inconsistent investigative records, with two of 46 hardcopy investigative files (4.3 percent) we reviewed listed in all three relevant recordkeeping systems;
- the information within the two investigative records we found listed in all three recordkeeping systems was inconsistent, including the case opened and closed dates, which did not match across any of the three recordkeeping systems;
- categories of enforcement-related data generated and recorded in improvised databases by the Administrative Bureau, such as Direct Shipper Program-, licensing-, examination-, and training-related noncompliance, were excluded from, or inconsistently included in, the enforcement database;
- 52 of 329 beverage vendors (15.8 percent) listed in the licensing database were also listed in the enforcement database; and
- licensees missing altogether from one or another database, such as one of 53 beverage vendors (1.9 percent) listed in the enforcement database was not in the licensing database.

Inconsistent Hardcopy Records

Inconsistency within hardcopy records included:

- documents on one licensee mis-filed in another licensee's record;
- inconsistently signed record copies of key documents, such as licenses, temporary licenses, and inspection reports;
- missing key documents, such as temporary licenses and tax and compliance examination results;

- records inconsistently reflecting final results of key events, such as recommendations resulting from final inspections;
- erroneous dates, some one full year off, while others were not recorded; and
- insufficient documentation to determine timeliness of licensing, permitting, and investigations.

Additionally, examination documentation was destroyed upon examination completion, and other records were disposed of before statute permitted.

Inconsistent Electronic Records

Inconsistency within Administrative Bureau databases included:

- a formal DBMS that had to be augmented by improvised, process-specific databases to manage licensing, the Direct Shipper Program, examinations, enforcement, and training;
- transaction lifecycles that were unauditible, such as those related to licensing, petitions, and the Direct Shipper Program;
- the mis-categorization of application types, which led to multiple data entries and required additional work to void earlier transactions;
- inaccurate licensee email addresses that reportedly led to one establishment losing its license;
- erroneous listing of at least one licensee on the list of licenses surrendered, leading to listing the licensee as out-of-business while it was still active; and
- errors in product, package, and container approval output data and Direct Shipper Program data.

Inconsistency within the enforcement database included:

- unauditible transaction lifecycles, such as those related to licensing;
- inflated call-for-service numbers due to data entry practices;
- the same establishment listed with as many as five different trade names with one name matching corresponding licensing data;
- incorrect data, such as the wrong license number, with some licensees listed in the enforcement database without the correct license number listed at all and 321 of 8,662 premises inspections (3.7 percent) being ascribed to locations without a license number or a valid license number;
- individual calls for service without key data, such as licensee name, license number, license type, or location;
- uncontrolled coding of activities, with multiple reason codes ascribed to the same event, multiple reason codes applied to the same type of event, and multiple reason descriptions ascribed to the same reason code;
- reason codes and event descriptions not matching, with some reason codes listing violations but event descriptions demonstrating no violation occurred or describing a different violation than the reason code;

- licensed establishments inconsistently included;
- different staff entering the same event, duplicating counting of the event;
- instances where one town was recorded as located in more than one county, and multiple jurisdiction codes used for the same town;
- training entries in live enforcement data; and
- ambiguities, including the violation purportedly observed.

Enforcement case monitoring logs derived from the enforcement database also contained inadequately controlled data, such as blank or invalid entries.

Inefficient Practices

The Division lacked efficiency measures, and records management practices were inefficient. An efficient records management program was integral to effectiveness and compliance with statute. We previously addressed aspects of Division records management inefficiency, recommending processes be automated and suggesting procedures be implemented to ensure records could be located. While technology can improve administrative and operational efficiencies, and despite significant investments in automation, hardcopy records were usually the definitive medium for Division records, and practices were largely, but not always, reliant upon hardcopy records. Division records management remained an improvised assemblage of manually-generated hardcopy records and electronic records contained in both formal and improvised DBMS with embedded inefficiencies and distributed across the Division. SOPs, procedural guides, and improvised practices were unintegrated and required:

- creating hand-written records, printing electronic records for subsequent manual use, and scanning hardcopy records previously printed to recreate electronic records;
- using as many as four separate DBMS to administer a single subprocess, and manually transferring data between DBMS;
- printing electronic records, at times multiple copies of the same records, for internal Division distribution; and
- utilizing internal courier services to move hardcopy records.

Management reported awareness of some of these inefficiencies, but lacked a resourced, time-phased plan to remediate them.

Recommendations:

We recommend Commission management provide adequate oversight and SOPs to ensure Division records management practices efficiently comply with law.

We recommend Division management improve records management, and:

- **comply with recordkeeping-related statutes and Commission SOPs;**
- **include a records lifecycle management element in strategy and plans;**

- once Division operations are rationalized, inventory records generated by Division operations, ensure each process is monitored, and discontinue making and keeping records without a purpose;
- develop, implement, monitor, and refine comprehensive and consistent recordkeeping SOPs that organize records throughout their lifecycle and control quality, access, security, classification, retention, and disposal;
- ensure records contain adequate and proper documentation of the Division's functions, policies, decisions, procedures, and essential transactions;
- develop, implement, monitor, and refine controls designed to ensure data reliability and include data reliability metrics;
- develop, implement, monitor, and refine controls over the minimum standard content for completed records for each transaction type; and
- monitor and report on the efficiency and effectiveness of records management practices.

We further recommend, once revised controls are shown to be consistently producing reliable records, that Division management establish a point in time where records attained reliability. The use of legacy records that preceded this date should be qualified to ensure those using unreliable legacy records for decision-making are cognizant of the inherent risks in using legacy Division records.

Agency Response:

We concur.

Information Technology Management

IT systems management was an essential component of overall knowledge management, and management should design IT systems and controls to achieve outcomes and manage risk. IT continually changes and can help improve agency efficiency and effectiveness when properly controlled. Whether internally managed or outsourced, effective development, implementation, monitoring, and refining IT controls remained management's responsibility.

While we had no IT-related audit objectives and did not undertake an IT control review, we did examine controls when necessary as an element of an audit objective. Management's system of controls over IT systems was undeveloped.

Observation No. 17

Improve Controls Over Information Technology Systems Management

The Division's controls over IT systems were inadequate to ensure optimization, data reliability, and integration of knowledge, leading to unachieved expected outcomes. The Commission and Division were subjected to several IT system-related audit findings over the last three decades, including findings of insufficient policies and oversight and the need to automate the beverage tax

filing process. However, the Division lacked strategies, plans, goals, objectives, targets, comprehensive SOPs, and performance measures to ensure effective IT system management and data management controls were incomplete, undermining reliability. The Division did not know about or use the full functionality of existing IT systems. Instead of optimizing existing IT systems, the Division expended significant time and resources on improvised efforts to research and replace key systems without any demonstrable results. Failing to replace key IT systems, there was no subsequent effort to optimize the use of existing systems or accommodate existing systems in practices and procedures by designing modified practices to optimize operations.

No IT Systems Strategy Or Comprehensive SOPs

The Division lacked a strategy to guide IT systems management to help achieve outcomes. An effective strategy is risk-based, data-informed, and developed and implemented by management to help ensure outcomes are achieved. In CY 2010, following recommendations in our *2006 Management Letter* and *State Of New Hampshire Liquor Commission Performance Audit Report April 2009*, the Division memorialized the need to improve IT systems by automating:

- the initial and renewal licensing and permitting processes,
- payments of fees and taxes,
- Direct Shipper Program reporting, and
- monitoring compliance with training requirements.

However, no strategy was formalized nor was a resourced, time-phased plan implemented, and identified needs were unmet. Through SFY 2019, IT systems remained unoptimized and disconnected, lacking comprehensive SOPs to control system use, and data were unreliable. The lack of a strategy led to improvised efforts to improve IT systems that did not lead to demonstrable outcomes. For instance, some employees were dissatisfied with the statewide standard licensing DBMS and spent years and expended a significant amount of resources researching alternative systems without any demonstrable outcome, even though the extent of the licensing DBMS's functionality was unknown. A formal risk assessment, strategy, and plan could have facilitated organized and coordinated efforts and reduced the risk of wasting resources.

Practices were not regulated by SOPs. The Division lacked key control documents, such as data dictionaries and user manuals, for its two major systems—the licensing and enforcement DBMS—although some practice changes were reportedly developed, and process controls drafted during the audit period. Ancillary systems used were also inconsistently controlled by SOPs or formal procedural guidelines, with the Division instead relying upon employees to communicate and independently learn how information systems would be used.

IT Systems Not Optimized

The Division did not optimize use of existing IT systems. The Division's two major DBMS supported aspects of core functions, including licensing- and enforcement-related business processes. However, neither system fully supported existing Division business practices or supported existing business practices efficiently. Other stand-alone databases, documents, spreadsheets, and other information systems were improvised to support practices, including some

that were used and shared among several employees and others that were only used by individuals. Furthermore:

- improvised IT systems were not connected to the Division's core DMBS through any automated processes, at times requiring inefficient manual data re-entry;
- practice lacked monitoring of licensing, permitting, and enforcement operations timeliness, even though IT systems could have provided such functionality;
- practice did not allow for electronic payment of many fees and all taxes despite agreed-to prior audit recommendations, longstanding stakeholder concerns, and an operational licensing DBMS that accommodated online payments;
- IT systems' reporting functionality was purportedly inadequate and inefficient, leaving most reporting functions unused and leading to improvised reporting procedures; and
- the licensing DBMS had additional functions to record and make publicly available licensee and permittee disciplinary history which were unused.

The Division lacked formal access management controls in SOPs, making it unclear which employees should have access to which systems to most efficiently and effectively achieve outcomes. For example:

- licensing specialists lacked access to and training on the enforcement DBMS to review licensee enforcement and examination histories to ensure requirements for license renewal were met, as we discuss in Observation Nos. 24 and 40;
- examiners lacked field access to, and investigators lacked access to and training on, the Commission's enterprise DBMS to monitor for adulteration and misbranding or unlicensed sales, and ensure licensees had obtained necessary product, package, and container approvals, as we discuss in Observation Nos. 35 and 41; and
- investigators inconsistently had access to, and training on, the licensing DBMS that would have allowed for reviewing licensee status and disciplinary history when conducting field compliance monitoring, as we discuss in Observation No. 42.

Recommendations:

We recommend Commission management ensure Division IT systems management efficiently and effectively helps achieve expected outcomes.

We recommend Division management improve IT systems management, and:

- **incorporate into long-term strategy and plans elements to obtain a system to efficiently and effectively automate business practices, such as automating compliance monitoring and performance measurement, and processes interfacing with stakeholders, including licensing, permitting, tax and fee payment, and reporting;**
- **incorporate into short-term strategy and plans an element to improve efficiency and effectiveness of its current IT architecture that reengineers practices to optimize the value of the systems used and data collected;**
- **integrate disparate databases and records into existing records management systems;**

- **develop, implement, monitor, and refine comprehensive SOPs to adequately control systems, their use, and the data entered into them;**
- **develop, implement, monitor, and refine comprehensive SOPs to ensure data quality standards are continuously met; and**
- **train employees and monitor performance, including conforming to SOPs regulating IT systems and data management standards.**

Agency Response:

We concur.

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STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING

CHAPTER TWO
LICENSING

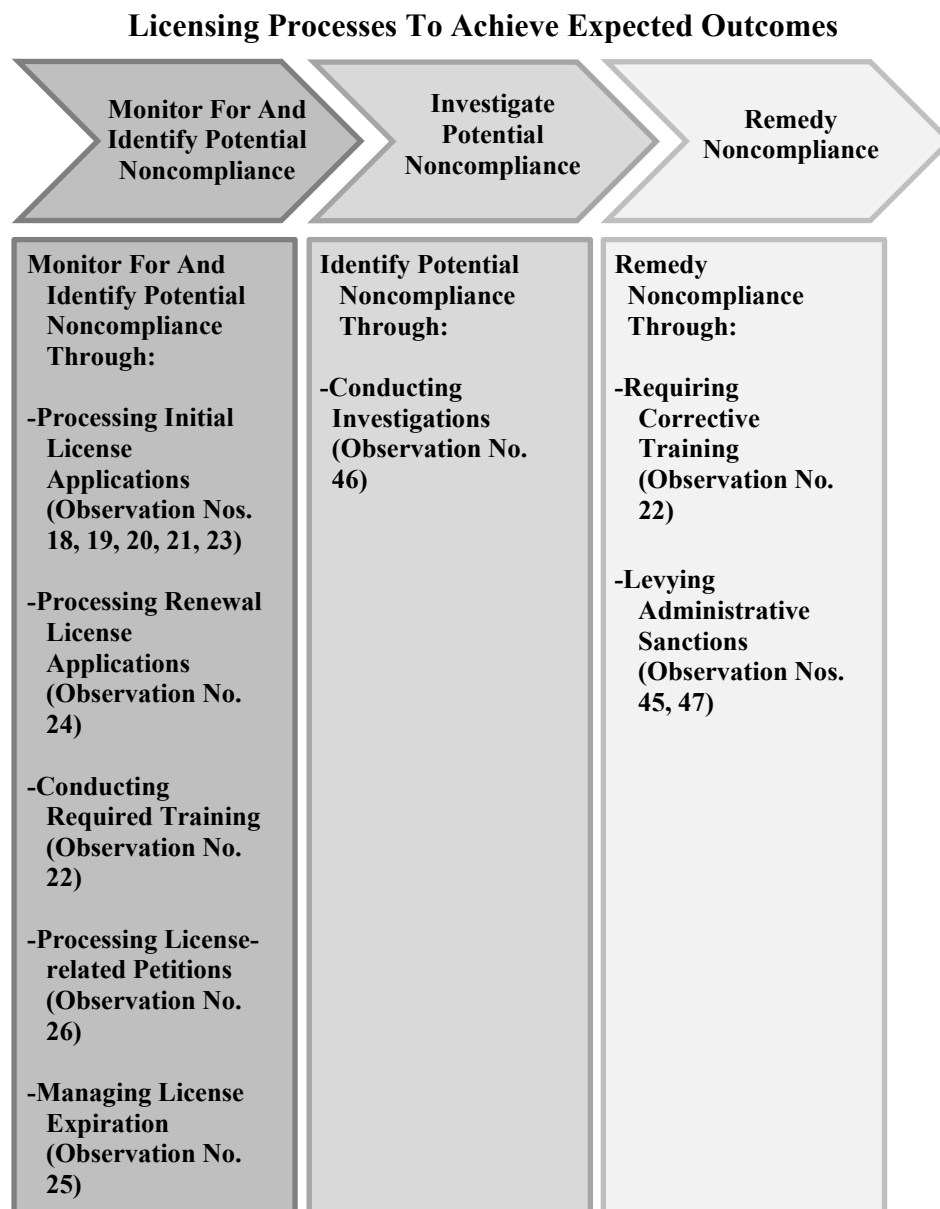
The licensing function was the entry point and principal control for individuals and entities to obtain and maintain a license to legally possess or transfer alcoholic beverages, with some narrow exceptions. The Division of Enforcement and Licensing's (Division) investigation of initial license applicants was intended to help ensure only proper persons were licensed, and licensee monitoring should help ensure ongoing compliance. At least 44 license types were specified by statute, covering a variety of business types, from manufacturers to carriers and retailers to restaurants. Licensees were primarily divided into two categories: on-premises licensees, licensees that served open containers of alcoholic beverages for onsite consumption, and off-premises licensees, licensees that transferred closed containers of alcoholic beverages for offsite consumption. License durations could be as short as one day or as long as 15 months, depending upon the license. Petitions from licensees to extend service of alcoholic beverages beyond what was specified by their license and special events were also provided. The licensing function encompassed several processes, including initial licensing, seasonal licensing, renewal licensing, and licensing-related petition processing. Licensing was primarily handled by licensing specialists who processed license pre-applications, processed initial and renewal license applications, recommended application approval or denial, processed petitions, and processed related fees. However, other components of the Division also had a role, particularly during the initial licensing process, including:

- examiners and investigators, who conducted licensing final inspections of license applicants' facilities, made recommendations for initial and renewal application approval or denial for certain types of entities, and monitored compliance;
- examiners, who also vetted some initial license applications;
- investigators, who also conducted licensee training; and
- training specialists, who conducted licensee training and monitored compliance.

According to unaudited Division data, the number of licensees increased 1.1 percent, from 4,054 in July 2017 to 4,099 in June 2019. Additionally, the number of licensees increased more for certain license types. For instance, the number of manufacturer licensees increased 28.8 percent, from 118 in July 2017 to 152 in June 2019. Concurrently, based on audited Liquor Commission (Commission) data, licensing fee revenue increased 38.6 percent from \$4.4 million in calendar year (CY) 2017 to \$6.1 million in CY 2019. There were 5,448 individuals and establishments listed in unaudited Commission data as licensed at some point during the audit period.

To help achieve expected outcomes, licensing required effectively operating systems of control over strategic, risk, compliance, performance, and knowledge management. As shown in Figure 5, effectively operating licensing and training systems to ensure proper licensure, noncompliance identification through monitoring, investigation of potential noncompliance, and remediation of noncompliance through administrative sanctions were also essential to achieve expected outcomes.

Figure 5



Source: LBA analysis.

Licensing should have monitored the lifecycle of each individual license from initial application and license approval to license expiration and license renewal to ensure achievement of expected outcomes. However, in practice, controls were at times absent, incomplete, and ineffective; proper licensure was inconsistently assured; and expiration management, investigations, and sanctions were inadequately controlled. Management was aware of some of the issues with licensing practices and reported working on forms and rules, and previously seeking to improve the licensing database management system (DBMS) without success. After the audit period, management reported working on streamlining the licensing process, including re-evaluating standard operating

procedures (SOP), updating practices and guides, and working to ensure licensing specialists' practices were consistent. However, management lacked a formal, time-phased, resourced plan to optimize licensing processes and management's controls over licensing operations were at an initial level of maturity.

Observation No. 18

Improve Controls Over The Licensing Function

The Division's controls over the licensing function were informal, reliant on ad hoc rules, incomplete, and inefficient, and lacked a discernable design to effectively achieve expected outcomes. Licensing was the entry point and principal control for individuals and entities to obtain and maintain a license to legally possess or transfer alcoholic beverages. Licensing decisions depended on clear criteria in statute and rule for vetting applications and effective processes formalized in rule and SOPs to ensure individuals and entities were properly and efficiently licensed. However, underpinning statutes and rules were dated and complex, criteria for licensing recommendations were inconsistently clear, and practices were improvised, not formalized in rule or SOP, and at times inconsistent with statutes and rules.

Adding to regulatory complexity, improvised practices involved both Division bureaus and multiple sections in initial license application processing and vetting, increasing inefficiency and the risk of bias in application decisions. The Commission was to approve or deny license applications. However, licensing recommendations, upon which licensing decisions usually depended, required approval from multiple individuals across components of the Division, and most license renewals and some other licensing decisions were instead approved by Division employees.

Licensing was inconsistently timely. The Division did not monitor and evaluate timeliness, lacking relevant performance measures or knowledge management systems. Obtaining the correct license in practice could take weeks, months, or, rarely, years. Initial licensing durations and fees were variable and made unnecessarily complex by rules. Multiyear licensing, authority for which the Commission requested, was unimplemented, accommodating undue burden on both the Division and the regulated community. The Division lacked risk-based, data-informed strategies, plans, goals, objectives, targets, and performance measures designed to help ensure licensing achieved expected outcomes. Without a formal, objective risk assessment, there was no way to determine what risks licensing practices undertaken by the Division were designed to mitigate. Without any cost-benefit or similar analysis, there was also no way to determine whether licensing practices efficiently mitigated risks.

No Cohesive Controls

The Division lacked controls designed to achieve outcomes. Rules should be designed to implement statute, and SOPs should be designed to implement statutory and regulatory requirements and to control practices within the Division. However, rules were incomplete and inaccurate, and some were expired, leading to development of ad hoc rules. In our *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2006*, we

recommended the Division develop comprehensive SOPs. However, licensing practices were based on past practice instead of achieving expected outcomes. Though the Division developed a licensing SOP, it was not used and both rules and SOP were incomplete and ineffective. Instead of following or updating the licensing SOP to reflect actual practice, licensing used an improvised procedure manual. The manual was in development during the audit period, was based on a former employee's practices, and was drafted when this employee was nearing retirement. Employees from other sections across the Division were also involved in licensing, but lacked any coordinated strategy, SOPs, or other guide to control operations and practices.

Incomplete And Ineffective Performance Management

The Division lacked a method for evaluating licensing outcomes. The monthly internal management reporting started in January 2019, was output-focused, centered on the number of applications processed and the number of individuals attending required training, and was inadequately detailed to demonstrate outcomes were achieved. The Division did not develop systematic methods to connect licensing and enforcement data with other electronic and hardcopy records to conduct objective performance measurement and effectively manage performance. Additionally, personnel performance management practices, including annual evaluations, were never tied to relevant organizational performance and outcomes.

Incomplete And Ineffective Knowledge Management

Management of licensing was hindered by uncoordinated, disparate knowledge management practices. Effective licensing practices required clearly formalized knowledge management systems and practices with consistent data entry ensuring data were reliable. However, individual Division components conducted licensing activity in relative isolation from each other. The Division used a variety of electronic and hardcopy records and forms to document and monitor licensing activities without consistently formalizing recordkeeping procedures in rule, SOP, or guides. The licensing DBMS was purportedly not suited to the Division's practices, and, even though it was not used to its fullest capacity, management reported seeking to replace the system without a formal, time-phased, resourced plan to do so, resulting in waste.

Licensing records were inconsistently reliable and maintained, undermining licensing objectives and complicating data use, reporting, and auditability. The Commission was to keep a record of all license applications and related petitions and actions, and records were to be retained for four years. However, records were inadequate to demonstrate all necessary licensing requirements were met, and met timely, and incomplete applications were inconsistently disposed based on a staff-developed, improvised timeline. The Division also lacked formal data entry and management procedures for the enforcement DBMS, licensing DBMS, improvised databases, and other electronic systems and records. Hardcopy records were inconsistently maintained. These systems and records were nonetheless used to develop weekly and monthly management reports, inform various licensing practices and management, and document Division activity, even though many transactions were unauditible.

Proper Control Not Ensured

Licensing practices inconsistently ensured proper control. Ensuring individuals and entities possessing or transferring alcoholic beverages were properly licensed and complied with statute and rule was essential to maintaining proper control. However, licensing, compliance monitoring, and enforcement decisions were inconsistent. For example:

- some entities either did not obtain a license or did not obtain the correct license, as we discuss in Observation No. 19;
- the Division’s compliance monitoring for unlicensed activity was inadequate, as we discuss in Observation No. 40;
- Division employees approved special, one-day, and renewal license applications and some petitions without delegated authority, as we discuss in Observation Nos. 21, 24, and 26;
- definitions such as “food,” or “full course meal,” were purportedly inconsistently interpreted by examiners and investigators, creating confusion, leading to ad hoc rulemaking, and resulting in some noncompliance and sanctions;
- some licenses were renewed without required examinations or annual premises inspections, as we discuss in Observation Nos. 21, 24, 26, 33, and 42;
- the online license renewal system purportedly allowed licensees with violations to renew without prior Division review and there were no formal procedures to check if renewal applicants had violations, points, or outstanding fines that would disqualify them from renewing, as we discuss in Observation No. 24;
- licensees inconsistently obtained training required by settlement agreements, as we discuss in Observation No. 22; and
- some licensees operated without valid licenses due to inadequate Division controls over license expiration, as we discuss in Observation No. 25.

Unoptimized Profitability

Licensing practices did not optimize profitability. The Division had a duty to efficiently and effectively use the public resources it was allocated to achieve expected outcomes. Fiscal analysis, within the context of a broader, risk-based licensing strategy, could have helped the Division coordinate and streamline operations, improve efficiency and effectiveness, and optimize profitability. However, practices lacked any objective measurement of, or controls over, efficiency and licensing processes were inconsistently efficient and effective. Additionally:

- licensing practices required the use of multiple knowledge management systems, formal and informal, hardcopy and electronic, that differed for each section and relied on inefficient data entry practices;
- seasonal licenses were unnecessary and inefficient, requiring application for renewal, a licensing inspection, and premises inspection annually unlike other licenses;
- internal communications on license expiration or termination was inefficient, with some investigators attempting premises inspections only to find licensees were out-of-business;

- applicants were sometimes given contradictory information on which license type to apply for, and Division employees had to expend more resources educating applicants and conducting one or more inspections to remedy misguided efforts; and
- some inspections were scheduled before applicants were prepared, leading to additional inspections and increased cost.

Good Customer Service Inconsistently Provided

Division licensing practices inconsistently provided good customer service. Effective customer service required understanding customers and their needs, rendering services to fulfill needs within the statutory and regulatory framework, and obtaining feedback to determine whether and how effectively needs were satisfied. The Commission and Division were required to timely and consistently process and render decisions on licensing applications and related petitions. However, the Division did not monitor or measure customer service and satisfaction, nor did it regularly solicit input on customer satisfaction during the audit period, as we discuss in Observation Nos. 19, 22, and 24. Instead, the Division relied on anecdotal feedback from the regulated community, limiting information obtained and increasing the risk of bias in decision-making. Our CY 2019 surveys of new and renewing licensees indicated overall satisfaction with the licensing process, as we discuss in Observation Nos. 19 and 24. We sent surveys to 239 new licensees and received 54 completed responses (22.6 percent) and sent surveys to 2,531 renewing licensees and received 567 completed responses (22.4 percent).

When we asked about their overall satisfaction of the licensing process 45 new licensees (83.3 percent) responded to our question, and:

- 34 (75.6 percent) reported they were *satisfied*,
- seven (15.6 percent) reported they were *somewhat satisfied*,
- two (4.4 percent) reported they were *neither satisfied nor dissatisfied*,
- one (2.2 percent) reported they were *somewhat dissatisfied*,
- one (2.2 percent) reported they were *dissatisfied*, and
- zero (0.0 percent) reported they were *unsure*.

When we asked a similar question in our survey of renewing licensees 545 of 567 licensees (96.1 percent) responded, and:

- 492 (90.3 percent) reported they were *satisfied*,
- 28 (5.1 percent) reported they were *somewhat satisfied*,
- 13 (2.4 percent) reported they were *neither satisfied nor dissatisfied*,
- five (0.9 percent) reported they were *somewhat dissatisfied*,
- five (0.9 percent) reported they were *dissatisfied*, and
- two (0.4 percent) reported they were *unsure*.

However, respondents also reported deficiencies and inconveniences encountered in licensing, including:

- having to call and visit the Division multiple times,

- abandoning the initial licensing process because of difficulties encountered,
- the fee for initial licenses not being straightforward,
- having to call to request license renewal application forms,
- the renewal licensing process involving multiple sections of the Division,
- the website for applying for renewal licenses being complicated,
- the processes to apply to obtain and renew a license being time consuming or too bureaucratic,
- directions and wording of renewal license application questions being unclear,
- staff being unprofessional,
- licensee training being taught differently depending on the instructor, and
- licensee training inadequately addressing all rules or information relevant to a license.

Complete results of our surveys of new and renewing licensees are included in Appendices E and F.

Timeliness and other consistency metrics for processing and returning licensing applications and fees were unmeasured, unmonitored, and in some cases noncompliant with statute and rules. Our file review of 40 licensing files demonstrated:

- all seventeen initial license applications lacked adequate documentation to holistically determine timeliness, as discussed in Observation No. 19;
- one of five renewal license applications (20.0 percent) was untimely processed and one (20.0 percent) lacked documentation to determine timeliness, as discussed in Observation No. 24; and
- one of six petitions (16.7 percent) we reviewed was untimely processed and three (50.0 percent) lacked documentation to determine timeliness, as discussed in Observation No. 26.

Additionally, at least 260 incomplete new license applications held by the Division were between zero and 24 months old when we reviewed them, as discussed in Observation No. 20.

Undue Complexity

Undue complexity in licensing practice compromised optimization of profitability, provision of good customer service, transparency, and efficiency. Licensing practices involved several employees and sections within the Division. Practices relied upon ad hoc rules and improvised procedures, over 100 license types and subtypes, at least 530 possible licensing fees, and initial license durations of between four and 15 months for “annual” licenses. To obtain a license, applicants were required to navigate a system underpinned by numerous requirements in statutes and rules, as well as forms, supporting checklists, instruction guides, and industry circulars, many of which included ad hoc rules. Licensing was complex to the point the Division had to use a “pre-application” form and process before they would provide an applicant the actual application needed to start the actual licensing process. Concerns with licensing complexity and timeliness were reportedly recognized by management and generalized discussion on how to reduce complexity reportedly occurred, with significant changes expected beyond State fiscal year (SFY) 2019.

Complex Initial Licensing Process

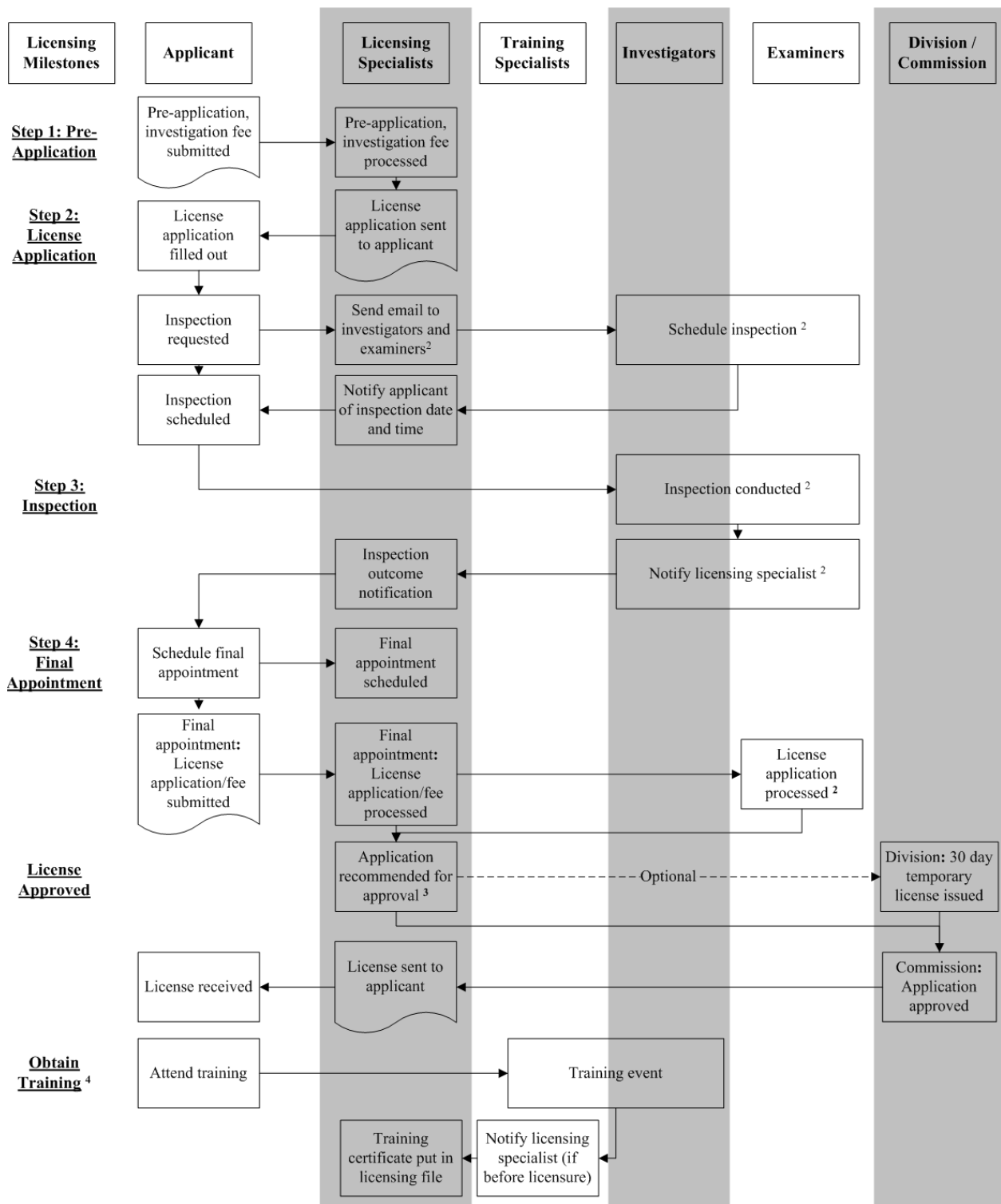
There was no formal system to monitor licensing consistency, including timeliness, and nothing demonstrated improvised licensing practices efficiently achieved outcomes. Improvised practices involved several sections and multiple employees in the initial licensing process, complicating and delaying licensure for some applicants and providing employees undue discretion. There were several points in the initial licensing process where Division employee discretion was necessary and could lead to delays and inconsistent licensing decisions, and increased the risk of bias. The licensing process and criteria for each step of initial licensing were incompletely adopted in rule, providing opportunity for inconsistent licensing decisions. Though licensing specialists were responsible for processing applications and fees, investigators, examiners, training specialists, and Division management were, or could have been, involved in initial licensing as well, as shown in Figure 6. The Division conducted no cost-benefit or other analyses to demonstrate practices involving so many employees and sections in initial licensing were efficient and necessary to achieve outcomes.

- **Pre-application Processing** – Before obtaining a license application, applicants were required to fill out and submit a pre-application to help licensing specialists determine for which one of the 44 license types the applicant could apply. Criteria for these determinations were not incorporated into rule or SOP, leaving undue discretion to licensing specialists. In some cases, applicants were directed to apply for a specific license type but were later to be told by other Division employees that a different license type was necessary, leading to delays. Applicants sometimes contacted other Division employees, instead of licensing specialists, before submitting a pre-application to obtain information about how to apply and which license type to seek, sometimes receiving contradictory information.
- **Site Inspection** – After the pre-application was processed and supporting documents collected, applicants could schedule a site inspection, conducted by an investigator and sometimes an examiner. Investigators, and examiners when involved, exercised undue discretion when inspecting the premises, cursorily reviewing supporting documents to determine whether licensing requirements had been met, and recommending approval or denial. Criteria for making these determinations were incompletely incorporated in rule or SOP. Investigators and examiners used separate, improvised checklists intended to help ensure compliance requirements were met, but these checklists were uncoordinated and contained requirements not adopted in rule, leading to additional inconsistency. Sometimes investigators and examiners would separately recommend approval or denial of the application. If denial was recommended, licensure was delayed as the applicant remediated deficiencies and underwent subsequent inspections until requirements were met or the license application withdrawn or denied.

Purportedly, licensing specialists used to conduct inspections, but this responsibility was moved to investigators, and examiners under certain circumstances. Investigators and examiners were supposed to be involved in inspections to help establish a relationship with the future licensee and facilitate future compliance monitoring activities, including premises inspections and examinations. However, investigators

Figure 6

Initial Licensing Process¹



Notes:

1. Process shown did not cover all possible deviations, including those related to incomplete applications, failed inspections, or application denials; processes for short duration licenses, petitions, and other lesser forms of permission; or permits. Parts of the process shown were based on the rules in effect during the audit period, which were subsequently changed.
2. Examiners may not have been involved if the applicant was not a wholesale distributor or manufacturer.
3. Investigators and examiners could also make recommendations for approval or denial.
4. On-premises licensees were required by rule to attend training and it was to occur between 45 days before and after licensure, without statutory underpinning.

Source: LBA analysis of rules, Division records, and employee interviews.

and examiners were instead involved in site inspections due to ambiguity in licensee operating requirements arising from complex licensing regulations. Investigator and examiner inspections, training, and other licensing-related efforts were also inconsistent, lacking underpinning SOPs. Additionally, unaudited Division data demonstrated inspections were inconsistently done by geographically assigned investigators. For example, one investigator without a geographic area assignment conducted 256 of the 1,111 final inspections (23.0 percent) investigators conducted statewide during the audit period. There was no effort to demonstrate this approach to inspections produced results it was purportedly implemented to achieve and established collaborative regulator-licensee relationships.

- **Licensing Application** – After pre-application processing and a successful final inspection, the applicant was required to submit a license application and supporting documents, which were reviewed and approved or denied by a licensing specialist or sometimes an examiner. Criteria for how determinations would be made on the license application, as well as when examiners would be involved, were not included in rule, SOP, or guide. Purportedly, examiners became involved primarily with manufacturer and wholesale distributor licensees, but this was inconsistently the case. Unaudited records demonstrated that if there was disagreement between Division employees and the applicant over the license application, licensure could be delayed for months or even years. The Division would relay the recommendation to the Commission, and Commission management would usually approve or deny the application. In some cases, Division management reportedly intervened and changed a staff recommendation before sending it to the Commission.
- **Training** – Retail applicants, or their designated manager, were required by rule to attend the Management Training Seminar (MTS). By rule, this had to occur between 45 days before licensure, without statutory underpinning, and 45 days after licensure, as provided in statute. Training was conducted by training specialists and investigators, and training events were regularly scheduled. If training was completed before licensure, the training specialists would apprise licensing and a completion certificate would be included in the applicant's file. However, controls over training and related compliance monitoring and internal communications were inadequate to ensure

applicants consistently complied with training requirements. The Division lacked cost-benefit or other analyses demonstrating why both investigators and training specialists had to perform these functions. Involving investigators was a relatively new practice, the purported purpose of which, once more, was for new licensees to learn about operating requirements from the investigators who would be enforcing compliance, instead of training specialists without field experience. Again, there was no effort to demonstrate this approach produced the results it was purportedly implemented to achieve and efficiently and effectively established collaborative investigator-licensee relationships.

Unnecessary License Types And Subtypes

Licensing practices were complicated by complex requirements in statutes, rules, and ad hoc rules, and by unimplemented statutory authority. The number of license types grew over time and reportedly some were the result of carve-outs to accommodate specific interests. Some applicants were fit into license types their business model did not precisely reflect, either by Commission decision or an applicant's adjustment of their business model. Some license types were dated to CYs 1933 or 1934, and newer license types may have truncated the three-tier system of traditional alcoholic beverage control.

- The 44 available license types were at times were duplicative, overlapped, or were unused. Most licenses listed in unaudited licensing data, 3,501 of 5,448 (64.3 percent), were one of two types: restaurant or combination licenses. The remaining 1,947 licenses (35.7 percent) represented the remaining 42 license types (95.5 percent). Each of the 42 remaining license types individually made up no more than six percent of the total licenses. Furthermore, 18 of the 42 lesser-used license types (42.9 percent) had ten or fewer licensees, including one type that had no active licensee.
- There were more than 100 different license types and subtypes, with many license types having up to six subtypes, each with different fees and some with unique requirements.
- Initial annual license durations could be anywhere from four to 15 months by rule, which went beyond statute, and some were even shorter or longer in practice. When combined with the hundreds of possible fees, many applicants did not know the final licensing fee until their final licensing appointment.
- Multiyear licensing, authority for which the Commission sought more than a decade ago as an efficiency improvement, was unimplemented, perpetuating wasteful practices, as we discuss in Observation No. 19.
- Seasonal licenses added another layer of unnecessary complexity. The Division accommodated seasonal versions of 13 license types. However, the rule-based "safe keeping" process allowed a licensee to temporarily surrender their license for periods of more than 30 days for any reason, including closing for the season. Seasonal licensees were annually subjected to license renewal, licensing inspection, and

premises inspection requirements leading to additional inefficiencies, as we discuss in Observation No. 23.

- The Commission could issue a single combination conditional license to a premises with business practices covered by two or more license types to help simplify licensing. The Commission never developed implementing rules, the Division lacked a relevant SOP or guide, and practice was inconsistent. The Division inconsistently made this license type available to licensees via ad hoc rules and improvised practices, and while licensees with business practices covered by multiple license types were accommodated, they were required to obtain multiple, separate licenses instead.

As depicted in Table 7, even though license types involved different establishments and types of alcoholic beverages possessed and transferred, they nonetheless fit into three primary categories:

- on-premises alcoholic beverage consumption,
- off-premises alcoholic beverage consumption, and
- combination on- and off-premises alcoholic beverage consumption.

Of the 44 license types:

- 25 types (56.8 percent), encompassing 2,895 licensees (53.1 percent of all licensees), allowed for possession and transfer of alcoholic beverage for on-premises consumption;
- 12 types (27.3 percent), encompassing 2,285 licensees (41.9 percent of all licensees), allowed for possession or transfer of alcoholic beverage for off-premises consumption; and
- five types (11.4 percent), encompassing 172 licensees (3.2 percent of all licensees), allowed for possession and transfers of alcoholic beverage for both on- and off-premises consumption.

The remaining two license types (4.5 percent), encompassing 96 licensees (1.8 percent of all licensees), were entities that procured or transported alcoholic beverages but were not allowed to transfer alcoholic beverages for on- or off-premises retail consumption. Structuring licensing along the three primary licensing categories of on-, off-, and combination on- and off-premises licenses, coupled with adopting specific, essential license conditions in rule, might simplify licensing and requirements.

Table 7

Total Licenses By Category And License Type, As Of August 14, 2019^{1,2}

Category And License Type	Total	Percent	Category And License Type	Total	Percent
On-premises			Off-premises		
Restaurant ³	1,835	63.4	Combination ³	1,666	72.9
Special One Day ⁴	323	11.2	Beverage Vendor	327	14.3
Sports Recreation Facility ³	135	4.7	Liquor And Wine Vendor	167	7.3
Off-site Caterer ³	106	3.7	Wine Retailer ³	71	3.1
Hotel ³	89	3.1	Off-premises Special ⁴	18	0.8
Alcohol Consultant	81	2.8	Beer Specialty Store	11	0.5
Veterans' Club	64	2.2	Wholesale Distributor	8	0.4
Beer Festival	60	2.1	Rectifier Manufacturer	5	0.2
Social Club	54	1.9	Agency Store	3	0.1
On-site Caterer ³	39	1.3	Liquor/Wine/Beverage Warehouse	3	0.1
Performing Arts Facility ³	23	0.8	Tenant Brewery	3	0.1
Cigar Bar	22	0.8	Wine Manufacturer Outlet	3	0.1
Vessel ³	17	0.6	Total Off-premises	2,285	41.9⁶
Racetrack ^{3,7}	10	0.3	On- And Off-Premises		
Bed And Breakfast ³	9	0.3	Nanobrewery ⁵	48	27.9
Ballroom	8	0.3	Wine Manufacturer ⁵	43	25.0
Wine Or Liquor Festival	5	0.2	Beverage Manufacturer ⁵	39	22.7
Sport Entertainment Center	4	0.1	Brewpub ⁵	27	15.7
State Fair	4	0.1	Liquor Manufacturer	15	8.7
College Club	2	0.1	Total Both	172	3.2⁶
Dining Car ³	2	0.1	Other^{4,8}		
Military Club	1	<0.1	Carrier	55	57.3
Railroad Car ³	1	<0.1	Liquor And Wine Representative	41	42.7
Convention Center	1	<0.1	Total Other	96	1.8⁶
Motor Vehicle Racetrack ⁷	0	0.0	Overall Total	5,448	
Total On-premises	2,895	53.1⁶			

Notes:

1. Division data were limited by inconsistency.
2. Twenty-five combination conditional licenses were listed in the State's online license database as of June 2020; however, this license type was not listed in licensing data.
3. Seasonal licenses were also allowed.
4. Excluded from conducting tastings, all other licensees could conduct or host tastings on their licensed premises or in conjunction with another licensee.
5. Allowed to sell alcoholic beverages at farmers' markets.
6. Percent of all licensees.
7. Two racetrack license types differentiated between motor vehicle racetracks and other racetracks, but only one was used in practice for all racetracks.
8. Not allowed to possess or transfer alcoholic beverages for on- or off-premises retail consumption.

Source: LBA analysis of unaudited Division data.

Recommendations:

We recommend Commission management conduct a risk assessment to determine how licensing requirements can achieve expected outcomes. Based on the risk assessment, we recommend Commission management:

- **seek legislative changes to the licensing construct decreasing the number of license types and fees, and simplifying associated requirements;**
- **monitor Division licensing operations to ensure they efficiently and effectively achieve expected outcomes; and**
- **develop, implement, monitor, and refine comprehensive rules that include all licensing activities and reflect statute, while ensuring rules do not add undue complexity to license types, fees, and associated requirements and license conditions.**

We recommend Division management improve controls over the licensing function, and:

- **incorporate into strategy and plans elements to establish a management control structure to consistently achieve expected licensing outcomes and automate licensing processes;**
- **develop, implement, monitor, and refine goals, objectives, and targets tied to licensing expected outcomes;**
- **develop, implement, monitor, and refine comprehensive SOPs compliant with statute, rules, strategy, plans, and licensing goals, objectives, and targets;**
- **formalize the licensing help desk as the single-entry point for all licensing activities, and involve other sections in licensing after it is determined to be necessary and efficient, and controlled by unifying SOPs;**
- **simplify practices, including dispensing with the pre-application form and fielding a single inspection checklist;**
- **develop, implement, monitor, and refine performance measures to ensure requirements are adhered to, the strategy is followed, plans are implemented, and licensing operations are demonstrated to achieve expected outcomes;**
- **tie employee performance to licensing goals, objectives, and targets; and**
- **periodically report on performance of all licensing-related activities.**

Agency Response:

We concur.

Prior to this audit commencing, the Division had already identified numerous areas and processes in need of improvement and then brought these to the attention of the auditors. Remediation of a number of these recommendations was complete or underway prior to the publication of this report.

The Division recently completed an update of the administrative rules governing licensing, including updating forms and simplifying the license application process. The Division is now in the process of ensuring that all processes and procedures are memorialized in SOP.

Managing Initial Licensing

Initial licensing for annual and short-duration licensees was the entry point for the legal commercial possession and transfer of alcoholic beverages. Following the four-step application process, applications were completed by applicants and applications were reviewed, inspections conducted, and recommendations for application approval or denial made by Division employees. Complete applications were then to be brought before the Commission for approval or denial, while incomplete applications were subjected to the Division's informal pending application process, as we discuss in Observation No. 20. The Division reportedly expected to process 1,120 new licensee applications during the audit period. Division-generated data on initial license applications processed and licenses issued during the audit period were unavailable. However, unaudited Division data from a CY 2017 organizational assessment indicated 85.8 percent of applications resulted in a final license issued, but final initial license issuance rates decreased from 90.1 percent in CY 2012 to 77.7 percent in CY 2016. Separately, unaudited licensing data from January through June 2019 indicated 505 initial applications were received and 439 licenses issued, for an issuance rate of 86.9 percent. Management's system of controls over initial licensing were inadequate and at an initial level of maturity.

Observation No. 19

Improve Controls Over Initial Licensing

The initial licensing process was complex; the Division's initial licensing controls were incomplete; practices were inconsistent with statute, rules, SOPs, and guidance; and procedures were inconsistently implemented. While many stakeholders and licensees reported being satisfied with the initial licensing process overall, some applicants encountered difficulty navigating the process and the process inconsistently achieved expected outcomes. Initial licenses were sought by unlicensed individuals or entities and licensees seeking a different type of license or an additional license type. The licensing process was supposed to ensure eligible individuals and establishments received an appropriate license for their business model, while those who were ineligible were denied. The Division sought to provide guidance to applicants and licensees to aid them through the process, while also ensuring they complied with laws and rules.

Initial licensing complexity was in part due to a complex statutory and regulatory framework with multiple license types and corresponding unique requirements. Practices relied upon ad hoc rules, introducing additional complexities, and were inefficient. The Commission, Division, licensees, and stakeholders expressed awareness of licensing complexities; however, past efforts to streamline licensing did not result in significant changes. The Division lacked a risk-based strategy, plans, goals, targets, objectives, performance measures, or initiatives for achieving initial licensing-related outcomes to:

- ensure applicants obtained an appropriate license for their business model,

- simplify the regulatory and procedural framework, and
- ensure efficiency.

Proper Control Not Ensured

Complexity arising from numerous license types, exacerbated by unclear and improvised requirements, ad hoc rules, and improvised procedures, reportedly caused applicant and licensee confusion. Licensing specialists were to evaluate license applications for completeness and whether applicants met requirements, and recommend approval or denial. Some applicants had to apply for or receive multiple types of licenses before obtaining the correct type of license, requiring Division staff rectify inconsistencies and leading to inefficiency, delay, and improper control.

Control Construct Was Deficient

Deficiencies led to process complexities. Rules over initial licensing were incomplete, leading to ad hoc rulemaking. Rules went beyond what statute provided. Several forms were not adopted or were incorrectly cited in rule, required information not required by statute or rule, or were outdated. The licensing SOP was inoperative, and the informal procedure guide used to memorialize Division licensing practices was incomplete, not addressing practices like license reinstatement, and circumvented statute and rules with practices. Initial licensing practices also allowed licensing staff to use a license rejection form, the content of which was inconsistent with statute. Staff issued temporary licenses instead of obtaining Director approval and without formal, written delegated authority. Initial licensing decisions were inconsistently documented in hardcopy licensing files. Documentation contained in licensing files was inadequate, incomplete, and did not demonstrate all necessary review steps or requirements for licensure were met. The Commission, at times, either tabled or denied applications the Division had processed, reviewed, and recommended for approval. We reviewed 17 initial licensing files during our license file review and none documented correspondence to applicants to: 1) notify them of omissions or errors, 2) request additional information, or 3) provide them the name, title, address, and telephone number of the employee to contact about the application as required by statute.

Improvised Four-step Initial Licensing Process Was Complex

The four-step licensing process consisted of multiple sub-steps, imposed ad hoc requirements, reportedly caused confusion, and prompted questions from applicants.

- Step 1, Complete A “Pre-application” For A License Application, included multiple sub-steps, such as obtaining and completing a “pre-application” to request an application for the correct license type and paying the investigation fee.
- Step 2, Complete The License Application, included at least six sub-steps. One step required obtaining documents reflecting one of five possible corporate structures an applicant might operate under, each with unique processes, forms, guides, and supporting documents. Another step was applicants notifying licensing to schedule a final inspection of their premises.

- Step 3, Obtain A Final Inspection, included at least two sub-steps. The first was receiving a final inspection, which could have included multiple personnel from the Division and multiple inspections over several days, weeks, or months. The second required applicants call licensing to schedule a final licensing appointment.
- Step 4, Attend A Final Licensing Appointment, included at least three sub-steps: 1) hand delivering required paperwork to the Division and reviewing the application in person, one or more times; 2) paying the license fee; and 3) usually, but not always, having a temporary license to operate issued.

The process and supporting materials, which excluded seasonal licensing procedures and requirements, contained additional complexities in practice, such as:

- having multiple versions of various forms for different license types;
- having checklists and explanation forms which created additional requirements, some of which were not in rule;
- having checklists of required documents which inconsistently clarified what applicants were to provide;
- having explanation guides necessary to help applicants discern the correct license type;
- having requirements for unnecessary documents;
- requiring examiner involvement for some license types;
- requiring training, sometimes more than necessary;
- potentially requiring multiple final inspections, some involving multiple staff from multiple sections of the Division;
- requiring visits to the Division with hardcopies of paperwork and payment to complete the process;
- having a complex fee structure that required applicants bring blank checks or cash to the final licensing appointment to pay licensing fees; and
- some applicants having difficulty obtaining clarification of questions.

Process To Obtain An Operational License Was Iterative

The initial licensing framework, coupled with additional complexities introduced by the Division's practices, caused difficulty for some applicants when applying for the appropriate license type. Some applied for an incorrect license type. Some applicants requested one license type, had to obtain multiple different license types, and ultimately obtained a license of the type for which they originally applied. This resulted in multiple exchanges over weeks or months with the Division to receive the appropriate license. Applicants and staff reported complexities led to new license applicants encountering more difficulty understanding application requirements and requiring more assistance than renewing licensees. In addition to licensing specialists, training specialists, examiners, and investigators could become involved in the initial licensing process. Some investigators indicated they had to intervene, sometimes at a final inspection, to correct inconsistent practices and ensure proper licensure. Furthermore, external stakeholders reported the Division directed some new license applicants to them to assist with the application process.

While the Division lacked formal measures of licensing effectiveness, staff asserted “everyone gets a license.” However, not everyone got a license. Those who did get a license might not have initially received the right one, might have had to apply for several licenses in the interim, or might not have timely received a license. While applicants could affect timeliness and accuracy, there was no formal process to identify and remedy complexities. Our audit was not designed to find every instance where an applicant or licensee encountered difficulties obtaining an operational license, but we did find:

- at least eight applicants never received a license during the audit period;
- one applicant applied for one type of license but after two final inspections and 115 days received a different type;
- one applicant applied for one type of license but after one final inspection and 82 days received a different type;
- one applicant applied for and held five licenses during the audit period, including one of the type they initially applied for, and, while they were eventually licensed under this type, they had to obtain and operate under multiple license types in the interim, all within 107 days;
- one applicant was issued the wrong license type initially and had four licenses issued over several months, engaged in multiple exchanges with staff from three sections in two bureaus, received multiple final inspections, and after 190 days finally received two different licenses, neither of which were the type first applied for;
- one applicant applied for one license type, initially received two license types different than what was first requested after 91 days, and went through a total of four license types and five license numbers, in eight months;
- one applicant applied for a license type that was originally recommended for denial by inspectors, who recommended another type, but the applicant received a license of the type originally applied for after 20 days and management intervention;
- one applicant applied for one license type, approval for which was recommended to the Commission by the Division, but the application was preliminarily denied after 98 days, was finally denied after 224 days, and the applicant reapplied and received approval 28 days later after revising its business plan, for a total of 252 days; and
- one applicant purportedly made multiple requests for a license over a period of years and eventually found they had requested the wrong type, without Division assistance in identifying the correct license type.

The final licensing appointment was to conclude the initial licensing process and, while most applicants received a temporary operating license at their appointment, not all did. We sent surveys to 239 new licensees and received 54 completed responses (22.6 percent). Forty-five new licensees (83.3 percent) responded to our question on whether they received a temporary license at their final appointment, and 35 (77.8 percent) reported *yes*, five (11.1 percent) reported *no*, *I received my permanent license*, and five (11.1 percent) reported *no*, *I did not receive a license at my final appointment*. When asked how many visits to licensing were required to obtain a permanent license, 45 of 54 (83.3 percent) responded, and:

- 30 (66.7 percent) reported one,
- five (11.1 percent) reported two,

- one (2.2 percent) reported three,
- one (2.2 percent) reported four,
- one (2.2 percent) reported five,
- zero (0.0 percent) reported more than five visits, and
- seven (15.6 percent) did not know.

Profitability Not Optimized

Initial licensing was not optimized. Initial licensing was underpinned by inefficient and ineffective practices. Multiyear licenses were unimplemented despite the Commission requesting legislative authority to do so to improve efficiency. Unduly burdensome practices imposed on new license applicants created barriers to entry for some applicants, causing them to delay or discontinue the application process, or change the license type they sought.

Practice Inefficiency

Initial licensing practices were: 1) not regularly reviewed to ensure optimization, 2) inefficient, and 3) outmoded, relying upon manual, paper-based processes and multiple, independent, and unintegrated information systems and hardcopy records. Recordkeeping was disconnected, there was no one repository for licensing data, and multiple databases were required to create a complete licensee record. Staff purported the licensing DBMS was not suited to Division practices. However, the value of the licensing DBMS was not optimized and licensing and enforcement data could have provided insights into the timeliness of licensing and final inspections, among other aspects of practice, but were not used to do so.

Management was aware of some of the issues with licensing practices and reported working on forms and rules, and previously seeking to improve the licensing DBMS without success. However, management lacked a formal, time-phased, resourced plan to optimize the licensing process or DBMS, instead seeking to replace the licensing DBMS with a unique system tailored to its practices, resulting in wasted resources. Management also purported working on streamlining the licensing process after the audit period, including reevaluating SOPs, updating practices and guides, and working to ensure licensing specialists' practices were consistent.

Unused Multiyear License Authority Exacerbated Inefficiency

The Commission did not issue multiyear licenses. Following our *State of New Hampshire State Liquor Commission Performance Audit Report July 1994* recommendation to analyze the effectiveness of a two-year license renewal cycle for most licenses, the Commission sought, and by CY 2003 received, authority to issue two- and three-year licenses to improve efficiency. However, the Commission never implemented multiyear licensing. Despite an awareness of the provision, no efforts to establish implementing rules, SOPs, guides, forms, or practices were made. Neither were cost-benefit or other analyses conducted to determine how much multiyear licenses would benefit licensees, reduce the Division's administrative burden, and help optimize profitability.

Final Inspections Inefficient

Final inspections were sometimes complex and inconsistently efficient. Examiners and investigators both shared responsibility for conducting final inspections. Although licensees were generally satisfied with the final inspection process, final inspection procedures were informal, inspections were inconsistent, and efficiency was not examined, limiting optimization of profitability and effectiveness. A final inspection was required before a license could be issued. Despite being a requirement, the forms used by investigators and examiners for final inspections were not formalized in an SOP or other procedural guide, nor were the supplemental checklists used by examiners. The forms incorrectly cited statute, and checklists were based on ad hoc rules and were inconsistently used. Division records also indicated:

- some licensees did not receive a final inspection;
- staff review of licensing paperwork at the time of the final inspection was inconsistent;
- multiple staff attended some final inspections at the same establishment on the same day or within a few days of one another;
- staff conducted multiple final inspections of the same facility with no documented purpose;
- additional complexity was imposed on entities seeking beverage manufacturer, nanobrewery, or brewpub licenses by involving examiners in the final inspection process;
- staff conducted multiple final inspections due to complexity and applicant unpreparedness; and
- the Division lacked workload and risk analyses to determine whether the benefits of having multiple staff at one inspection outweighed the cost of needing more than one set of expertise to conduct a single final inspection.

Final Inspection Timeliness Was Uncontrolled And Unmeasured

The Division lacked a timeliness standard for final inspections, compromising the Division's ability to determine efficiency and effectiveness and ensure compliance with overall statutory time limits. Division staff reported different time limits for completing final inspections, ranging from one to two weeks from the date of the request. There were no rules, SOPs, guidance, or performance measures formalizing any reported standard. The Division did not monitor compliance with a standard and investigators and survey respondents reported, and our file review demonstrated, these informal standards were inconsistently met. Performance evaluations did not hold staff accountable for a related metric. Documentation in initial license application files we reviewed was sufficient to allow us to determine timeliness of final inspections for ten of 17 initial licenses (58.8 percent). Records demonstrated two (20.0 percent) did not meet any of the informal standards, taking 16 and 23 days respectively to complete. Our CY 2019 survey of new licensees asked how many days it took to receive a final inspection and 46 of 54 (85.2 percent) responded to the question. Of the 46:

- 18 (39.1 percent) reported it took between one and five days,
- ten (21.7 percent) reported it took between six and ten days,
- four (8.7 percent) reported it took between 11 and 15 days,

- zero (0.0 percent) reported it took between 16 and 20 days,
- zero (0.0 percent) reported it took more than 20 days, and
- 14 (30.4 percent) reported they were unsure.

Complete results of our survey of new licensees are included in Appendix E.

Time To Receive A License Was Unmonitored And Unmeasured

Initial licensing timeliness varied. Applicants, licensees, the Division, and the Commission were responsible for timely licensing and could cause delays. However, the Division lacked a system to monitor timeliness and ensure applications were processed timely. Statutory time limits were not monitored and Division processing was inconsistent. Management relied on anecdotes and impressions of timeliness, and staff with licensing responsibilities were not evaluated on timeliness or consistency. We found several indications of inconsistent timeliness.

- The 17 completed initial licensing applications we reviewed were missing documentation required to evaluate elements of timeliness, consistency, or compliance. Of the 17 initial licensing files, nine (52.9 percent) were timely overall, four (23.5 percent) were untimely overall, and four (23.5 percent) lacked sufficient documentation to determine overall timeliness.
- Division of Enforcement and Licensing Meeting (Division Meeting) minutes demonstrated some applications were tabled by the Commission for extended periods for investigation, additional or re-investigation, or applicant business plan changes. We observed delays of up to 14 meetings over 98 days, in addition to application processing time consumed by the Division.
- Division enforcement data indicated initial license applications could take up to 378 days to finalize.
- When respondents to our survey of new licensees were asked whether they received their permanent license before their temporary license expired, 40 out 54 (74.1 percent) replied and 36 (90.0 percent) responded *yes* while the remaining four (10.0 percent) responded *no*.

Good Customer Service Inhibited

The Division had a goal of providing prompt and courteous service; however, in addition to not monitoring timeliness, it lacked a consistent method to obtain relevant licensee opinions. There was no definition of “prompt” or “courteous;” and management lacked a strategy, plans, SOPs, and practices clarifying how these outcomes could and would be achieved. Good customer service was also inhibited by:

- the complex fee structure and rules, which required licensing staff to improvise implementing practices;
- some applicants being fit into a license type they did not apply for;

- delays while applications were pending Commission approval and reinvestigations conducted; and
- Commission denials after the Division recommended approval.

While most licensees were reportedly able to get through the initial licensing process, many required assistance from licensing specialists and others to do so.

No Consistent Measurement Of Licensee Satisfaction

The Division lacked a systematic method to obtain licensee and stakeholder input on initial licensing. In CYs 2017 and 2018, a survey was administered during MTS events to 130 attendees, but the survey's questions did not solicit relevant input related to initial licensing. The MTS survey collected some information on customer service, including attendee opinions on whether licensing staff were helpful. Reportedly, of the 130 attendees, 90.0 percent responded to the question and 65.3 percent reported staff were very helpful, 27.1 percent reported staff were helpful, 6.8 percent reported staff were average, and less than one percent reported staff were not helpful.

While most licensees responding to our CY 2019 new licensee survey were satisfied overall with the licensing process, some reported the process was time consuming, confusing, and overly complicated, and required undue staff intervention. Forty-five of 54 licensees (83.3 percent) responded to our question about their overall satisfaction with the initial licensing process, and:

- 34 (75.6 percent) reported they were *satisfied*,
- seven (15.6 percent) reported they were *somewhat satisfied*,
- two (4.4 percent) reported they were *neither satisfied nor dissatisfied*,
- one (2.2 percent) reported they were *somewhat dissatisfied*,
- one (2.2 percent) reported they were *dissatisfied*, and
- zero (0.0 percent) reported they were *unsure*.

When asked whether:

- applicants needed to contact licensing staff to ask questions about the pre-application process, 46 of 54 applicants (85.2 percent) responded *yes* while 20 (43.5 percent) reported *no*;
- licensing staff answered their questions, 26 of 54 applicants (48.1 percent) responded *yes-on the first call*, nine of 26 (34.6 percent) reported *yes-after more than one call*, and zero (0.0 percent) reported *no*; and
- completing the pre-application clarified which license type they needed, 46 of 54 applicants (85.2 percent) responded *yes* and 38 (82.6 percent) reported *yes* and eight (17.4 percent) reported *no*.

When asked approximately how many hours it took to complete the pre-application and obtain required documents, 46 of 54 applicants (85.2 percent) responded, and:

- six (13.0 percent) reported one hour;
- 11 (23.9 percent) reported two hours;

- seven (15.2 percent) reported three hours;
- three (6.5 percent) reported four hours;
- zero (0.0 percent) reported five hours;
- nine (19.6 percent) reported more than five hours; and
- ten (21.7 percent) reported they did not know.

Additionally, not everyone who applied for a license was able to get through the process. We surveyed 254 individuals and entities whose records were expunged from Division licensing data and had not obtained a license. We received 11 responses (4.3 percent). Four of eleven respondents (36.4 percent) reported not receiving a license after having applied, and three of those four (75.0 percent) discontinued the process due to difficulties encountered.

Of the 54 licensees responding to our survey of new licensees, 45 (83.3 percent) responded to our question about their satisfaction with the inspection process, and:

- 34 (75.6 percent) reported being *satisfied*,
- two (4.4 percent) reported being *somewhat satisfied*,
- two (4.4 percent) reported being *neither satisfied nor dissatisfied*,
- zero (0.0 percent) reported being *somewhat dissatisfied*,
- zero (0.0 percent) reported being *dissatisfied*, and
- seven (15.6 percent) reported they were *unsure*.

License Duration And Fees Inhibited Good Customer Service

Under rule, initial licenses, except for seasonal and other short duration licenses, were valid for at least four months but not longer than 15 months, contrary to what statute provided. It was unclear what outcome the Division was seeking to achieve with the wide-ranging durations for initial licenses, making it impossible to measure whether they successfully achieved their objective. The range in duration of initial licenses was inefficient, inconsistently followed, and forced additional, undue complexity into the license fee structure. Under rule, each license type had its own fee structure, and the adjusted duration was accompanied by a prorated fee, which resulted in at least 530 possible initial license fees, not all of which were provided for in statute. License fees were calculated based on the license duration using a formula in rule and the license duration was determined by the effective date of the license and the licensee's birth date or legal date of incorporation. Some licensees and stakeholders found the fee structure to be confusing and the licensing specialists had to develop and use an improvised fee matrix to help ensure accurate licensing fee establishment.

Additionally, with the short duration for which a license could be issued, some new licensees would receive a license renewal notice 30 days after receiving their initial license, if the Division complied with rules to send license renewal notices 90 days before license expiration and issued licenses for no less than 120 days. This imposed an undue burden upon licensees and Division staff. Also, despite the rule-based license duration parameters, there was no monitoring or other formal control to ensure the Division issued licenses with durations that complied with rules. We found one case which had an initial license issued for 102 days and another initial license issued

for 108 days, both less than the 120-day minimum. We also found licenses valid for more than 15 months, with one lasting 15 months, 19 days.

Recommendations:

We recommend Commission management improve initial licensing processes, and:

- **simplify initial licensing requirements to only those necessary and ensure they are properly codified in rule;**
- **develop licensing rules that accommodate multiyear licenses; and**
- **ensure forms and guidance are correctly cited and adopted in rules.**

We recommend Division management improve initial licensing processes, and:

- **incorporate into strategy and plans an element to optimize initial licensing practices, including an online application and fee payment process;**
- **optimize initial licensing practices, discontinue practices without demonstrated contribution to achieving expected outcomes, and codify remaining practices into a comprehensive SOP;**
- **ensure practices include statutory and rule-based requirements, such as timely notifying applicants of omissions or errors, timely requesting additional information, and notifying the applicant of the name, official title, address, and telephone number of the employee to contact about their application;**
- **ensure practices include multiyear licenses;**
- **adapt processes to optimize the utility of the existing licensing DBMS to inform performance assessments of initial licensing, such as timeliness and consistency; and**
- **monitor, measure, and periodically report on initial licensing performance, including consistency, timeliness, and compliance.**

Agency Response:

We concur.

The Commission recognizes the importance of effective controls. Prior to the audit commencing, the Commission began the process of reviewing, redrafting, and adoption of the Liq 700 rules to streamline the licensing application process. In addition, the Commission will review the entire licensing process and create or modify the administrative rules dealing with licensing and ensure that adequate SOPs are in place and followed.

Incomplete Annual License Applications

Some applicants submitted incomplete applications to the Division, becoming subject to the Division's informal pending application procedures. The Division was required to notify applicants who submitted an incomplete application of the reason for rejection within ten working

days. The Division also had to request additional information, notify the applicant of errors, and provide the applicant with the Division employee to contact about the application within 60 days, if the application was received before January 1, 2019 or within 30 days if the application was received on or after January 1, 2019.

The Commission was also required to: 1) return incomplete applications; 2) immediately record revenue; 3) secure cash and checks, and endorse checks, to ensure proper control and maximize earned interest; 4) document transactions and decisions; and 5) retain records. Data on the total number license applications submitted during the audit period, particularly those that did not result in a license being issued, was unavailable, but we observed the Division had 260 incomplete license applications on file between zero and 24 months old on October 7, 2019, the day of our review. Division procedures were inconsistently compliant with statute, leading to inefficiency and inconsistently achieved expected outcomes, and management's controls over incomplete annual license applications were undeveloped.

Observation No. 20

Improve Controls Over Incomplete Annual License Applications

The Division's processing and disposal of incomplete annual license applications was noncompliant with statute and rules, and inconsistent with SOPs and procedural guides. Incomplete annual license applications were caused by applicants not providing required documentation. Incomplete annual applications were sometimes retained instead of being returned as required and incomplete applications left uncorrected were improperly destroyed. Cash and checks for incomplete applications were also improperly handled. The Division lacked a data-informed, risk-based strategy, plans, goals, objectives, targets, performance measures, and initiatives for processing these applications. Processing practices resulted in noncompliance, potentially compromised optimization of profitability, and disenfranchised or unduly burdened applicants.

- Processing incomplete applications was inconsistent and lacked underpinning documentation explaining decisions to not process, reject, or accept an application. Instead of returning incomplete applications as required, the Division returned some and retained others. We reviewed incomplete license applications and on the day of our review, we found 260 incomplete annual applications between zero and 24 months old. We reviewed ten of the 260 (3.8 percent) and seven (70.0 percent) lacked documentation demonstrating the applicant met necessary requirements to obtain a license, three (30.0 percent) lacked documentation clarifying why the application had not been processed, and one (10.0 percent) contained the required rejection letter.
- Payment monitoring was improvised, and related forms did not support consistent monitoring. Licensing staff reportedly used a tracking form to monitor application processing, including whether a payment was made, but the form was not always used and did not provide for the recording of payment status. Often, licensing staff followed improvised practices and annotated payment status on the corresponding application form, which also lacked formal provisions for the collection of payment status. There

was no documented receipt provided to applicants, and applicants may have needed to contact the Division to inquire about their payment and whether it was received, unduly burdening applicants. We found one instance where an applicant had to submit a replacement check with a replacement application for an unprocessed application that was reportedly lost.

- Incomplete annual applications pending 12 or more months were reportedly “deleted” from the licensing database. The hardcopy record was reportedly disposed of 24 months after receipt if the application remained uncorrected. Statute required records be retained for four years unless otherwise provided by law. The Division lacked a duly adopted and approved record retention schedule providing for a different retention period. No SOP or formal guide regulated disposal of incomplete annual license applications. Improvised practices were inconsistently followed, with incomplete hardcopy applications being disposed of between three and 18 months, and electronic records deleted from the licensing database between five and 15 months, after initial receipt.

Recommendations:

We recommend Division management improve controls over incomplete annual license applications, and:

- **rationalize practices with statutory and regulatory requirements, and formalize compliant procedures into a revised SOP and supporting forms;**
- **ensure the revised SOP includes statutory and rule-based requirements, such as the timely return of incomplete applications, timely notification to applicants of omissions and errors, timely requesting additional information, and notifying the applicant of the name, official title, address, and telephone number of the employee to contact about an application;**
- **implement, monitor, and refine the SOP and supporting forms;**
- **document all decisions, such as decisions to not process, reject, or approve license applications; and**
- **consistently process pending applications.**

Agency Response:

We concur.

Short-duration Licenses

Short-duration licenses were licenses which were not required to follow the four- to 15-month initial license duration requirement. Short-duration license applications were submitted by licensees and non-licensees and typically held by the Division while awaiting approval or acknowledgement at a Division Meeting. Acknowledgement might have occurred at the meeting closest to, or sometimes after, the event date. Short-duration licenses represented 410 of 5,448 licenses (7.5 percent) active during the audit period.

- One-day limited licenses could be issued to a nonprofit organization approved by the Commission to sell beverages and liquor. Unaudited licensing data listed 323 one-day limited licenses active during the audit period.
- Beverage festival licenses of up to three days in duration could be issued to a beverage manufacturer, brewpub, wholesale distributor, beverage vendor, on-premises, or off-premises licensee, or nonprofit entity to promote the industry's products. Unaudited licensing data listed 60 beverage festival licenses active during the audit period.
- Special off-premises licenses could be issued to individuals to sell liquor or beverages which came into their possession in their official capacity, or to public or nonprofit entities to auction donated wine and liquor to the public once a year as part of an annual fund raising program. Unaudited licensing data listed 18 special off-premises licenses active during the audit period.
- Wine and liquor supplemental festival licenses could be issued for up to three days to wine and liquor manufacturers or nonprofit entities to promote the industries' products. Unaudited licensing data listed five wine and liquor supplemental festival licenses active during the audit period.
- State fair licenses could be issued to members of the New Hampshire State Fair Association and were not required to follow the four- to 15-month initial license duration requirement. Unaudited licensing data listed four State fair licenses active during the audit period.

Additionally, seasonal licenses were license subtypes that had similar requirements to annual licenses and had durations of six months, but we discuss seasonal licenses separately from other short-duration licenses in Observation No. 23. Each short-duration license had unique requirements and forms which added complexities to the licensing process. However, management's controls over managing short-duration festival licenses were undeveloped.

Observation No. 21

Improve Controls Over Short-duration Licenses

The Division's controls over managing short-duration licenses were unduly complex, ineffective, and inconsistent. Processing of short-duration licenses and associated application fees was inconsistent with statute. Examinations of one-day nonprofit events and beer festivals were not conducted during the audit period. The Division lacked a risk-based, data-informed strategy, plans, goals, objectives, targets, performance measures, and initiatives to manage short-duration licenses.

Approvals Inconsistently Compliant With Statute

Approvals of short-duration licenses were not always compliant with statute. Applicants were required to submit a hardcopy application, supporting forms and documents, and a check 15 days before the event, while other processes, such as applying to renew an annual license, could be done

online. The Commission was required to approve these applications, but inconsistently did so. Applications were included on the Division Meeting agenda, sometimes as a request for approval but also as informational items that were only acknowledged by the Commission, having been “approved” by the Division earlier. We reviewed seven short-duration license applications, and:

- five (71.4 percent) were on an agenda as informational items, being previously “approved;”
- four (57.1 percent) were placed on an agenda after the event occurred;
- one (14.3 percent) was on an agenda as a request for Commission approval, but five days after the event had occurred; and
- one (14.3 percent) was not on an agenda at all.

Applications Inconsistently Processed And Insufficiently Documented

Applications were inconsistently processed. For instance, unaudited Division licensing data included 323 one-day limited licenses active during the audit period. Inconsistent data entry practices made these data unreliable and we could not determine how many one-day license applications were actually processed, nor could we determine overall timeliness. We did find one-day license applications could be submitted up to 101 days in advance of the event and processed anywhere between the day of the event and 78 days before the event occurred. Some were held for as many as 66 days before being processed.

Unaudited enforcement data inconsistently recorded necessary steps in the approval process, rendering the lifecycle of many cases unauditable. In at least 48 one-day license applications reviewed, steps needed to process an application were not always documented, lacking a record of:

- receipt of the application,
- requests for an investigator to conduct a final inspection,
- inspection results, and
- approval or denial of the application.

As with other license-related final inspections, timeliness was unmonitored, no formal timeliness standard applied, and timeliness was inconsistent.

Documentation in records was inadequate. The Division was required to: 1) notify applicants of errors or omissions, 2) request additional information, and 3) notify applicants of the official to contact about the application. However, of the seven one-day license applications we reviewed, none had correspondence in the files to demonstrate this occurred. Five of seven one-day license applications (71.4 percent) were insufficiently documented, lacking one or more of the following:

- agenda requests for approval,
- dates of inspection,
- dates licenses were issued,
- signed training designation forms, and

- signatures on reports of investigations and temporary registration of beverages forms for festivals.

Examination Requirements Unmet

Examination requirements were unmet. The Division could not demonstrate licensees paid proper taxes and retained required documentation for holding one-day events and beer festivals, which undermined proper control and optimization of profitability. Statute allowed beer festival licensees to temporarily register beverages and specialty beers not available for sale in New Hampshire, and required festivals pay a tax of \$.30 per gallon on beverages sold within 10 business days. Rule required one-day license holders to retain for one year records for money derived from sale of liquor and beverages, expenses incurred, and the distribution of profits for future examination. However, of the 60 festival licenses recorded in unaudited licensing data during the audit period, no examinations were recorded.

Recommendations:

We recommend Commission management comply with statute and review, approve, or deny short-duration applications.

We recommend Division management improve short-duration license processes, and:

- **simplify application processes and forms for short-duration licenses;**
- **ensure timely and proper notice is provided to short-duration license applicants;**
- **ensure short-duration license examinations are conducted;**
- **develop, implement, monitor, and refine a comprehensive SOP of short-duration license practices; and**
- **ensure short-duration license applications are consistently processed and completely documented.**

Agency Response:

We concur.

New Licensee And Other Required Training

Training was reportedly integral to achieving expected outcomes and ensuring licensee compliance with the terms and conditions of their license or settlement agreements. Of the three required licensee training courses provided to ensure compliance, the Division was only required by statute to offer MTS. Rules required MTS for new retail licensees within 45 days of the date the license was issued. MTS was provided by two training specialists in the Administrative Bureau and investigators from the Field Operations Bureau. The two other courses were intended for grocery stores and their employees and other types of licensees and their employees. The Commission could order licensees to take any of the three training courses as a part of the terms and conditions of settlement agreements after licensees' incurred violations. Data from various partial and

unaudited datasets indicated at least 13 required training events were conducted from December 2017 through April 2018; eight required training events were conducted by sworn employees from September 2017 through November 2019; and as many as 64 training events, including the three required and other elective events, were held from January 2019 to June of 2019. Comprehensive, reliable data on the number of required training events conducted during the audit period was unavailable and management's system of control over required licensee training was undeveloped.

Observation No. 22

Improve Controls Over Required Training

The Division's system of control over required licensee training was inadequately structured, measured, and monitored. While rules and SOPs addressed some elements of the Division's required training practices, they were not comprehensive and lacked procedures to measure outcomes or establish costs and benefits of training practices. Noncompliance with training requirements was not integrated into routine Division reporting systems and enforcement databases. The Division did not always know whether licensees who required training received it, whether the training they received was effective, and whether noncompliance with training requirements was timely corrected. Required courses were not examined for effectiveness and training specialists and other employees involved in training were inconsistently assessed in annual performance evaluations on training responsibilities. There were no relevant risk-informed strategies, plans, goals, objectives, targets, performance measures, or initiatives established for required licensee training demonstrating training contributed to accomplishing expected outcomes.

Rules And SOPs Inadequate

Training-related rules did not reflect statute, SOPs, or practice. SOPs did not fully reflect practice and practice did not consistently follow formalized procedures, leading to ad hoc rulemaking, ineffectiveness, and inconsistency. Rules addressed only the required MTS course, but not the other two required training courses. MTS-related rules did not:

- reflect the statutory timeframe for requiring MTS attendance;
- properly adopt the MTS designation form;
- include statutory requirements or elements required by the designation form; or
- reflect numerous requirements of practice, such as attendee testing.

The two training SOPs were incomplete, were inconsistent with one another, and lacked adequate controls to ensure instructor consistency. SOPs were to provide a comprehensive and consistent procedure for Division employees facilitating training but lacked:

- numerous steps in enforcing training-related requirements,
- measures of consistency,
- instructor materials used to conduct training,
- procedures for recording training test results,
- references to the data systems to be used to identify and monitor training requirements, and

- details on the separate process licensing staff and training specialists used to monitor compliance with training requirements, although part of the process was contained in an informal licensing guide.

Procedure and practice inconsistency also created inconsistency with provisions of training specialists' supplemental job descriptions (SJDs). SJDs also contained tasks that in practice were accomplished by other Division employees and lacked some tasks accomplished by training specialists in practice, such as monitoring Commission-ordered training required by settlement agreements. Finally, employees inconsistently followed relevant procedures formalized in forms supporting the initial licensing process.

Remedying Noncompliance Inadequate

Practices for enforcing training requirements were not documented in rules or SOPs. For example, there were no: 1) connections drawn between effectiveness of training and subsequent violations, 2) enforcement procedures, 3) clear delegations of authority for the Field Operations Bureau Administrator to sanction individuals not attending training, 4) requirements that instances of noncompliance be entered into the Division's enforcement database, and 5) systems to consistently ensure all required training was completed timely.

Initial License Training Requirements

Statute allowed the Commission to suspend licenses when licensees did not meet training requirements and reissuing the license before the licensee became compliant was prohibited. Rules were more emphatic, requiring the Division suspend the initial license of any noncompliant licensee at midnight on the 45th calendar day from date of issuance. No other notice or hearing was required before suspension. However, neither the Division Meeting minutes nor the enforcement database recorded any suspensions for failure to attend training, even though such noncompliance occurred, demonstrating Division noncompliance with rules. When noncompliance occurred, the Division instead issued a failure to attend letter, and these letters further contradicted requirements in rules by:

- extending the 45-day statutory and rule-based timeframe for compliance by an additional 30 days, without underpinning statute or rule, and contrary to rule requiring licenses be suspended at midnight on day 45 if training was not completed;
- giving licensees five business days to pay a \$100 fine before a hearing would be initiated, despite rules stating no hearing would be needed and without systematic monitoring of timeliness;
- incorrectly citing a rule referencing the \$100 fine; and
- being signed by Field Operations Bureau management without delegated authority.

Additionally, passing MTS was not required and the testing of attendees during MTS training did not demonstrate transfer of knowledge or learning. While licensees were required to *attend* MTS, rules did not further expand on requirements, such as requiring attendees *take* and *pass* a test as a prerequisite of course completion. For those attending MTS in person, a course completion card was issued at the conclusion of the course whether they passed the test or not. For those who did

not pass the MTS test online, the failure was purportedly circumvented, and staff issued a course completion card anyway.

During the audit period, no comprehensive, efficient system to collect, monitor, and disseminate adequate licensee initial license training status data was developed to demonstrate that every licensee with training requirements was identified and either timely attended training or was appropriately sanctioned for noncompliance. Data demonstrating compliance with licensee training was distributed across several databases, in both hardcopy and electronic format, and some data were manually entered into the Division's licensing database and inconsistently entered into the Division's enforcement database. The process was inefficient, and investigators did not have direct access to licensee training status. Further, employees inconsistently followed procedures that were formalized in forms supporting the initial licensing process and training requirement compliance. MTS completion documentation was not included in 13 of 14 applicable licensing records (92.9 percent) we reviewed that had initial license applications and supporting documents.

During the audit period, one instance of failure to attend MTS was recorded for a licensed establishment in Division Meeting minutes, and in this case, the Division's enforcement action was reactive, occurring three months after licensure. The Division's monthly reports, implemented in January 2019, similarly lacked relevant data and did not demonstrate noncompliance was identified and remediated timely and consistently.

Training Required By Settlement Agreements

During the audit period, no comprehensive, efficient system existed to collect, monitor, and disseminate adequate data on the status of licensee training required by settlement agreements to demonstrate that every licensee with training requirements was identified and either timely attended training or was sanctioned for noncompliance. Training required by settlement agreements was not always completed timely. Of the 69 settlement agreements unaudited Division data indicated were finalized during the audit period, training requirements were timely met for 34 agreements (49.3 percent) and untimely met for 11 agreements (15.9 percent). Tardiness ranged from two to 39 days. Documentation was insufficient to determine timeliness for the remaining 24 agreements (34.8 percent).

Further, while agreements named one or more persons obligated to take training, Division records indicated not all named individuals completed requirements within agreed time limits. No follow-up was recorded and Division monthly and annual reports lacked relevant analysis and did not demonstrate noncompliance was identified and remediated timely. Rules required noncompliance with a Commission order be sanctioned with a \$2,000 fine, 30-day license suspension, or both. As with other noncompliance with training requirements, none of the 11 untimely cases had any related follow-up recorded in the Division's enforcement database.

Customer Service Unmeasured

While the Division was to operate "superior" educational programs, there was no way to determine whether programs achieved this standard. No customer service metrics existed for training. Evaluation forms were distributed to attendees to fill out after attending an in-person training

session and were reportedly reviewed at the end of each session and again annually to identify any inconsistencies. However, the evaluation forms did not ask about the quality of the information presented during the training and there were no summary reports detailing evaluation results. Furthermore, despite staff suggestions that some licensees preferred the online training options, while others preferred in-person sessions, no attempt to affirm these preferences was made by the Division. Also, investigators aided in conducting MTS, reportedly to enhance their relationship with licensees. However, the Division lacked a way to measure effectiveness, and did not collect any data to measure the purported value of these relationships or connect this to subsequent licensee compliance. Stakeholders reported mixed views of training. Although most stakeholders were satisfied with training, some felt training could use improvement and was: 1) unprofessional, 2) inconsistently taught depending upon the instructor, and 3) did not adequately address all rules or information relevant to their license type.

Recommendations:

We recommend Commission management revise rules to accurately reflect statute and contain all training requirements and formal and informal training procedures imposed on licensees.

We recommend Division management improve required training processes, and:

- **develop, implement, monitor, and refine comprehensive SOPs that encompass all training courses and employees' training responsibilities, including practices to help ensure consistency among instructors and noncompliance with training requirements is identified and remediated timely;**
- **develop, implement, monitor, and refine SOPs requiring measurement of training effectiveness, including effective transfer of knowledge;**
- **establish a relationship between training and desired outcomes;**
- **establish a process to understand trends between course failures and violations;**
- **objectively establish costs and benefits for required training and discontinue wasteful efforts;**
- **obtain customer service feedback to gauge effectiveness of licensee training and opinions regarding online or in-person training preferences;**
- **revise SJDs to reflect all training specialists' responsibilities;**
- **revise current measures of training specialists' performance to include measurement of outcomes; and**
- **ensure training requirement noncompliance is identified, documented, and properly addressed.**

Agency Response:

We concur.

The Division will develop metrics, including customer feedback, to evaluate and enhance training effectiveness.

Managing Seasonal Licenses

Seasonal licenses were provided for certain otherwise eligible on-premises and off-premises applicants. Seasonal licenses had the same terms and conditions as annual licenses but were effective for six months and the fee was half the applicable annual fee for the equivalent license. According to unaudited Division licensing data, seasonal licenses constituted 120 of the total 5,448 licenses (2.2 percent) during the audit period. Seasonal licensees, unlike annual licensees, were subject to final licensing inspections annually, in addition to premises inspections and compliance checks. Multiyear licenses permitted by statute were never implemented, leaving seasonal licensees with no option other than to apply for a new license every year. Management's controls over seasonal licenses were at an initial level of maturity.

Observation No. 23

Improve Controls Over Seasonal Licenses

The Division's controls over seasonal licenses were inefficient. Processes duplicated other licensing provisions, were not measured for costs and benefits or to ensure the distributed costs of processing and inspecting each licensee were recovered, and disproportionately burdened seasonal licensees. The Division lacked a risk-based strategy, plans, goals, objectives, targets, and performance measures to demonstrate the benefits of requiring licensees to obtain a seasonal license outweighed the cost of Division licensing and oversight and licensee resources. Without a risk assessment there was no way to determine what risks seasonal licensing practices mitigated. Alternative modes of licensing establishments for less than a full year were also not considered. Inefficiency compromised optimization of profitability and effectiveness, and hindered provision of good customer service.

Duplicative Processes

Licensing an establishment under a seasonal license created a duplicative and burdensome process for both the Division and licensees. As with other licenses, the Commission never implemented multiyear licensing for seasonal licensees since obtaining authority to do so in CY 2003. Consequently, seasonal licensees had to apply for a new license annually. They were additionally subjected to a final inspection each year even though other renewing licensees did not have similar requirements. Instead of requiring a distinct seasonal license, the Commission could have issued annual licenses and allowed licensees to use the existing "safekeeping" process, which allowed a licensee to temporarily surrender their license for periods of more than 30 days for any reason, including renovations, not operating the required number of days per week, and closing for the season.

Inefficient Inspections

The Division lacked cost-benefit, risk, or other analyses to demonstrate seasonal licensing practices efficiently and effectively achieved expected outcomes. The Division required seasonal licensees receive a final inspection annually, unlike renewing licensees, and additionally subjected

seasonal licensees to annual premises inspections and compliance checks. Subjecting seasonal licensees to an annual license inspection, annual premises inspections, and intermittent compliance checks likely burdened licensees and investigators without demonstrated need or underpinning requirements for annual seasonal license inspections. Like annual licensees applying to renew a license, seasonal licensees provided an affidavit affirming the information they submitted was correct. Combined with premises inspections and intermittent compliance checks, this may have sufficed. The Division lacked a risk assessment to identify, quantify, or qualify any risk associated with seasonal licensees that may have warranted additional annual final inspections. The Division did not collect data to help determine whether conducting additional inspections of seasonal licensees were warranted and benefits outweighed costs. Based on the risk assessment we conducted, most seasonal license types were at a negligible level of risk and only a few presented medium or higher levels of risk for noncompliance.

Annually requiring a seasonal final inspection potentially duplicated investigators' other regulatory visits, compromising optimization of profitability, and potentially took time away from investigators performing premises inspections or other duties elsewhere, potentially compromising proper control. Furthermore, seasonal licensees were inconsistently subjected to other regulatory visits in practice and some received no regulatory visits at all during the audit period, including annual seasonal final inspections.

Incomplete Processes

The Division's procedures for renewing seasonal licenses were incomplete, leading to inefficiency and unnecessary burden on the Division and licensees. While the licensing SOP detailed manual seasonal licensing processes for license specialists and investigators to follow, the SOP was inoperative. The informal licensing practice guide used instead just contained data entry processes, leaving out substantive process details, such as when and how to contact licensees regarding their license renewal. Monitoring the expiration of the 120 seasonal licenses of 5,448 total licenses (2.2 percent) listed in unaudited Division data was an inefficient, manual process distributed to investigators and licensing specialists. Seasonal licensees did not automatically receive a license renewal notice at the expiration of their six-month license term unlike annual licensees. Instead, seasonal licenses were manually monitored by license specialists or investigators who contacted seasonal licensees to remind them of expiration dates. Licensees had to call to request license renewal application forms. While annual licensees could apply to renew their licenses online, seasonal license holders could not and instead had to follow less efficient manual procedures to renew, affecting good customer service.

Recommendations:

We recommend Division management determine whether seasonal licensure is cost beneficial when compared to alternatives, such as discontinuing the practice, and:

- **use the most cost-effective licensing process for seasonal licensees;**
- **seek necessary statutory and regulatory changes to reflect the most cost-effective process;**

- ensure seasonal licensing inspection practices are risk-based and data-informed to avoid duplicative, wasteful practices;
- focus seasonal licensing processes on compliance and achieving expected outcomes, and develop, implement, utilize, monitor, and refine implementing SOPs; and
- improve efficiency by limiting or eliminating manual practices for seasonal licenses.

Agency Response:

We concur.

Managing Annual License Renewals

After an applicant for an annual license obtained an initial license, they were required to apply to renew the license annually to legally continue the commercial possession and transfer of alcoholic beverages. Unlike initial licensing, many renewing licensees could apply to renew a license online. However, seasonal licensees, licensees seeking to renew an expired license, and non-retail licensees had to follow a manual application process and mail in, or deliver, a completed renewal application and payment. Commission approval was still required for license renewal. Data on the number of licenses renewed during the audit period was unavailable, but unaudited licensing data indicated the Division generated 2,638 renewal licenses between January and June 2019. However, management's controls over renewal licensing processes were undeveloped.

Observation No. 24

Improve Controls Over License Renewals

Division license renewal practices were noncompliant with statute and rules, and were unduly complex, compromising achievement of expected outcomes. While most licensees responding to our CY 2019 survey of renewing licensees were satisfied with their experience renewing their license, the Division lacked a risk-based strategy, plans, goals, objectives, targets, performance measures, or initiatives for achieving license renewal-related outcomes. Processes were inefficient and relied on ad hoc rules. Forms and guidance were inconsistent with statute, rules, and SOPs. The licensing SOP was inoperative, and the substitute licensing practice guide was incomplete. Manual and online license renewal application systems were inefficient. Performance, including timeliness, was unmeasured, and documentation was inadequate. Given the Commission did not implement multiyear licenses, renewing licensees were subjected to the inefficient license renewal process annually.

Practice Inconsistent With Statute And Rules

Renewal licensing practices did not comply with statute and rules. Instead, renewal practices relied on ad hoc rules, improvised and incomplete procedures and practices, and a manual process to prevent some licensees with violations from renewing their license. The Division was required to:

- send license renewal notices and forms to licensees 90 days before a license expired;
- have the Director review each license application;
- submit a written recommendation to the Commission to grant or deny the license;
- notify the applicant in writing of Commission approval or denial, specifying their reasoning and apprising them of their right to a hearing if denied; and
- notify the applicant that their license lapsed on the expiration date, and that no extensions would be granted.

However, the Division did not:

- send license renewal application forms,
- consistently send license renewal notifications,
- document Director review of each application for license renewal,
- send most license renewals to the Commission for approval or denial,
- notify the applicant of their right to a hearing if denied,
- notify the applicant no extensions would be provided, and
- ensure unrenewed licenses were terminated on their expiration date.

Additionally, the Commission did not implement multiyear licenses even though multiyear licenses were requested by the Commission to reduce the annual paperwork burden for licensees and staff to improve efficiency. With over 5,448 licensees, multiyear licenses could have reduced the Division's license renewal-related workload by half or two-thirds, and also relieved licensees of the burden to apply to renew their license annually.

Inconsistent Commission Approval

Most license renewals were not reviewed and approved by the Commission. There was no presumption a license would be renewed unless it met applicable requirements. Statute required the Commission review license renewal applications, approve those meeting requirements, deny those not meeting requirements, and issue written findings stating its reason for approval or denial. However, in practice, license renewal applications were processed both manually and through the online licensing DBMS. Both processes resulted in the Division approving and denying most applications for license renewal before the action was inconsistently placed on a Division Meeting agenda for the Commission's acknowledgment, or review and approval. For example, of the thousands of license renewals in SFY 2018, the Commission considered five: three agency stores and two warehouses. Consequently, the Commission never had the opportunity to consider or render a decision on applications nor issue written findings on its decisions for most license renewals. Division approvals and denials were made without delegated authority.

Notifications Were Inconsistent

The Division inconsistently provided proper notice, and license renewal rejection forms and practices were inconsistent with statute and rule. Rules required the Division send license renewal notices and forms to licensees. If the application was denied, the Commission had to notify the applicant in writing why the application was denied, that the license lapsed on the expiration date, that no extensions would be granted, and that the applicant had a right to a hearing. If a denial was based on accumulating 12 or more points for violations in the preceding license year, the license was ineligible for renewal, and the Division was to include the number of points accumulated and the underlying violations on the notice. However:

- 17 of 545 individuals (3.1 percent) who responded to our CY 2019 survey of renewing licensees question about license renewal notices reported not receiving a license renewal notice prior to the expiration of their license;
- license renewal notices were not accompanied by required forms, and applicants were instead instructed to either apply to renew their license online, request the forms to apply to renew their license manually, or notify the Division they would not apply to renew the license;
- the license renewal notice did not reflect whether violations had been incurred by the licensee and whether they were actually eligible for license renewal;
- the license renewal form required information not required by rule; and
- the license renewal rejection form did not enumerate violations, cite the reasoning for denial, or apprise the applicant of their right to a hearing.

The complete results of our survey of renewing licensees are included in Appendix F.

License Renewal Practices Lacked Controls To Ensure Licensees Met Requirements

Practices to ensure only eligible licensees could renew their license were inadequate. Ineligible licensees were reportedly inconsistently identified, and some were able to renew their license nonetheless. Management lacked a system to monitor the number of improper license renewals, and we could not determine how many improper license renewals occurred. The licensing practice guide used in place of the inoperative licensing SOP was incomplete, lacking procedures for processing license renewal applications and provisions to ensure licensees met all license renewal requirements. The Division's licensing DBMS also allowed for online application for license renewal, but management reported controls within the system allowed licensees to renew their licenses despite having violations. The manual process to prevent or undo improperly vetted license renewals was reportedly cumbersome.

Statute and rule required the Commission consider a licensee's violation history and licensees accumulating 12 or more points for violations or having outstanding administrative fines were ineligible. However, the Division lacked formal procedures to check for violations or unpaid fines before generating the renewed license. Practices to check for other requirements of license renewal, such as a license renewal applicant being in good standing with the Secretary of State and whether the license renewal fee was paid, did exist. Furthermore, the point system was poorly designed and not well integrated into the license renewal process, and no information systems

comprehensively monitored points issued to particular licensees, as we discuss in Observation No. 45.

Additionally, there were no procedures to ensure the Division met requirements to examine licensees prior to license renewal. For instance, during the audit period, restaurants represented 1,835 of 5,448 of all licensees (33.7 percent). They were required to be examined on their ratios of food sales to alcoholic beverage sales at least annually before relicensing, but unaudited enforcement data showed 92 (5.0 percent) were. Approximately 3,578 restaurant license renewals were processed over the two-year audit period without a required examination. In addition to restaurant examination requirements, 13 other license types had relevant examination requirements in statute or rule that were inconsistently examined during the audit period, as we discuss in Observation No. 34.

License Renewal Process Was Inconsistent

The Division lacked measures of consistency, including timeliness, for license renewal applications to help ensure the Division met statutory and regulatory requirements and provided good customer service. The Division was required to send license renewal notices to licensees 90 days before the expiration of a license but created improvised expiration management practices without underpinning statute or rules. Of the five license renewal files we reviewed:

- three (60.0 percent) met statutory time limits for processing;
- one (20.0 percent) did not meet statutory time limits for processing;
- one (20.0 percent) lacked sufficient documentation to determine timeliness; and
- all five applications had documentation issues making it unclear when they were processed or initially reviewed by the Division.

Also, while three of the five files (60.0 percent) did not have apparent consistency issues, two (40.0 percent) did.

- One, a beverage manufacturer license renewal, was diverted to examiners to process without a documented explanation. Neither the inoperative licensing SOP nor the improvised practice guide contained procedures for referring license renewals to examiners, and the examiners lacked relevant SOPs entirely.
- The second license renewal application contained date stamps for the received and mailed dates that were one year apart, but without a documented explanation.

Customer Service Unmeasured

The Division did not monitor or measure customer service and renewing licensee satisfaction, nor did it regularly solicit input on customer satisfaction during the audit period. Instead the Division relied upon anecdotes to assess customer service and satisfaction. Management understanding of issues encountered by licensees, and their satisfaction, was consequently limited and subject to bias. Our CY 2019 survey of renewing licensees indicated overall satisfaction with the license renewal process. However, licensees reported deficiencies and inconveniences when applying to

renew their licenses. We asked how satisfied licensees were with the online license renewal application process and 418 of 567 licensees (73.7 percent) responded to the question. Of the 418:

- 361 (86.4 percent) reported they were *satisfied*;
- 33 (7.9 percent) reported they were *somewhat satisfied*;
- 14 (3.3 percent) reported they were *neither satisfied nor dissatisfied*;
- three (0.7 percent) reported they were *somewhat dissatisfied*;
- four (1.0 percent) reported they were *dissatisfied*; and
- three (0.7 percent) reported they were *unsure*.

Some respondents identified specific concerns, including:

- having to call to request license renewal forms,
- having to call and visit the Division multiple times to renew a license,
- the process involving multiple sections of the Division,
- the website being complicated,
- the process being time consuming or too bureaucratic, and
- directions and wording of license renewal application questions being unclear.

Online License Renewal Application Process Inefficient And Not Optimized

The online system for processing license renewal applications ineffectively ensured proper control and was not optimized. The Division's licensing DBMS was the standard, statewide system for license management. Division management reported the licensing DBMS inadequately supported the Division's practices. In addition to purportedly allowing ineligible licensees to renew their license, the online license renewal process was inefficient, causing Division staff to manually intervene and help licensees throughout the process. The licensing DBMS allowed only certain licensees to renew and all others had to renew their license manually. Management was aware of some of the system's deficiencies and reportedly had previously sought improvements, but without success, leading to waste and unoptimized profitability.

Respondents to our CY 2019 survey of renewing licensees echoed some of these issues, including having to abandon the online license renewal process and revert to a manual, paper-based process via mail, or visiting the Division and applying to renew their license in person. The license renewal process also prompted calls, and sometimes multiple calls, to licensing staff and some renewing licensees reported never having their questions answered. Of the 567 licensees we surveyed, 545 (96.1 percent) responded to our question about how they began the license renewal application process, and:

- 423 (77.6 percent) reported starting through the Commission's website;
- 60 (11.0 percent) reported mailing license renewal applications;
- 38 (7.0 percent) reported calling;
- 19 (3.5 percent) provided another response; and
- 14 (2.6 percent) reported visiting licensing staff.

When asked whether they needed to contact licensing to ask questions about the license renewal process:

- 96 (17.6 percent) reported *yes*; and
- 449 (82.4 percent) reported *no*.

When asked whether licensing staff answered their license renewal questions, 97 licensees (17.8 percent) responded and:

- 87 (89.7 percent) reported *yes-on the first call*;
- seven (7.2 percent) reported *yes-after more than one call*; and
- three (3.1 percent) reported *no*.

Licensees also reported additional difficulties with the online system, including:

- clerical changes, such as corporate address or office numbers, required licensees to revert to manual, paper-based procedures;
- not being able to apply to renew supplemental licenses with the primary license;
- seasonal licensees being required to use manual procedures to renew;
- being unable to apply to renew multiple licenses at the same time, requiring separate transactions and manual processes;
- not being able to apply to renew a license early; and
- not being able to make payment for license renewal fees or taxes online at times.

Recommendations:

We recommend Commission management improve controls over license renewals, and:

- **comply with statute and review, and approve or deny, license renewal applications, and notify applicants of their status and the opportunity for a hearing if denied;**
- **ensure renewing applicants comply with law and rules; and**
- **ensure rules comprehensively reflect all procedures affecting license renewal applicants, correctly cite statutes, and properly adopt forms.**

We recommend Division management improve license renewal processes, and:

- **review license renewal practices, identify processes required by statute and rule, and ensure practices reflect statute and rule and achieve expected outcomes;**
- **refine, implement, and monitor a comprehensive licensing SOP that reflects statute and rules;**
- **incorporate into strategy and plans, goals and targets for license renewal process performance;**
- **ensure all statutory and rule requirements for relicensing, such as examinations, are met prior to recommending license renewals;**

- **include within strategy an element to maximize the value of the existing licensing DBMS system, accommodate online application and fee payment for all renewals, prevent ineligible licensees from renewing their license without approval, allow for multiple transactions to occur at once, and accommodate administrative changes;**
- **ensure license renewal applications are processed timely and consistently, with adequate documentation; and**
- **regularly solicit input on the license renewal process from licensees and stakeholders.**

Agency Response:

We concur.

Annual License Expiration

Controls over license expiration were essential to maintaining proper control. The Division was responsible for ensuring entities with lapsed licenses did not continue to operate. However, Division controls over expiration of licenses were informal and inadequate to prevent unlicensed activity, and management's system of controls over the expiration of annual licenses was undeveloped.

Observation No. 25

Improve Controls Over Annual License Expiration

The Division's system of controls over the expiration of annual licenses was ineffective and inconsistent. Practice did not consistently ensure licensee compliance and contained improvised timelines for managing license expirations and ad hoc administrative sanctions, which were unmonitored and not formalized in rule, SOP, or guidelines. During the audit period, the Division lacked a risk-based, data-informed strategy, plans, goals, objectives, targets, performance measures, and initiatives to adequately manage license expirations. The Division inconsistently identified late license renewals before license expiration. Consequently, administrative sanctions for failing to apply to renew licenses timely were applied retroactively, inconsistently, or not at all, resulting in inequitable treatment of licensees.

Timelines Improved

The Division's improvised timelines for managing license expirations were unmonitored and inconsistently formalized in rule, SOP, or guidelines. Because the Commission never implemented multiyear licenses, year-round licenses expired annually. Licensees had to annually take part in the renewal process and Division staff had to process and store records for every annual license every year, inhibiting efficiency, optimization of profits, and good customer service. The licensing SOP was not followed, and the informal and incomplete procedural guide used in its place did not

fully reflect practice. Practice demonstrated there were some key events occurring around annual license expirations, a process that could last 180 days.

- At 90 days before expiration, rule required the Division issue a written notice of impending expiration and license renewal application form in electronic or hardcopy format. The notice of impending expiration provided instructions on how to initiate the license renewal process but did not include the license renewal application as rule required. The notice requested licensees provide written notice if they were not pursuing license renewal, which was not in rule.
- At 60 days before expiration, another license renewal notice was provided by practice with no underpinning rule or SOP.
- At 30 days before expiration, another license renewal notice was provided by practice with no underpinning rule or SOP. However, rules required license renewal applications be postmarked at least *30 days before the expiration date* of the license. At 30 days before expiration, if the licensee had not submitted a license renewal application, the licensee was noncompliant with rules. There were no procedures to proactively identify noncompliance and timely sanction a licensee. No further notification was sent to noncompliant licensees, nor did licensing staff send notice to investigators to apprise them of licensee noncompliance so they could investigate and attempt to remedy noncompliance.
- On the license expiration date, the licensee no longer had a valid license. There were no procedures to identify noncompliance and proactively sanction a former licensee or gain compliance, and no cease-and-desist notification was sent by the Division. Licensing staff did not notify investigators that entities within their areas were operating without a valid license.
- Up to and including 90 days after expiration, the license was categorized in the licensing DBMS as “did not renew.” However, according to rule, these former licensees were allowed to operate and could still apply to renew their license using regular renewal procedures without a late fee or other administrative sanction.
- More than 90 days after expiration licenses were categorized as “out-of-business” in the licensing DBMS. Under rule, the individual or entity had to submit a new license application if they wished to regain licensed status. No notification was sent to inform former licensees their license expired and was no longer renewable, and that they were required to apply for a new license. Neither did licensing staff inform investigators of this final change of a former licensee’s status.

Identifying And Sanctioning Noncompliance Was Inconsistent

Practices for identifying and sanctioning licensees who failed to renew their license timely:

- were noncompliant with statute and rules,

- were inconsistent and reactive,
- led to improper control, and
- exceeded delegated authority.

Statute stated any person who violated rules was guilty of a misdemeanor, and licensees could also be subjected to license suspension or revocation after a hearing. However, rules did not reflect statute and instead imposed administrative sanctions, including a \$100 fine and an order for corrective action. Furthermore, Division practice was more lenient than Commission rules by providing for warnings instead of a sanction. Statutes and rules made the Commission responsible for applying administrative sanctions, but in practice the Division applied sanctions without Commission approval. Division-sanctioned licensees were usually included in Division Meeting minutes, but after sanctions were applied and fines paid.

Reactive Identification Of Noncompliance

The Division's practice of identifying renewing licensee noncompliance with rules was reactive and ineffective. The Division suggested their improvised graduated sanctions were intended to educate licensees on their noncompliance and proactively address less severe violations to prevent more severe violations. However, untimely renewals, when identified, were usually identified after a license expired, undermining proper control by allowing noncompliant licensees to operate with an expired license for extended periods without sanctions or before administrative sanctions were applied. Division license renewal data were incomplete, limiting quantification of how many instances of noncompliance were timely identified. However, of the 264 unique untimely license renewal entries recorded in the Division's enforcement data, we could determine:

- 207 (78.4 percent) were cases where noncompliance was identified between one and 205 days *after* licenses expired,
- 34 (12.9 percent) lacked sufficient data to determine timeliness,
- 20 (7.6 percent) were identified on the expiration date, and
- three (1.1 percent) were identified before the expiration date.

Inconsistent Sanctions

Untimely renewing licensees were inconsistently sanctioned and there was no late-renewal fee, leading to inequitable treatment and inconsistent customer service. SOPs and guidance were silent on the escalation of sanctions and neither statute nor rule outlined graduated sanctions for these violations. In practice, noncompliant licensees usually received "written verbal" warnings on their first offense and administrative notices and \$100 fines on their second and subsequent offense. However, sanctions were inconsistently applied and sometimes no sanction was applied at all. Division data were inconsistently complete, limiting quantification of how many licensees received a "written verbal" warning for their first offense and an administrative notice and a fine for a subsequent offense. We were unable to tell whether sanctions were applied according to general practice for 271 of 281 records (96.4 percent) in unaudited enforcement data. We could determine:

- six untimely renewing licensees (2.1 percent) received a second “written verbal” warning for a subsequent offense;
- two untimely renewing licensees’ violations (0.7 percent) were listed as a third offense when it was a second offense;
- one untimely renewing licensee (0.4 percent) received an administrative notice for a second violation, but a verbal warning for a third violation; and
- one untimely renewing licensee’s violation (0.4 percent) was listed as a second offense when it was a third offense.

Additionally, one of the five license renewal files (20.0 percent) we reviewed contained an untimely license renewal, a sanction for which was not recorded in the licensing file or the Division’s enforcement database.

Inadequate Communication

Communication between licensing specialists and investigators was improvised, inconsistently effective, and inefficient, compromising optimization of profitability. There was no formal system to communicate when:

- licensees were noncompliant with the requirement to submit a license renewal application 30 days before expiration;
- licenses expired but were in the zero to 90-day window post-expiration when they could still renew their license late, and the license’s status was changed to non-renewal; and
- a license’s status was changed to out-of-business 90 days after expiration, and the former licensee could no longer renew the license.

Unaudited Division enforcement data demonstrated 245 of 281 untimely license renewal violations (87.2 percent) were identified by the Administrative Bureau, while 36 (12.8 percent) were identified by investigators. Investigators were supposed to conduct annual premises inspections of each licensee and sometimes identified out-of-business entities before licensing was aware of it. Reportedly, investigators would then advise licensing of the licensee’s apparent status. Unaudited Division enforcement data contained 29 instances where annotations indicated an investigator went to an establishment to find out they were out-of-business. When licensing did not advise investigators of out-of-business entities, investigators wasted time attempting to conduct premises inspections at locations no longer licensed.

Recommendations:

We recommend Division management improve management of license expirations, and:

- **develop, implement, monitor, and refine SOPs over license expiration to ensure compliance with statute and rule, codifying all practices;**
- **ensure timely communications between licensing and enforcement staff, and ensure complete and accurate data collection; and**
- **monitor performance to ensure consistent compliance with statute, rules, and SOPs.**

Agency Response:

We concur.

Managing Licensing-related Petitions

Licensing-related petitions were provided to:

- authorize on-premises licensees to extend alcoholic beverage service to areas other than those covered by a license,
- allow certain on-premises licensees to charge corkage fees to accommodate consumption of privately-owned table wines at the licensed location, and
- allow wine and beverage manufacturers, nanobreweries, and brewpubs to conduct sales, tastings, and samplings at farmers' markets.

According to unaudited Division licensing data, 459 extension of service, 14 corkage fee, and 100 farmers' market petitions were recorded during the audit period. However, farmers' market petitions were not monitored as a specific action and some were recorded as extensions of service or premises inspections. Management's controls over licensing-related petitions were undeveloped.

Observation No. 26

Improve Controls Over Licensing-related Petitions

Controls over licensing-related petitions were incomplete and inconsistent with statute and rules. Management lacked a risk-based, data-informed strategy, plans, goals, objectives, targets, performance measures, or initiatives to demonstrate achievement of expected outcomes. Practices led to:

- ad hoc rulemaking;
- authorizations for service to other areas, also known as extensions of service, being inconsistently reviewed and improperly approved;
- timeliness not being measured;
- the Division requiring approval of petitions for tastings and retail sales at farmers' markets even though neither statute nor rules required it, imposing an undue burden on licensees;
- some requirements for licensees attending farmers' markets going unexamined;
- undelegated staff decision-making; and
- data being inadequately controlled.

Approvals Of Extensions Of Service Inconsistent

The petition approval process for extensions of service was inconsistent, untimely, and noncompliant with statute and rules, and lacked clarity and adequate documentation. Unaudited Division enforcement data listed 459 extension of service requests during the audit period, 137 (29.8 percent) of which lacked a license number.

Also, unlike other processes related to licensing, no form for filing licensing-related petitions existed. Despite having an online page dedicated to authorizations of other areas with procedural steps, some licensees still queried the Division directly to gain clarity on the process. Although not required by statute or rule, providing a form for petitions could have added a level of clarity and simplified the process.

Practice Inconsistent With Statute And Rules

Procedures for approving extensions of service were inconsistent with statute and rules. Statute and rules allowed on-premises licensees to petition the Commission to extend alcoholic beverage service beyond the area approved by their license if it was a controlled area. However, applications did not receive the required Commission approval. Division staff instead “approved” them without a required delegation of authority, and informally “approved” petitions never received the formal, written approval from the Commission required by rules. No SOP governed the process and the licensing practice guide used by licensing specialists contained an improvised process for approving extensions that amounted to ad hoc rules. In practice, following the petition request, submittal of required documentation, inspection of the extended area by an investigator, and a signature from a supervisor, the extended area was verbally or temporarily “approved” by Division staff. The petition was then added to the Division Meeting agenda as an informational item, *after* the informal “approval” had already been given. Commission *acknowledgement* of an extension occurred from one to nearly two weeks after Division staff had informally “approved” the petition.

Extensions Inconsistently And Untimely Processed

Processing of petitions for extensions of service was inconsistent, petitions we reviewed had no evidence of application review, and timeliness could not be reliably determined based on hardcopy and electronic records. In addition to statutory time limits, rules required the Division reply within 30 days following receipt of a petition. Of the six extension of service petitions we reviewed:

- one (16.7 percent) was not processed within 30 days of receipt, two (33.3 percent) were processed timely, and three (50.0 percent) lacked sufficient documentation to determine timeliness;
- three (50.0 percent) were verbally approved before being acknowledged by the Commission, including one (16.7 percent) approved before the petition was even filed with the Division;
- two (33.3 percent) lacked documentation of an inspection;
- three (50.0 percent) lacked a documented Commission acknowledgement;
- two (33.3 percent) were found in enforcement data, while the other four (66.7 percent) were not; and
- no petitioner was provided the additional information and reviewer contact information within 30 days or a reply within 30 days.

Sales, Tastings, And Samplings At Farmers' Markets Inconsistently Controlled

The Division's controls over sales, tastings, and samplings by wine and beverage manufacturers, nanobreweries, and brewpubs at farmers' markets were inadequate, noncompliant with rules, and exceeded delegated authority. During the audit period, examiners handled 100 "requests" for sales, samplings, or tastings at farmers' markets. Practices placed an undue burden on licensees, imposed ad hoc rules upon licensees, inhibited proper control, and compromised good customer service.

- Practices Contradicted Statute And Rules – Statute and rule permitted wine and beverage manufacturers, nanobreweries, and brewpubs to conduct samplings at farmers' markets after *informing* the Commission and submitting required documentation within 15 days of the event. However, the Division by practice required licensees obtain *permission* by submitting petitions.
- Retail Sales Approved Without Underpinning Requirements – Retail sales of alcoholic beverages at farmers' markets were allowed by statute, which also required the Commission adopt rules, but only for wine manufacturers. However, the ad hoc requirement that retail sales be approved was not underpinned by statute, rules, SOPs, or formal procedures for beverage manufacturers, nanobreweries, and brewpubs, and without rules, SOPs, or formal procedures for wine manufacturers.
- Examining Retail Sales And Sample Slips Undocumented – Division records did not demonstrate retail slips and lists of tastings conducted at farmers' markets were examined even though rule required their retention for such purposes. The Division lacked an examination program and there were no SOPs or formal practices to ensure slips and lists were examined when examiners examined licensees who attended farmers' markets. Requiring licensees maintain slips and lists, which would go unexamined, was unduly burdensome.

Additionally, tastings at farmers' markets were managed under a different process and were available to smaller subset of licensees than were other tastings, compounding complexity.

Corkage Fees Inadequately Controlled

Licensees could charge corkage fees for patrons consuming their own table wine stored on the licensee's premises. No rules or SOPs regulated Division practices. Ad hoc rulemaking and staff verbally approving petitions for fees, a Commission responsibility, ensued. The Commission was merely notified after the fact that staff approved the petitions.

Recommendations:

We recommend Commission management revise, monitor, and refine licensing-related petition rules and ensure it approves or denies petitions where required.

We recommend Division management improve management of licensing-related petitions, and:

- **discontinue informal, verbal, and temporary approvals of extensions and corkage fee requests without delegated authority and refer matters requiring Commission approval to the Commission;**
- **incorporate into strategy and plans an element to optimize licensing-related petition practices, including automating petition processing;**
- **develop, implement, monitor, and refine comprehensive SOPs to ensure consistent compliance with statutory and regulatory timeliness and other requirements, and focus processes on compliance and achieving expected outcomes; and**
- **ensure sales slips and tasting lists are examined or related requirements are discontinued.**

Agency Response:

We concur.

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**STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING**

**CHAPTER THREE
THE DIRECT SHIPPER PROGRAM**

The Direct Shipper Program (Program), in place since calendar year (CY) 1998, was created to enable citizens and licensees to buy hard-to-find alcoholic beverages from out-of-State suppliers and regulate out-of-State entities directly shipping alcoholic beverages into New Hampshire. Beverage manufacturers, importers, wholesalers, or retailers licensed in another state were allowed to directly ship product to legal-age New Hampshire consumers and licensees using a common carrier licensed by the Liquor Commission (Commission). Direct shippers were allowed to import beverages, wine, and liquor, including products available in Commission stores or through Commission licensees. Unaudited CY 2018 data demonstrated nearly 77,000 direct shipments, totaling at least 409,000 bottles of alcoholic beverages, were reported delivered by the three major licensed carriers to over 35,800 recipients. Due to numerous data and other inadequacies, the actual number of bottles directly shipped into New Hampshire could not be established.

Program employees were responsible for processing new and renewal permit applications, collecting and reviewing direct shipper and carrier monthly reports, processing fees and taxes, identifying and investigating potential noncompliance, and recommending and levying sanctions for noncompliance. According to unaudited Division data, the number of permittees increased 3.6 percent during the audit period, from 1,179 in July 2017 to 1,221 in June 2019. According to audited Commission data, permit fees increased 5.2 percent from \$944,831 in State fiscal year (SFY) 2018 to \$994,015 in SFY 2019. In addition to annual permitting fees, direct shippers were required to pay monthly taxes totaling eight percent of the retail price for shipments of alcoholic beverages into New Hampshire. According to unaudited Division data, taxes from direct shipments decreased 4.4 percent from SFY 2018 to SFY 2019 and the majority of direct shipper taxes were derived from direct shipments of wine, as shown in Table 8.

Table 8

Direct Shipper Tax Revenue, SFYs 2018-2019

SFY	Beverages	Liquor	Wine	Subtotals ¹
2018	\$ 909	\$ 3,150	\$ 937,482	\$ 941,541
2019	2,464	10,866	886,722	900,052
Subtotals	\$ 3,373	\$ 14,016	\$ 1,824,204	\$ 1,841,593
Percent Of Total ²	0.2	0.8	99.1	100.0

Notes:

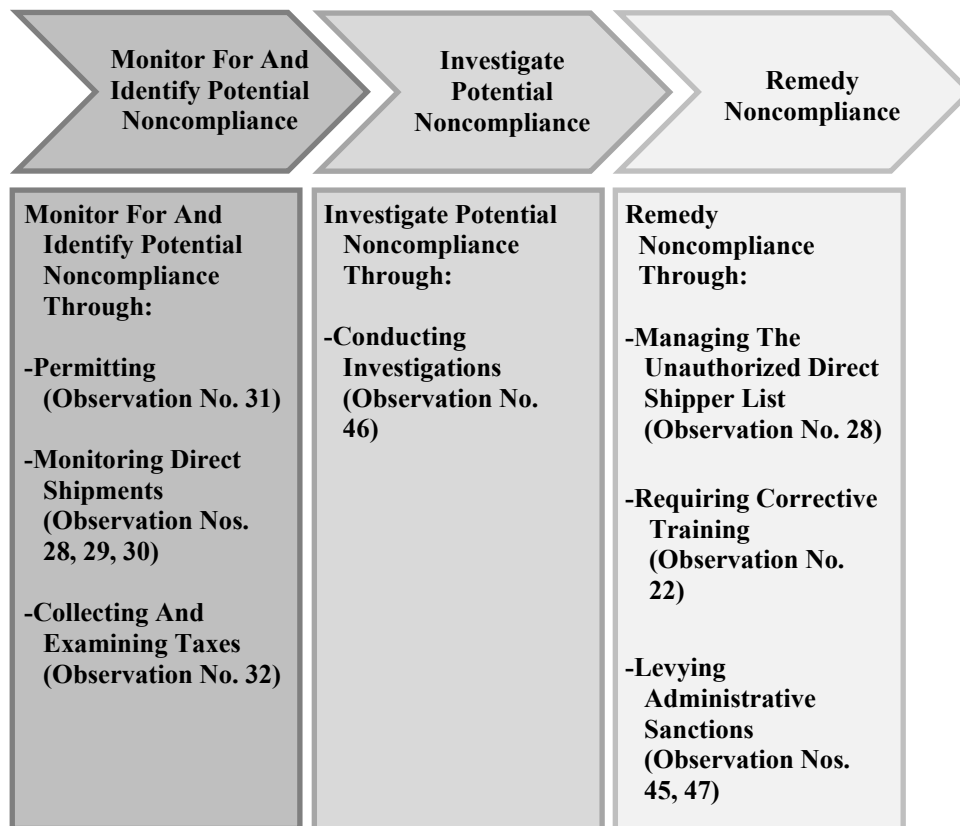
1. Based on unaudited Division data on direct shipper tax receipts, over \$23 million worth of alcoholic beverages were directly shipped into the State during the audit period.
2. Percentages do not add to 100 percent due to rounding.

Source: LBA analysis of unaudited SFY 2018 and 2019 Division tax revenue reports.

To help achieve expected outcomes, the Program relied upon effective systems of control over strategic, risk, compliance, performance, and knowledge management. As shown in Figure 7, permitting, collecting taxes and fees, monitoring for and investigating potential noncompliance, and remediating noncompliance through administrative sanctions were also integral to achieving outcomes.

Figure 7

Direct Shipper Program Processes To Achieve Expected Outcomes



Source: LBA analysis.

However, in practice, systems of control were at times absent, incomplete, and ineffective; and permitting, noncompliance identification, and noncompliance remediation efforts were inadequately controlled. Management’s controls over Program operations were at an initial level of maturity.

Observation No. 27

Improve Controls Over The Direct Shipper Program

The Program lacked a discernable design to achieve expected outcomes and did not consistently fulfill statutory requirements. The Program lacked risk-based and data-informed strategies and

plans; a performance measurement system tied to outcomes; adequate oversight, monitoring, and enforcement; comprehensive rules and standard operating procedures (SOP); and complete, integrated information systems. Consequently, the Program's statutory purpose was exceeded; optimization of profits, proper control, customer service, and efficient and effective operations were undermined; statutory noncompliance was longstanding; ad hoc rulemaking was common; rules were inconsistently followed; and operations were inconsistent. Ultimately, the Commission did not know what was being directly shipped into the State, whether noncompliance was consistently identified, or whether the State received the correct amount of tax revenue and permit fees. Without a formal, objective risk assessment, there was no way to determine what risks Program practices were designed to mitigate. Without any cost-benefit or similar analysis, there was no way to determine whether Program practices efficiently mitigated risks. Records were inadequate for the purposes of assessing and ensuring proper control, making some processes unauditable and compelling us to qualify our use of, and conclusions resting on, Program records.

Prior Audit Recommendations Inconsistently Resolved

Prior audit recommendations related to the Program, issued a decade or more ago, were inconsistently resolved. We previously concluded the Program lacked adequate controls to ensure compliance. Our *State of New Hampshire Liquor Commission Management Letter for the Fiscal Year Ended June 30, 2006 (2006 Management Letter)* recommended the Commission review controls over direct shipment sales to ensure controls were appropriate and develop comprehensive SOPs. Our *State of New Hampshire Liquor Commission Performance Audit Report April 2009 (2009 Performance Audit)* found staff were unable to effectively monitor the Program due to the number of direct shippers and the volume of monthly reports. The *2009 Performance Audit* contained four Program-related observations and one other issue and concern that included recommendations or suggestions to:

- seek legislative changes to statute to reestablish a direct shipper permit fee;
- work with the Department of Information Technology to automate direct shipper reporting;
- improve monitoring of direct shippers, which we also recommended in our *2006 Management Letter*;
- seek an amendment to statute to allow for progressive sanctions for violators;
- work with the Office of Attorney General to prosecute violators;
- restrict direct shipper products that were available in State liquor stores;
- periodically review direct shipper products to determine the feasibility of selling them in State liquor stores;
- establish a training program for carriers to improve compliance; and
- establish a process for ensuring carrier compliance with direct shipper statutes.

The Commission concurred with recommendations to: 1) review controls over direct shipment sales, 2) reestablish permit fees, 3) automate direct shipper reporting, and 4) improve monitoring. It concurred in part with the recommendation to restrict and review direct shipper products. However, only direct shipper permit fees were reestablished through legislative action. Through SFY 2019, the conditions leading to the remaining observations and the other issue and concern

were unresolved, as we discuss in Observation No. 28, leaving the Program exposed to the same operational risks identified a decade or more ago.

Rules And SOPs Incomplete And Inadequate

Commission rules regulating the Program were incomplete. The Commission was required to adopt rules to ensure direct shipments were sent only by permitted direct shippers and transported only by licensed carriers, as well as ensure additional requirements regarding shipment limits to particular consumers, licensees, and municipalities were met. However, rules did not:

- incorporate all requirements on Program forms;
- address pack and ship (P&S) entities, leading to ad hoc rulemaking, as we discuss in Observation No. 29;
- provide criteria for timeliness and consistency of permitting, leading to statutory noncompliance, ad hoc rulemaking, and poor provision of customer service, as we discuss in Observation No. 31;
- allow examiners to conduct investigations or levy sanctions, though such activity took place in practice, as we discuss in Observation Nos. 45 and 46;
- require carriers to provide adequate information on shipments, including information on alcoholic beverage type, volume, and bottle count, and whether a legal signature was obtained, to help ensure statutory compliance, as we discuss in Observation No. 28;
- require direct shippers, carriers, or P&S entities submit reports using a standard format, leading to an inefficient use of employee time navigating various reporting formats and insufficient data, as we discuss in Observation Nos. 28 and 32;
- detail enforcement procedures for noncompliant direct shippers, carriers, and P&S entities, as we discuss in Observation No. 28; or
- consistently reflect actual practices related to direct shipments to licensees, resulting in ad hoc rulemaking and Commission noncompliance with rules, as we discuss in Observation No. 30.

The Program's SOPs were outdated and solely focused on check processing. Absent formal guidance in rule or SOP, Program employees created an informal manual to guide practice. This manual detailed statutory and regulatory requirements, position-specific duties, and scheduling for various tasks. However, it did not cover all processes related to ensuring compliance with statute, including requirements to:

- achieve expected outcomes,
- monitor and evaluate bottle count and product volume of direct shipments by calendar year,
- verify direct shipments were not delivered to underage buyers, and
- crosscheck direct shipment products with products sold by the Commission.

Inadequate Performance Measurement

No performance measurement or evaluation or customer service metrics existed for the Program. Data inadequacies prevented performance measurement, and the Program lacked a formal system of performance measurement tied to outcomes. Until January 2019, the Program was not included in routine Division output reporting. Starting in January 2019, a newly-created monthly management report contained Program outputs, including the number of permits approved, the number of packages shipped by three of the 55 licensed carriers (5.5 percent), and the number of enforcement actions. The report lacked outcome or efficiency measures.

Though the Program's manual detailed various customer service objectives, including providing prompt, courteous service in a fair and consistent manner, controls were not created to ensure these objectives were fulfilled. We found permitting decisions were inconsistent, direct shippers engaging in illegal shipments were inconsistently sanctioned, and certain entities were allowed under ad hoc rules to operate without permits, among other questionable practices.

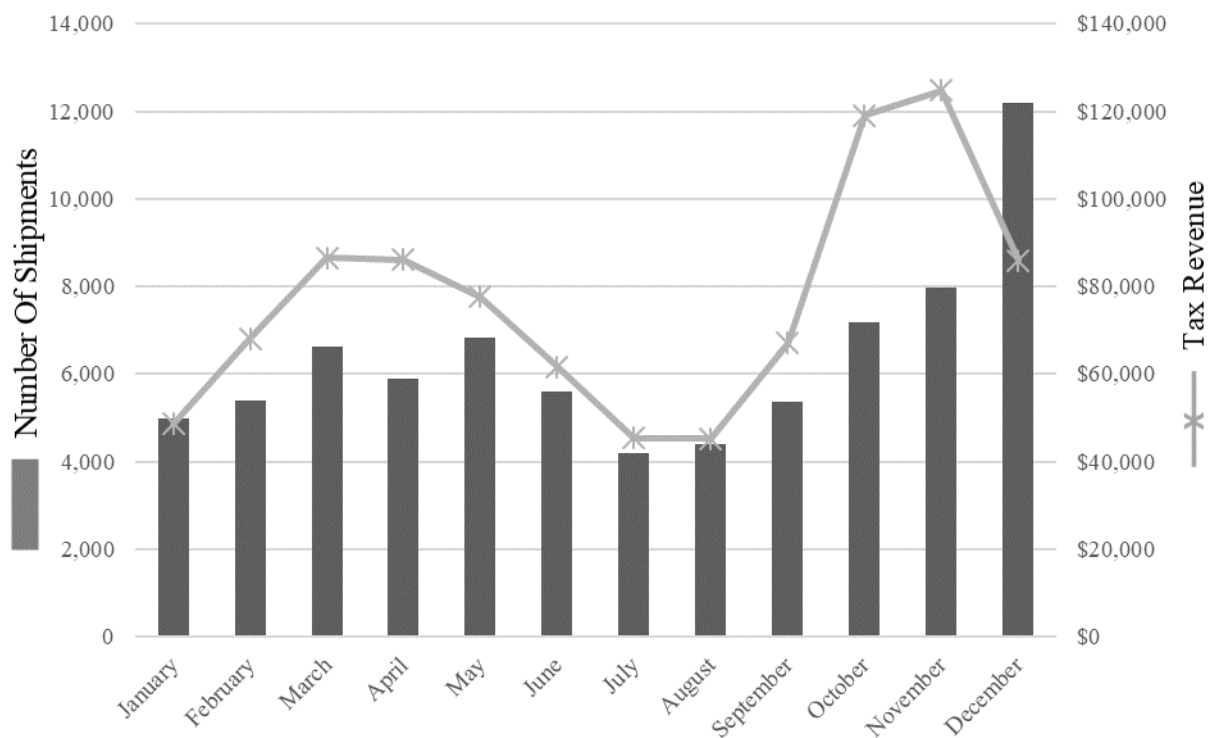
Uncontrolled Practices

Program practices were uncontrolled, exceeding original intent and statutory provisions. Lacking holistic information from carriers on bottle count, beverage volume and type, and legal signatures for packages, as well as an automated process for carrier and direct shipper reporting, it was impossible to consistently determine whether direct shippers complied with statute and proper control was ensured, or whether direct shippers filed correct taxes and profitability was optimized. Division employees purported that, while the carrier and P&S entity reports they received were examined every month, direct shipper tax revenue was not, undermining efforts to ensure optimization of profits, a deficiency we identified in our *2006 Management Letter*. For example, unaudited Division data depicted in Figure 8 and Table 9 show the number of direct shipments during December 2018 were almost double every other month of that year. However, tax revenues collected were dramatically lower than October and November 2018 and nothing indicated that the following months in CY 2019 made up for the apparent gap. The lack of a relevant Program control meant this apparent abnormality garnered no attention from Program staff to understand why revenue figures diverged in December 2018. Unaudited Division data further demonstrated in CY 2018:

- at least 76,639 shipments of at least 409,846 bottles of alcoholic beverages were shipped into the State;
- shipments were delivered to as many as 35,828 recipients, with some deliveries to a single individual being made to several addresses; and
- 30,935 of the shipments (40.4 percent) were sent by a carrier that did not include a bottle count of product shipped.

Figure 8

Total Reported Direct Shipments And Tax Revenue, CY 2018^{1,2}



Notes:

1. Three licensed carriers provided shipment data. The other 52 licensed carriers directly shipped an indeterminate amount of product into New Hampshire.
2. Direct shipper data was limited to those direct shippers that submitted tax filings.

Source: LBA analysis of unaudited Division CY 2018 data.

Additionally:

- in CY 2018, 440 recipients (1.2 percent) received over 100 bottles each, with the maximum total count of bottles shipped to one consumer being 563, possibly exceeding statutory limitations;
- in CY 2018, 132 recipients (0.4 percent) received more than the statutory limit of 108 liters of wine, with over 422 liters being the highest volume received;
- during SFYs 2018-2019, recipients included licensed individuals and entities who had not received Commission permission, as we discuss in Observation No. 30;
- during SFYs 2018-2019, some direct shipments went through the 37 P&S entities for which the Division improvised a quasi-permit and to which they applied other regulations without a basis in statute or rule, as we discuss in Observation No. 29; and

- during SFYs 2018-2019, the unauthorized direct shippers list, the primary enforcement mechanism for helping to ensure direct shipper, carrier, and P&S entity compliance, was inconsistently effective, as we discuss in Observation Nos. 28 and 31.

Table 9

Direct Shipper Program: Shipments, Minimum Number Of Bottles Shipped, And Tax Revenue, CY 2018

Month	Number Of Shipments ¹	Minimum Number Of Bottles ²	Tax Revenue			
			Beverage	Liquor	Wine	Total
January	4,993	28,620	\$ 156	\$ 47	\$ 48,330	\$ 48,533
February	5,408	27,367	0	90	67,930	68,020
March	6,632	34,954	238	471	85,841	86,550
April	5,900	27,429	0	65	85,973	86,038
May	6,817	36,163	20	106	77,546	77,672
June	5,600	36,234	181	424	61,057	61,662
July	4,182	25,611	211	332	44,781	45,324
August	4,398	26,536	173	328	44,673	45,174
September	5,366	28,851	188	399	66,408	66,995
October	7,175	37,394	190	714	118,145	119,049
November	7,982	44,992	154	1,507	123,056	124,717
December	12,186	55,695	210	2,109	83,598	85,917
Total	76,639	409,846	\$ 1,721	\$ 6,592	\$ 907,338	\$ 915,651

Notes:

1. Three licensed carriers provided shipment data. The other 52 licensed carriers shipped an indeterminate amount of product directly into New Hampshire.
2. One of the three reporting carriers did not include bottle counts in shipment data. The bottle count data presented reflected the *minimum* number of bottles reportedly shipped to New Hampshire consumers and licensees.

Source: LBA analysis of unaudited data from Division CY 2018 tax revenue and carrier reports.

Inadequate Knowledge Management

Incomplete and inaccurate data compromised efficient and effective Program operation, and controls were inadequate to ensure data quality and reliability, conditions identified in our *2009 Performance Audit*. The Division should design the Program's information system and use quality information to achieve objectives. However, the Program depended upon an amalgamation of electronic spreadsheets and hardcopy reports containing data that were incomplete and inconsistently reliable. Evaluations of these reports to assess one month's compliance sometimes required the review of direct shipper reports from various months due to the piecemeal nature of reporting and shipping. Shipment data were also collected from just three of 55 licensed carriers (5.5 percent). Despite these limitations, some recognized for over a decade, and statutory

requirements related to shipments to consumers in a calendar year, the Division continued to examine carrier and direct shipper reports on a monthly basis. Sporadic, entity-specific yearly analyses were undertaken in isolated instances. This approach, partially caused by the lack of an adequate information technology (IT) system to facilitate effective oversight of the Program, inhibited proper control and optimization of revenue.

Recommendations:

We recommend Commission management improve Program controls, and:

- **monitor Program operations to ensure they efficiently and effectively achieve expected outcomes; and**
- **develop, implement, monitor, and refine comprehensive rules covering all Program activities.**

We recommend Division management improve controls over the Program, and:

- **include in strategy and plans elements to establish a management control structure to consistently achieve expected Program outcomes and automate Program processes;**
- **develop, implement, monitor, and refine goals, objectives, and targets tied to Program expected outcomes;**
- **develop, implement, monitor, and refine comprehensive SOPs compliant with statute, rules, strategy, and Program goals, objectives, and targets;**
- **develop, implement, monitor, and refine performance measures to ensure requirements are adhered to and the strategy followed;**
- **tie employee performance to Program goals, objectives, and targets; and**
- **periodically report on performance of all Program-related activities.**

Agency Response:

We concur.

Proper Control Of Directly Shipped Alcoholic Beverages

The Program was to ensure direct shipping statutory and regulatory requirements were met by carriers and direct shippers. To do so, the Program relied upon: 1) data provided on shipments into New Hampshire by three of the 55 licensed carriers (5.5 percent) and 37 informally regulated P&S entities, 2) direct shipper tax filings, and 3) cease and desist letters and an unauthorized direct shipper list in cases of noncompliance. The Program was a substantial contributor to the importing and distributing of alcoholic beverages to consumers and approved licensees in New Hampshire, but as with other Administrative Bureau functions, the Program did not receive sufficient management attention to ensure proper control was ensured. Management's system of controls to ensure the Program properly controlled alcoholic beverages was at an initial level of maturity.

Observation No. 28

Ensure Proper Control Of Directly Shipped Alcoholic Beverages

Management's system of controls to ensure the Program properly controlled alcoholic beverages was not designed to ensure compliance, and was ineffective in fulfilling statutory control objectives. When illegal shipments were identified, effective enforcement action did not consistently follow, as we discuss in Observation Nos. 31 and 47. The Division did not fully remediate related prior audit findings, leaving long-standing deficiencies in place. The Division also:

- lacked adequate rules and SOPs, a formal assessment of Program risks, and strategies or plans to address Program performance;
- inconsistently followed rules;
- relied upon inefficient, manual processes to monitor compliance;
- lacked adequate data and analysis of available data to holistically ensure proper control; and
- depended upon an inconsistently effective enforcement mechanism to ensure control.

Practices also accommodated untimely and inconsistent permitting, as we discuss in Observation No. 31, and illegal shipments to licensees, as we discuss in Observation No. 30.

Program Not Controlled

During the audit period, the Program did not provide proper control. As summarized in Table 10, the Division did not ensure compliance with the majority of direct shipping-related statutory and regulatory requirements. Rules, SOPs, data, and Program practices were inadequate, leading to illegal shipments, excessive shipments to individual consumers and licensees, shipments from New Hampshire and international entities, and inconsistent sanctions action.

Inadequate Data

The Commission did not require carriers and direct shippers provide sufficient data to assess statutory compliance and did not require all carriers report shipment data, conditions that have existed for over a decade. Commission rules did not specify what information carriers or shippers were required to provide. Consequently:

- data from the three carriers providing reports was inconsistent, with one carrier providing data on legal signatures obtained and the number of *shipments*, while the other two carriers did not provide data on legal signatures, but did report the number of *bottles* and the type and volume of alcoholic beverages shipped;
- direct shipper tax filings were inadequate and inconsistent in format and data provided, as we discuss in Observation No. 32; and
- P&S entity reports, required by the Division under ad hoc rules, were inconsistent in format and the data provided, as we discuss in Observation No. 29.

Table 10

Direct Shipper Program Requirements, Compliance, And Weaknesses Identified

Statute And Rule Requirements	Affected Entities		Program Ensured Compliance	Weaknesses Identified			
	Carriers	Direct Shippers		Rules	SOPs	Data	Practice
Obtain a license or permit.	Yes	Yes	No	Yes	Yes	Yes	Yes
Ensure delivery to of-age adults.	Yes	Yes	No	Yes	Yes	Yes	Yes
Retain legal signature records for at least six months.	Yes	N/A	No	Yes	Yes	Yes	Yes
No shipments to areas where alcoholic beverages cannot be lawfully sold.	Yes	Yes	Yes	No	No	No	No
Ship no more than 60 containers of not more than one liter each of liquor to one consumer in a calendar year.	No	Yes	No	Yes	Yes	Yes	Yes
Ship no more than 12 nine-liter cases or equivalent of wine to one consumer in a calendar year.	No	Yes	No	Yes	Yes	Yes	Yes
Ship no more than 27 gallons of beverage in containers of not more than one liter each to one consumer in a calendar year.	No	Yes	No	Yes	Yes	Yes	Yes
Ship no more than 600 liters of liquor or wine directly to licensees or consumers without offering to sell a matching amount to the Commission or a distributor.	No	Yes	No	Yes	Yes	Yes	Yes
Ship no beverage to a licensee.	No	Yes	No	Yes	Yes	Yes	Yes
Do not transport liquor, wine, or beverage for 90 days for a shipper identified as not holding a direct shipper permit.	Yes	No	No	Yes	Yes	Yes	Yes
File monthly reports for each shipment and pay an eight percent tax on the retail price.	No	Yes	No	Yes	Yes	Yes	Yes
File monthly reports for each shipment.	Yes	No	No	No	Yes	Yes	Yes
Maintain tax filings for at least three years and permit an examination.	No	Yes	No	No	Yes	N/A	Yes

Note: N/A = Not applicable.

Source: LBA analysis of Program requirements, data, and practices.

Furthermore, tracking numbers, the primary method for identifying different shipments, could not be consistently verified between various entities' reports, as we discuss in Observation No. 29. As a result, it was impossible for the Division to comprehensively determine whether statutory limits on the number of bottles and volume of liquor, beverage, and wine that direct shippers could send to a consumer or licensee in a given calendar year were observed. The Division could also not determine whether legal signatures were obtained for many deliveries.

Inefficient And Ineffective Practice

Program practices were inefficient and inadequate to ensure proper control. Practice focused on monthly monitoring, with sporadic, unstructured yearly analysis conducted. Monthly, Program staff manually assembled and reviewed hundreds of spreadsheets and documents with inconsistent formats representing thousands of lines of data to determine whether direct shippers were permitted and the amount of taxes they remitted was accurate. Monitoring and control efforts were further complicated since shipments could be reported in one month by a direct shipper, then listed as delivered one or more months later in a carrier report. This required Program employees to review several months of data in spreadsheets and other documents just to understand one month of shipments. Shipment vetting was based on monthly reports from the three carriers providing reports to determine whether shipments were sent by permitted direct shippers. P&S entity shipments, a significant portion of overall direct shipments, were also identified using a manually-generated spreadsheet listing all 37 P&S entities recognized by the Division, as we discuss in Observation No. 29. These shipments were further crosschecked using monthly P&S entity reports, required by the Division under ad hoc rules, to determine whether the originating direct shipper was properly permitted. Consequently, 15 to 20 percent of shipments in carrier reports were reportedly crosschecked against direct shipper tax filings to determine whether taxes paid were accurate, as we discuss in Observation No. 32.

Illegal Direct Shipments – Unpermitted Shippers

The Program could not ensure direct shipments were sent by permitted direct shippers. Definitive quantification of how much illegal product was shipped by non-permitted entities was impossible because rules did not require carriers provide necessary data and the carrier reports the Division accepted were significantly limited. Nonetheless, data collected by the Division identified several non-permitted entities that shipped alcoholic beverages into the State.

- One carrier's June 2019 report showed 14 of 322 direct shippers (4.3 percent) listed in the report were not permitted, though these entities made 24 out of 4,112 total *shipments* (0.6 percent) listed in the report.
- One non-permitted entity shipped at least 130 *bottles* of alcoholic beverage to a single licensee during CY 2018.
- Ten retailer direct shippers previously permitted by the Commission, including four placed on the unauthorized direct shipper list, illegally shipped at least 4,978 *bottles* of alcoholic beverage into the State during CY 2018, as we discuss in Observation No. 31.

- Ten entities paid taxes on illegal shipments in CY 2018 after they were out-of-business, seven of which (70.0 percent) were not subjected to required enforcement actions.

Illegal Direct Shipments – Excessive Quantities

Direct shippers sent excessive quantities of alcoholic beverages to recipients. Without Commission approval, direct shippers could not ship to any one consumer in a calendar year more than:

- 60 containers of not more than one liter each of liquor;
- 12 cases or its equivalent totaling nine liters of wine, or 108 liters total; and
- 27 gallons of beverage in individual containers of not more than one liter, or 102.2 liters total.

Further, direct shippers could not ship beverage to a licensee. Program practice did not include controls over volume limits and the data the Division accepted from carriers were incomplete, preventing definitive identification of over shipments. Nonetheless, unaudited data demonstrated significant noncompliance likely occurred during CY 2018.

- The highest number of bottles shipped to a single consumer in CY 2018 was at least 563.
- Of the 35,828 recipients listed in CY 2018 data, 1,425 (4.0 percent) received more than 60 bottles, 440 (1.2 percent) received more than 100 bottles, and 46 (0.1 percent), received more than 200 bottles.
- The 46 recipients receiving over 200 bottles included consumers and licensees, with deliveries to both commercial and residential addresses.
- Nearly a dozen licensees, without permission from the Commission to receive direct shipments, received over 200 bottles each for a total of at least 2,800 bottles, as we discuss in Observation No. 30.

New Hampshire-based And International Direct Shippers

A small number of direct shipments were made by New Hampshire- and internationally-based establishments to in-State consumers and licensees. The intent of the Program was to allow entities duly licensed in their home state to ship their product directly to New Hampshire consumers and, with Commission permission, to licensees. However, New Hampshire-based establishments were allowed to directly ship domestically-produced product and international entities were allowed to directly ship foreign product to in-State consumers. Statute and rules did not accommodate these shipments. New Hampshire-based sources accounted for 402 of the 409,846 bottles (0.1 percent) directly shipped from within the United States.

In addition, 14 shipments were made by international establishments to a mix of consumers and licensees, according to unaudited Division CY 2018 data. Purportedly, international shipments were typically made to wholesalers and consumers who had obtained permission from the

Commission to import alcohol. However, none of the 14 international shipments had documented Commission approval.

Inconsistent Enforcement And Sanctions, And Ineffective Disciplinary Action

Controls were not designed to enforce compliance with direct shipper requirements in statute, rule, and practice, and the Division inconsistently enforced compliance and sanctioned noncompliance. Entities found to be illegally shipping product into the State were guilty of a felony and prosecution was required. The Division relied upon the unauthorized direct shippers list to convey to carriers monthly which entities were not allowed to ship directly into the State. While the list was referenced in rules, other relevant procedures, such as how entities were added to or removed from the list in practice, were not. Entities directly shipping product into the State without a permit were supposed to be sent an illegal shipment letter and advised to obtain a permit, unless they were categorized as a P&S entity. If the entity remained noncompliant, they were supposed to be added to and remain on the unauthorized direct shipper list for 90 days. Subsequent noncompliance purportedly resulted in immediate re-listing, but not sanctions. Program examiners were responsible for all aspects of monitoring, investigating, and sanctioning, without statutory and regulatory authority, as we discuss in Observation Nos. 45 and 46.

Unauthorized Direct Shipper List Ineffective And Inefficient

The unauthorized direct shipper list was inconsistently effective. The 90-day limit on keeping noncompliant entities on the list purportedly did not ensure proper control. Practices were inefficient, with manual monitoring and the list residing outside the Division's enforcement database. Noncompliant direct shippers were at times not put on the unauthorized direct shipper list, or were put on the unauthorized direct shipper list but continued to send product into the State, as we discuss in Observation No. 31. Additionally, the Division lacked adequate controls to ensure carriers did not ship product for entities on the list. Unaudited CY 2018 Division data on improper shipments and the unauthorized direct shipper list indicated:

- 259 unique entities made at least 389 illegal shipments, and 23 entities (8.9 percent) were multiple offenders;
- 128 unpermitted shippers made 184 illegal shipments;
- 136 entities on the unauthorized direct shipper list made at least 209 illegal shipments, and seven entities (5.1 percent) were re-listed for continued illegal shipment;
- one of 13 direct shippers (7.7 percent) that shipped more than 60 bottles to a single recipient during CY 2018 was placed on the unauthorized direct shipper list, not for over shipping but for not renewing its permit, and nonetheless continued to illegally ship 4,468 bottles until it was re-permitted several months later;
- none of the 102 direct shippers listed in a June 2018 carrier report that did not file taxes for the same month were placed on the unauthorized direct shipper list for non-payment; and
- two of ten unpermitted entities (20.0 percent) directly shipping into the State who paid direct shipper taxes during CY 2018 were put on the unauthorized direct shipper list.

Division employees stated the 90-day unauthorized direct shipper list duration in statute was too short, hindering their ability to control illegal shipments and creating additional administrative burden. Division employees reportedly had to wait until the month following the end of a 90-day no-ship period to re-list a noncompliant entity on the unauthorized direct shipper list. This meant there was a month or more lag between when a noncompliant entity's 90-day period on the unauthorized direct shipper list expired and when the Division relisted the noncompliant entity. Further, a set duration for noncompliant entities to age-out of the control intended to limit illegal shipments reportedly meant noncompliant entities, instead of becoming compliant, simply had to wait to resume shipping. Additionally, the unauthorized direct shipper list was not disseminated to P&S entities, creating an additional gap in the Division's control system.

Illegal Shipment Letters Ineffective And Inefficient

The effectiveness of illegal shipment letters was inconsistent, with repeat offenders not receiving sanctions, and inefficient, with the manual monitoring residing outside the Division's enforcement database. Based on unaudited data in an improvised Program database, Division illegal shipment monitoring data indicated 145 illegal shippers received an illegal shipment letter and 47 of 145 calls for service (32.4 percent) were opened on these illegal shippers during CY 2018. However:

- ten entities either with a permit or shipping through a P&S entity were erroneously sent an illegal shipment letter;
- five entities had a call for service for illegal shipment erroneously opened; and
- the 145 entities listed in the enforcement database were different from the 145 entities listed in the improvised Program database, with 30 entities not matching between databases.

Additionally, in CY 2018, unauthorized direct shipper lists contained 207 entities, 146 (70.5 percent) for sending at least 209 total illegal shipments to New Hampshire. Ten entities (6.8 percent) were listed more than once, indicating repeated offenses. This was amplified by a subjectively selected sample of Division CY 2018 carrier data which indicated at least five entities that illegally shipped more than 20 bottles and never became compliant with permitting requirements were untimely added to the unauthorized direct shipper list. On average, it took the Division 201 days to add these entities to the unauthorized direct shipper list and as many as 326 days after their first illegal shipment occurred. Meanwhile, they continued to make illegal shipments totaling over 450 bottles. Further, 22 establishments paid taxes during CY 2018 after their permit expired, indicating shipments were made after they were no longer permitted. Six (27.3 percent) were placed on the unauthorized direct shipper list or received an illegal shipment letter.

Sanctions Not Sought

Without a system of graduated sanctions like we recommended in CY 2009, fines were required for violations of the Program's statute, and most violations were a criminal offense. However, no fines were levied nor were criminal charges pursued for illegal shipments, even when illegal shipments were identified by the Division, as we discuss in Observation Nos. 32 and 45. Division employees also purported, but could not document, the Department of Justice refused to prosecute

direct shipper violations due to the cost involved, a similar but unresolved condition reported in our *2009 Performance Audit*. Of the 20 direct shipper-related disciplinary actions listed in unaudited Division enforcement data, 13 (65.0 percent) were returned checks, four (20.0 percent) were related to one direct shipper not filing reports, two (10.0 percent) were carrier violations, and one (5.0 percent) was related to improper use of an alcohol consultant. None were related to improper shipments or violations of the unauthorized direct shipper list. The direct shipper not filing reports timely was the only direct shipper listed as receiving an administrative notice. Meanwhile, illegal shipments, including repeated illegal shipments, were concluded, at most, with the issuance of an illegal shipment letter and no additional sanction. Lastly, permit records did not record any disciplinary action occurred when illegal shipments were identified and the illegal shipper subsequently received a permit.

Recommendations:

We recommend Commission management ensure proper control of direct shipments, and:

- **amend rules to require adequate data be submitted by carriers and permittees to inform comprehensive enforcement;**
- **amend rules to include all Program-related procedures, such as those related to improper shipment letters and the unauthorized direct shipper list;**
- **consider seeking amendment to statute to remove the 90-day unauthorized direct shipper limitation for unpermitted entities directly shipping into the State; and**
- **seek clarification from the Legislature as to whether New Hampshire-based licensees and international-based entities should be allowed to direct ship to consumers, or discontinue the practice.**

We recommend Division management ensure the Program properly controls direct shipments, and:

- **develop an efficient, automated system to replace manual control processes, such as carrier reporting, direct shipper reporting and tax filings, and the unauthorized direct shipper and improper shipments lists;**
- **work with the Department of Justice to prosecute, when necessary, noncompliant entities; and**
- **require and ensure all carriers provide monthly reports on shipments from direct shippers and comply with unauthorized direct shipper list requirements.**

Agency Response:

We concur.

Unregulated P&S Entities Allowed

Direct shipments of alcoholic beverages could only be made by permitted direct shippers. However, a significant portion of direct shipments into New Hampshire during the audit period

were handled by non-permitted P&S entities that shipped product produced by third parties. In an effort to control P&S entity shipments, the Division improvised a quasi-permitting and monitoring process without underpinning statutory authority, rules, forms, SOP, or formal procedures. Despite these improvised efforts, unaudited Division data demonstrated P&S entities shipped product from non-permitted entities in some cases and P&S entity compliance with the Division's improvised requirements was inconsistent. Management's system of control over P&S entities was undeveloped.

Observation No. 29

Establish Proper Control Over Pack And Ship Entities

The Division's system of control over P&S entities was inadequate, leading to unrealized revenue and incomplete control over direct shipments. Management lacked a strategy, plans, objectives, targets, or performance measures to regulate P&S entities, and had no system to determine how many resources were spent permitting and monitoring P&S entities. Without any corresponding collection of revenue from P&S entities, the improvised process was a net cost to the State.

Ad Hoc Rules

The Division created a quasi-permit for P&S entities. It was illegal to manufacture, sell, distribute, or store alcoholic beverages in New Hampshire without first registering to do business with the Secretary of State and obtaining a license from the Commission. Violations were a felony. The Program provided for permits to allow manufacturers, importers, wholesalers, or retailers licensed in another state to ship alcoholic beverages directly to New Hampshire consumers or licensees through licensed carriers. Neither statute, rule, nor SOP accommodated unlicensed and unpermitted P&S entities, although an informal practice guide mentioned how shipments from P&S entities should be vetted using monthly carrier reports. The Division did not require P&S entities obtain a direct shipper permit because these entities were incongruously purported to not produce the product they shipped, even though direct shipper retailers, importers, and wholesalers were required to obtain a permit for a similar service.

The Division improvised a quasi-permitting process and subsequent monitoring and reporting requirements based wholly on ad hoc rules. When the Division identified a P&S entity, the entity was compelled to complete and sign a form letter agreeing to certain terms and conditions and to monthly submit data listing all shipments into New Hampshire. No fee was imposed on P&S entities by the Division. However, each month P&S entities were required to verify whether entities using their services were permitted direct shippers, and to provide the permittee's permit number and expiration date, the recipient's name and address, and the tracking number for each shipment. The Division then reviewed the P&S entity reports using the same review process used for reports provided by licensed carriers. This involved reviewing the listing of P&S entities and monthly carrier reports to identify P&S entities actively shipping in a given month and reconciling tax filings to ensure the direct shippers listed on P&S reports paid the required eight percent tax on sales.

The improvised nature of regulation led to inconsistencies. Without apparent reason, some Division-recognized P&S entities actually had licenses or permits, while others did not. Some P&S

entities shipped from multiple addresses and under different business names, with one entity shipping under at least 12 business names from eight addresses. The P&S monthly reporting requirement, while helping the Division determine whether shipments were compliant, induced complexity through an additional layer of monitoring which was compounded by P&S entities not consistently providing monthly reports or providing them in a consistent format. Additionally, the direct shippers on whose behalf P&S entities shipped were not listed on monthly carrier reports, complicating Division monitoring efforts even though the three carriers that filed reports were listed as the P&S entities' shippers. The Division purportedly placed P&S entities on the unauthorized direct shipper list if the improvised requirements were not met, for instance if the P&S entity shipped on behalf of a non-permitted entity. Carrier reports also labelled P&S entities differently, requiring Division employees to manually review the reports for each entity listed by name to determine whether it was a P&S entity or not, increasing the complexity of Division monitoring and forcing the Division to expend additional resources on monitoring activities. Time spent vetting P&S and carrier reports prevented Division employees from effectively monitoring other aspects of the Program, such as reviewing direct shipper monthly tax filings.

Profitability Not Optimized

The Division did not optimize profitability since direct shippers using P&S entities did not all file taxes, permit fees were not collected from P&S entities, and resources were expended through the improvised permitting and monitoring of P&S entities and their shipments. P&S entities represented a variety of entities, some of which had licenses or direct shipper permits from the Commission. The Division's list included at least 37 P&S entities, of which at least four (10.8 percent) had direct shipper permits and one (2.7 percent) was a licensed carrier. The remaining 32 (86.5 percent) had no State regulation in place. Direct shippers who used P&S entities inconsistently filed taxes, as we discuss in Observation No. 32. For instance, in one carrier's June 2019 report, 95 of 150 direct shippers (63.3 percent), representing 102 of the 1,613 shipments (6.3 percent) listed, filed required taxes that same month as required by statute. Additionally, had P&S entities been subjected to permit requirements like a retailer, importer, or wholesaler direct shipper, an annual fee of \$500 per entity could have been collected, potentially producing \$16,000 in annual revenue.

Improper Control

The Division inconsistently maintained proper control over P&S shipments, even though they made up a significant portion of all direct shipments listed in unaudited Division data. One P&S entity alone was responsible for at least 137,541 out of 409,846 total bottles of alcoholic beverages (33.6 percent) shipped into the State during CY 2018. P&S entities shipped product for some entities which were not permitted direct shippers. Unaudited Division data for June 2019 indicated:

- product from five non-permitted entities in 13 of 2,499 packages (0.5 percent) was shipped by P&S entities that month; and
- two of 37 P&S entities listed in one monthly carrier report (5.4 percent) shipped five of 892 P&S packages (0.6 percent) in the carrier report but did not send a monthly P&S entity report to the Division.

Furthermore, Division staff did not verify all packages between P&S reports and carrier reports. Of 841 P&S shipments made through one carrier during June 2019, 218 (25.9 percent) were verified in the carrier's corresponding June 2019 report.

Finally, the Division purportedly placed P&S entities on the unauthorized direct shipper list if the entity failed to comply with the terms and conditions of their agreement, such as shipping on behalf of a non-permitted entity. However, unaudited Division data indicated six instances in CY 2018 where P&S entities were put on the unauthorized direct shipper list with no additional explanation.

Recommendation:

We recommend Division management ensure P&S entities are properly permitted or licensed.

Agency Response:

We concur.

Inadequately Controlled Direct Shipments To Licensees

Licensees could request permission to receive direct shipments of alcoholic beverages. Rules provided a framework for the Commission's Division of Marketing, Merchandising, and Warehousing to manage licensee requests to obtain direct shipments, which was not followed in practice, resulting in uncontrolled direct shipments to licensees. Management's system of control over direct shipments to licensees was undeveloped.

Observation No. 30

Improve Controls Over Direct Shipments To Licensees

The Division's system of control over direct shipments to licensees was inadequately structured, measured, and monitored. There were no data and risk informed strategies, plans, goals, objectives, targets, performance measures, or initiatives governing licensees requesting permission to receive direct shipments or the process's contribution to helping the Commission achieve expected outcomes.

In practice, the Division of Enforcement and Licensing processed licensee requests for permission to receive direct shipments instead of the Division of Marketing, Merchandising, and Warehousing, creating inconsistency with rules. The Division of Enforcement and Licensing lacked an SOP detailing related procedures but the Program had an informal practice guide that generally, but not fully, conformed to applicable rules. For example, the guide lacked requirements related to notifying the direct shipper of approved shipments to licensees. Also, each request was to be accompanied by a report describing whether the products were sold by the Commission but currently out of stock, a limited allocation item, or not available from the Commission. The report was also required to make a recommendation as to whether or not approval of the request would

harm Commission revenue, but no corresponding procedures existed, potentially compromising optimization of profitability.

The guide-based process was inefficient, relying upon manual procedures; several unintegrated databases and a process-specific database; and duplicate hardcopy records. The guide provided for manually monitoring shipments to verify they did not exceed the approved quantity and were delivered to the licensed establishment. Unaudited Division data demonstrated four licensees obtained permission during the audit period to receive direct shipments and ten other licensees had perpetual permission to routinely receive direct shipments, which required monitoring during the audit period. Unaudited Division data also demonstrated these practices resulted in improper control, including:

- a dozen licensees that received over 200 bottles without Commission approval collectively received illegal shipments of over 2,800 bottles in CY 2018;
- two licensees that received illegal shipments during the audit period by exceeding the terms of their agreements; and
- one licensee that received direct shipments during the audit period from an unpermitted entity.

None of these examples resulted in sanctions.

Also, no performance measurement or evaluation or customer service metrics existed for this process. While the option for licensees to receive direct shipments was publicized by the Division, unlike other direct shipper-related processes, there were no supporting guidelines or forms issued. No employee had performance requirements nor were employees evaluated on metrics related to the process. Unaudited Division data indicated requests were approved in just over 16 days on average but erroneous analysis of product availability through the Commission occurred, delaying the approval of one of the four requests for 36 days, in addition to Division processing, which was unmonitored.

Recommendations:

We recommend Commission management improve controls over direct shipments to licensees, and:

- **determine which division should retain responsibility for managing licensee direct shipments;**
- **revise rules to reflect actual division responsibilities; and**
- **ensure rules establish data requirements allowing for comprehensive assessment related to achievement of expected outcomes.**

We recommend management of the responsible division:

- **develop, implement, monitor, and refine a comprehensive SOP, compliant with rules, over direct shipments to licensees;**

- review control processes to ensure they accommodate comprehensive analysis of licensee and permittee compliance to help ensure proper control;
- simplify recordkeeping, eliminating redundant hardcopy records and consolidating electronic records, to help ensure optimization of profitability; and
- create and monitor performance and consistency measures related to direct shipments to licensees, such as timeliness, to ensure good customer service is provided.

Agency Response:

We concur.

Permitting Inadequately Controlled

Similar to licensing, direct shipper permitting was essential to ensuring proper control. Any entity sending direct shipments into the State had to have a valid permit. Permitting was required to be timely and consistent. Before January 1, 2019, the Division had 60 days to: 1) examine permit applications, 2) notify applicants of any errors or omissions, 3) request additional information, and 4) provide applicants the name, title, address, and telephone number of the Division employee to contact on the application. Once a complete application was received, the Commission had 120 days to approve or deny it, or commence an adjudicative proceeding. On January 1, 2019, these time limits became 30 and 60 days, respectively. The Division also had to notify an applicant in writing within ten business days of application receipt if the application did not comply with statute or rule. According to unaudited Division data, the number of permittees increased 3.6 percent during the audit period, from 1,179 in July 2017 to 1,221 in June 2019. However, the Division lacked controls over permitting to ensure timeliness, consistency, or proper control, and management's system of control over permitting was at an initial level of maturity.

Observation No. 31

Improve Controls Over Permitting

The Division's inadequate system of control over permitting undermined achievement of expected outcomes. Management lacked a strategy, plans, goals, objectives, targets, risk assessment, performance measures, or initiatives to ensure timely and consistent permitting. In practice, permit processing was inconsistently timely, permit application decisions were inconsistent, and management lacked controls to evaluate permitting timeliness and consistency. In some cases, permitting practices did not comply with statute, for instance, with management allowing P&S entities to operate without permits, and no Commission approval being rendered for permit renewals. During SFYs 2018-2019, hundreds of direct shipper permit renewals were authorized by Program employees with no delegation of authority in rule, employee supplemental job descriptions, or any other document describing this duty. Management reporting consisted of a limited set of output metrics that quantified the number of permit transactions, but not how consistently and timely transactions were processed or how processes contributed to achieving outcomes. Additionally, while the Commission previously sought changes to statute to allow for

multiyear licenses, it did not seek corresponding authority for multiyear permits. Multiyear permits might help improve efficiency and reduce the burden of permit renewals for permittees and the Division.

Incomplete Controls Over Permitting

Rules, SOPs, and improvised practices controlling the Program’s permitting processes and decisions were inadequate to achieve expected outcomes. There was a lack of substantive guidance on permitting timeliness and consistency, and procedures to provide applicants required information. Rule and policy provided for initial and renewal permit applications, but neither established timeliness benchmarks or consistency criteria within which the Division made permitting recommendations and the Commission made decisions.

Without formal, comprehensive controls over permitting, Division employees could not objectively evaluate timeliness or consistency. Division employees stated permitting was timely and consistent but could neither identify controls to demonstrate and ensure such was the case nor articulate statutory or regulatory timeliness requirements. The formal review of permitting was the weekly Division of Enforcement and Licensing Meeting (Division Meeting) agenda process of submitting Division recommendations for permit approval or denial to the Commission for final action, and internal Division monthly reports listing the number of permits approved and denied, which started in January 2019. Unaudited Division data indicated there were 1,212 active direct shipper permits as of June 27, 2019, and six months of Division monthly reports indicated an average of ten new permits were processed and approved monthly while none were denied. No other metrics were developed.

Timeliness Of Permit Processing Unmonitored And Inconsistent

Commission and Division records indicated the processing of permit applications was inconsistently timely. We reviewed 11 initial and 18 renewal permit application files, and found issues with timeliness and insufficient documentation to determine timeliness, as shown in Table 11.

Table 11

Permitting Timeliness Based On File Review

Result	Initial Applications		Renewal Applications	
	Total	Percent	Total	Percent
Processed Timely	8	72.7	7	38.9
Not Processed Timely	1	9.1	0	0.0
Insufficient Documentation	2	18.2	11	61.1
Total	11	100.0	18	100.0

Source: LBA analysis of Division records.

The Commission was also inconsistently timely rendering final decisions on permit applications that were tabled during the weekly Division Meeting. Of ten permit applications listed as tabled in Division Meeting minutes during SFYs 2018-2019, two (20.0 percent) were tabled more than 120 days, in addition to Division processing time, exceeding statutorily-established time limits for the whole review and approval process.

Also, one of 11 initial applications (9.1 percent) we reviewed was deemed incomplete but the Division did not communicate to the applicant reasons for incompleteness within the required ten business days of receipt. Insufficient documentation, coupled with the recordkeeping and deficiencies in IT systems, meant the Division had no effective means to determine timeliness of permitting. The Division's enforcement and licensing databases, repositories for at least some permitting actions, were limited by unreliable data and were not evaluated by the Division for completeness and consistency.

Inconsistent Permit Decisions

Statute, rules, and SOPs provided no criteria for consistent permit decisions. In practice, criteria for permit decisions were inconsistent among Division reviewers and between the Division and the Commission. Staff reported and Division records indicated that certain entities were incorrectly permitted. For instance, we found at least three entities had to be reclassified from manufacturer, with a corresponding \$100 permit fee, to retailer, importer, or wholesaler, with a corresponding \$500 permit fee, during the audit period. Division permitting recommendations and Commission permitting decisions also deviated, with several instances identified in Division Meeting minutes where the Division recommended approval and the Commission either tabled or denied the permit. The record was insufficiently detailed to consistently demonstrate why decisions differed from recommendations.

Improvised Strategy For Retailer Direct Shippers

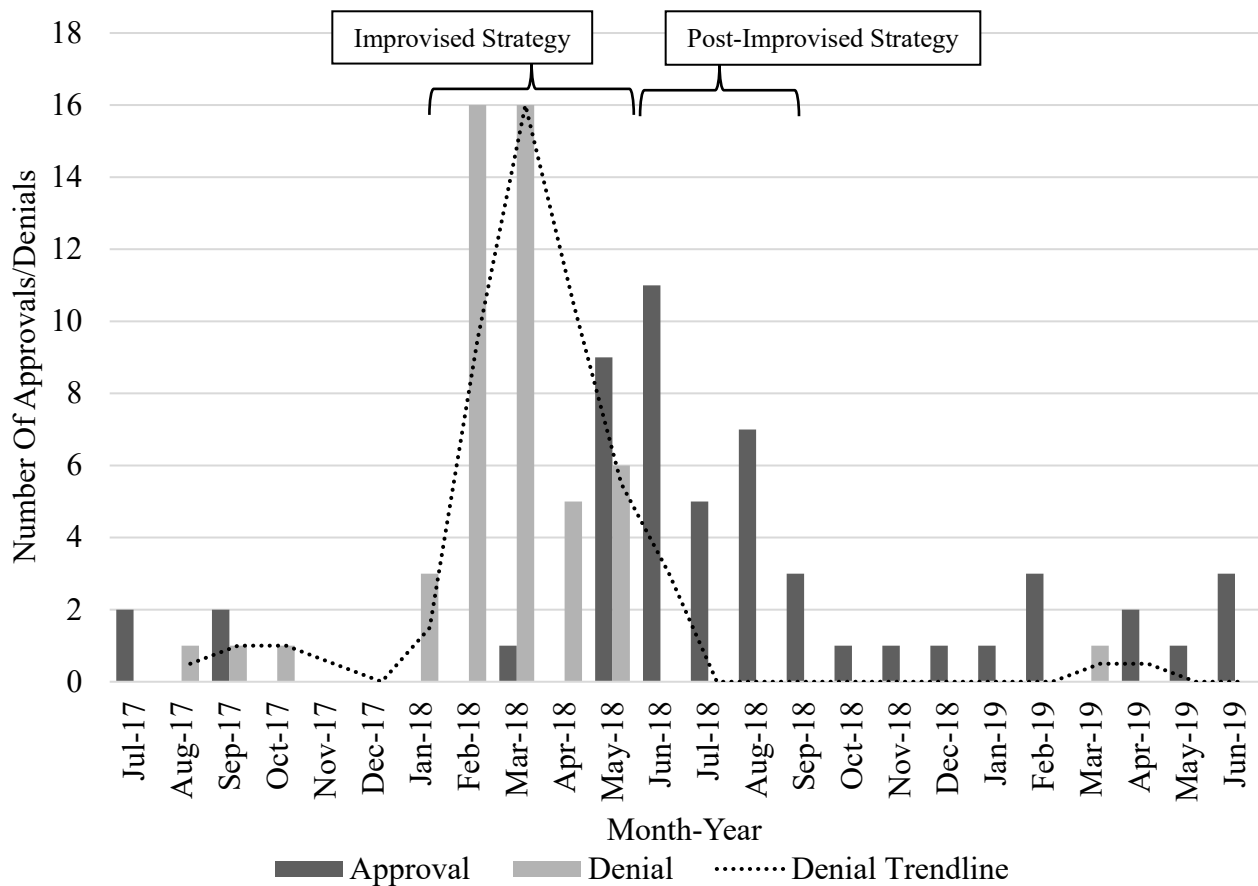
The most systematic display of inconsistent permitting was the Commission's improvised strategy for regulating retailer direct shippers. During SFY 2018, the Commission improvised a strategy to deny initial and renewal permit applications for retailer direct shippers purportedly because these entities were identified as potential competitors to the Commission. At the same time, the Commission sought legislative changes to direct shipper-related statutes to prevent out-of-State retailers from obtaining a permit. The Commission did not wait for legislative authority before implementing its improvised strategy. Between December 2017 and May 2018, the Commission denied 50 retailer, importer, and wholesaler direct shipper applications when these entities applied for initial or renewal permits, and the requested statutory changes never materialized. Before and after the duration of the improvised strategy, the permit denial rate for retailer direct shippers was low, as depicted in Figure 9, illustrating the distorting effect the improvised strategy had.

Strategy implementation was haphazard and unplanned, leading to inconsistent treatment of retailer direct shippers. The improvised strategy was based upon the analysis of one large permitted entity's direct shipments which purportedly found 60 percent of the products shipped were also sold by the Commission. This conclusion was then applied to all 80 retailer direct shippers without any apparent considerations of entity size or actual shipment activity. The Commission misled

permittees by claiming the source of the improvised strategy was “pending legislation” and legislative intent—disingenuous statements since proposed legislation was unenforceable and the impetus for the proposed legislation was the Commission itself. When the proposed legislation did not pass, the Commission continued to deny permit applications based on “pending legislation” for over a month. The basis for denial was then changed to a statutory provision allowing the Commission to sanction or take marketing or merchandising actions against permittees competing for market share. Statute did not, however, provide for the Commission disallowing an entire type of business operation from permitting that was already expressly allowed, an altogether different approach than levying sanctions or taking marketing or merchandising actions.

Figure 9

Approvals And Denials Of Retailer, Importer, And Wholesaler Direct Shippers In Division Meeting Minutes, SFYs 2018-2019



Source: LBA analysis of unaudited Division data.

In May 2018, the Commission ended its improvised strategy to systematically deny retailer direct shipper permit applications and allowed previously denied applicants to re-apply. Though the Division suggested in the denial letters it previously issued that affected entities would be

contacted if pending legislation did not pass, we found no documentation indicating such action took place. Of the 50 direct shipper applications the Commission denied a permit for as part of the improvised strategy, 24 (48.0 percent) were resubmitted as of June 2019. Compounding the problematic nature of the improvised strategy's implementation:

- were direct shippers with permit expiration dates between May and December 2018 that were unaffected;
- were P&S entities the Commission concurrently allowed to engage in retail direct shipping without any license or permit;
- was the lack of a system of control to compare direct shipment products with products sold in State liquor stores, despite *2009 Performance Audit* recommendations that such controls be created; and
- was unaudited data in the Division's enforcement database that demonstrated none of the entities denied direct shipper permits or permit renewals because of the improvised strategy were formally investigated, contrary to policy.

Inadequate controls over enforcement and sanctions also contributed to inconsistency. Of the 50 denied direct shippers, eight (16.0 percent) were placed on the unauthorized direct shipper list during CY 2018 as required. Of those denied, ten entities (20.0 percent of 50 direct shippers), including four of those placed on the unauthorized direct shipper list, illegally shipped at least 4,978 bottles of alcoholic beverages into the State during CY 2018. No illegal shipments were listed in CY 2018 for the other 40 denied direct shippers (80.0 percent). Though it was not clear why the latter group had no shipments, while the former group did, one possible explanation was certain entities ceased shipments upon learning they had lost their permit, while others did not. This was complicated by the denial letters which instructed direct shippers to continue operating normally until the Division apprised them of the final disposition of the proposed legislation—we found no evidence of Division follow-up. Neither did we find evidence the Division pursued disciplinary action against de-permitted entities and respective carriers for noncompliant shipments. We did find two instances where entities that had been denied permits earlier in CY 2018 as part of the improvised strategy were put on the unauthorized direct shipper list after the improvised strategy ended, but no evidence of any outreach to inform these direct shippers that they could reapply for a permit.

Inconsistent Sanctions For Untimely Permit Renewal

The Program inconsistently sanctioned permittees for untimely application for permit renewal. Administrative fines were required for violations of statute and rules, which were also misdemeanors, and the Program's manual provided permittees that did not renew their permit and shipped into the State were to be placed on the unauthorized direct shipper list. However, we reviewed ten direct shipper files, encompassing 21 permit renewal applications, and found five applications (23.8 percent) were not timely renewed. One instance resulted in a listing on the unauthorized direct shipper list, no criminal charges were filed, and no fines were levied.

Recommendations:

We recommend Commission management improve permitting controls, and:

- **comply with statute and timely render permitting decisions,**
- **develop comprehensive rules to ensure consistent, timely, and properly authorized permitting decisions,**
- **analyze the potential efficiency and effectiveness of multiyear permitting, and**
- **seek amendment to statute to allow for multiyear permits.**

We recommend Division management improve permitting processes, and:

- **develop procedures to ensure compliance with statutory and regulatory timeliness benchmarks and other consistency requirements;**
- **develop, implement, monitor, and refine permitting timeliness, consistency, and disciplinary action criteria and processes in SOPs;**
- **collect reliable data to evaluate permitting timeliness and consistency; and**
- **monitor, and periodically report on, compliance with permitting timeliness and consistency requirements.**

Agency Response:

We concur.

Optimizing Profitability

The Program was to collect an eight percent tax on the retail value of all direct shipments, as well as annually collect a \$100 permit fee from manufacturers and a \$500 permit fee from retailers, importers, or wholesalers. According to audited Commission and Division data, the Program collected \$944,831 in direct shipper permit revenue and \$941,541 in direct shipper taxes in SFY 2018, and collected \$994,015 in direct shipper permit revenue and \$900,052 in direct shipper taxes in SFY 2019. However, it was unclear whether direct shipper permit revenue figures were derived from permit fees, direct shipper tax revenue, or both. Management's system of controls to ensure profitability optimization of the Program was at an initial level of maturity.

Observation No. 32

Improve Controls To Optimize Profitability Of The Direct Shipper Program

There was no structure established to optimize profitability of the Program. Since the Program could not determine what was being shipped into the State and in what amounts, a known long-standing deficiency, it was impossible to verify whether the correct amount of taxes were collected. Related prior audit findings were not fully addressed, allowing other long-standing deficiencies to persist; direct shippers inconsistently filed taxes; two categories of unpermitted entities were allowed to ship within and into the State; the regulatory construct added complexity to regulated community compliance efforts; and administrative fines against noncompliant entities were not pursued.

Tax Revenue Not Optimized

The Division lacked adequate controls to ensure the correct amount of direct shipper taxes were filed. Similar to conditions found in prior audits, the Program could not verify whether direct shipper tax filings were correct due to inconsistent filings and inadequacies in rules, SOPs, data, and practices. Optimization of direct shipper tax filings depended upon data from carriers, P&S entities, and direct shipper tax filings. However, rules did not ensure necessary data was provided; data provided by carriers and P&S entities was incomplete and inconsistently reliable; and direct shipper tax filings were inconsistent in format and data provided.

The manual and complex nature of reporting and examining records hindered validation of tax filings. Prior audit findings notwithstanding, the Program continued to rely upon an amalgamation of electronic and hardcopy records to monitor direct shipments using inefficient processes and a variety of spreadsheets and databases. Vetting carrier, P&S entity, and direct shipper documents, sometimes across several months, and manually copying information into spreadsheets and databases, required a significant amount of staff time. Meanwhile, employees reported being able to examine 15 to 20 percent of direct shipper tax filings due to time constraints. Tax and fee payments were also made by check, reportedly forcing four examiners to spend about four hours each month processing checks instead of performing other essential duties. Though one employee was tasked with Program duties during the audit period, a second was hired in the Summer of CY 2019 to help with Program duties, along with licensing responsibilities.

Examination of filings was not risk-based, leading to an inefficient use of Division resources. Direct shippers were required to file taxes monthly, and Program procedures and practices were focused on ensuring tax filing compliance on a month-to-month basis, without consideration of filing amount. During CY 2018, monthly tax amounts of a little as \$0.16 and as much as \$12,715.65 were paid by direct shippers, while the median monthly amount was \$37.50. Concurrently, the Division examined filings of as little as \$2.15. Considering the low percentage of filings purportedly examined, such practices were neither risk-based nor focused on optimizing profitability.

While Division employees purported that required tax revenue was obtained and untimely payment was “a rarity,” direct shippers inconsistently paid taxes when shipments were made in a given month. For instance, in one carrier’s June 2019 report, 95 of 150 direct shippers (63.3 percent), representing 102 out of 1,613 shipments (6.3 percent) in that month’s report, did not pay taxes that month. Further, unaudited Division data showed the number of direct shipments during December 2018 were double, or almost double, every other month of that year, yet tax revenues collected were dramatically lower than prior months.

Lost Tax, Fee, And Administrative Fine Revenue

Other Program processes did not consistently collect necessary taxes, fees, and fines.

- Ad hoc rules allowed 37 P&S entities to ship alcoholic beverages into the State without permits and with no requirement to pay taxes or permit fees. Tax revenue was inconsistently collected from direct shippers who used P&S entities and the Program

could have collected \$16,000 in permit fee revenue annually had P&S entities been regulated consistent with statute and rules and a \$500 permit fee required.

- Ad hoc rules allowed New Hampshire-based and international direct shippers to ship alcoholic beverages within or into the State without permits and with no requirement to pay taxes or permit fees. During CY 2018, New Hampshire-based sources accounted for over 400 of all bottles directly shipped (0.1 percent) and 14 shipments were made by international establishments to a mix of consumers and licensees according to unaudited Division data.
- Between December 2017 and May 2018, the Commission improvised a strategy to deny new and renewal permits to retailer direct shippers through legislative changes and misapplied statutory authority. In total, 50 retailer, importer, and wholesaler direct shipper applications were denied. Though the improvised strategy eventually ended, those denied permits were not contacted by the Commission and told they could reapply. Of the 50 direct shippers the Commission denied a permit for as part of the improvised strategy, 24 (48.0 percent) were subsequently re-permitted as of June 2019, representing potential lost permit fees of approximately \$13,000 and an indeterminate amount of tax revenue.
- The Division inconsistently levied administrative fines for noncompliance with statute and rule. Rules required a \$100 fine be levied for each instance of noncompliance. We identified multiple instances of noncompliance, including illegal shipments from non-permitted entities, excessive shipments and excessive volumes, and illegal shipments to licensees. However, the Division did not levy administrative fines for any of these instances. A total estimated revenue lost due to unlevied administrative fines was impossible to calculate due to data inadequacies; however, the Division did not collect at least \$32,000 for illegal shipments in CY 2018.

Recommendations:

We recommend Commission management optimize Program profitability, and:

- **amend rules to require adequate data be submitted by carriers and permittees;**
- **develop, implement, monitor, and refine policies and procedures to evaluate whether direct shipping products are offered in State liquor stores;**
- **restrict direct shipment products that are sold in State liquor stores; and**
- **seek amendment to statute to allow direct shippers to file taxes annually and change rules to reflect revised statute.**

We recommend Division management optimize Program profitability, and:

- **include an element in strategy and plans designed to optimize Program profitability and develop an automated system to replace manual control processes, including carrier reporting and direct shipper tax filing;**

- **discontinue monthly requirements that are not cost effective and migrate direct shippers to annual filing requirements and examinations;**
- **develop, implement, monitor, and refine SOPs to ensure optimization of profitability and data reliability;**
- **require all carriers provide monthly reports on shipments from direct shippers; and**
- **ensure all taxes are filed and examined based on risk and sanctions are sought for instances of noncompliance.**

Agency Response:

We concur.

STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING

CHAPTER FOUR
EXAMINATIONS

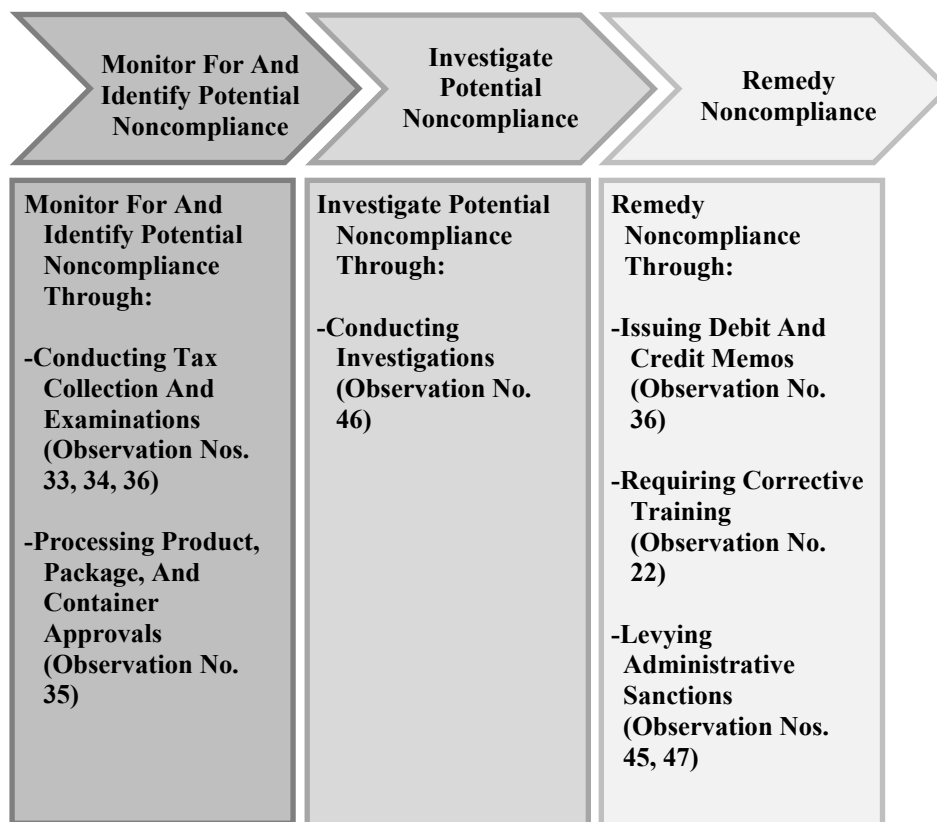
The Division of Enforcement and Licensing's (Division) examination function monitored certain licensees' compliance. Three liquor examiners in the Auditing Section conducted licensee tax and compliance examinations, internally referred to as "audits." They also collected taxes, observed product destruction, conducted premises inspections, investigated potential licensee noncompliance, levied administrative sanctions, and processed product, package, and container approval requests. They additionally held licensing, Direct Shipper Program, and enforcement related responsibilities. Examinations were typically done on-site to help ensure licensees, including manufacturers, distributors, retailers, and restaurants, complied with subjectively-selected licensing- and tax-related requirements. If examiners identified noncompliance, practice allowed them to levy administrative sanctions, including issuing debit or credit memos requiring licensees pay more or less taxes based on examinations of tax filings. The Division reportedly expected to conduct 545 examinations during the audit period, but unaudited Division data recorded 737 examinations (135.2 percent) were conducted. In practice, the number of examinations reportedly decreased over time and certain groups of licensees, particularly restaurants, were not examined as frequently as other groups of licensees, particularly manufacturers and wholesale distributors. Additionally, licensees with examination-related requirements in statute and rule were inconsistently examined, and product, package, and container approval requirements were inconsistently applied. In calendar year (CY) 2017, management recognized required examiner duties were not addressed, ascribing this to a long-reported shortage of employees. There was no apparent monitoring of examination findings to inform risk assessment, recoveries made by examinations or other results to ascribe to achieving expected outcomes, or other metrics monitoring performance.

Statute required liquor manufacturers to pay monthly taxes at a rate of eight percent of sales and wine manufacturers to pay at a rate of five percent of sales. Distributors, beverage manufacturers, nanobreweries, and brewpubs had to pay a \$0.30 per gallon tax on any beverage sold, transferred for sale, or transferred to the public. According to audited Liquor Commission (Commission) data, revenues from beverage taxes increased 0.8 percent, from nearly \$12.7 million collected in State fiscal year (SFY) 2018 to just over \$12.8 million in SFY 2019. Revenues from wine taxes increased 19.6 percent, from \$249,176 in SFY 2018 to \$297,936 in SFY 2019, while revenue figures on liquor taxes were unreported.

To produce expected outcomes, the examination function was reliant upon effective controls over strategic, risk, compliance, performance, and knowledge management. Proper licensure through licensing and product, package, and container approvals; noncompliance identification through collecting taxes and conducting tax and compliance examinations; and noncompliance remediation through investigations and administrative sanctions, as shown in Figure 10, were also required.

Figure 10

Examination Processes To Achieve Expected Outcomes



Source: LBA analysis.

However, in practice, systems of control were at times absent, incomplete, and ineffective, and product, package, and container approvals; licensing; noncompliance identification; and noncompliance remediation efforts were inadequately controlled. The Division could not demonstrate expected examination-related outcomes were achieved and management’s system of controls over the examination function was undeveloped.

Observation No. 33

Improve Controls Over The Examination Function

Examination function processes lacked a discernable design to ensure expected outcomes were achieved. Practices were underpinned by inadequate and incomplete rules and standard operating procedures (SOP). The Division lacked risk-based, data-informed strategies, plans, goals, objectives, targets, initiatives, and performance measures. This left important processes such as tax collection, compliance monitoring, and product, package, and container approvals without formal procedural controls, adequate guidance, and adequate supervisory review and managerial

oversight. Further, examiners' roles in licensing and enforcement was largely unstructured, leading to inefficiency and inconsistency.

Absent effective control, examination processes were characterized by outmoded practices with a day-to-day rather than strategic focus, reliant upon broad ad hoc rulemaking, noncompliant with statutory requirements, and susceptible to improvised changes based on individual employee judgement. The Division's approach to overseeing and controlling examinations was not based on good management practices and allowed informal, improvised practices to persist. Without a formal, objective risk assessment, there was no way to determine what risks examination practices were designed to mitigate. Without any cost-benefit or similar analysis, there was no way to determine whether these practices efficiently mitigated risks. Some controls and corresponding actions were unauditible because they were poorly documented and other data quality issues compelled us to qualify our use of, and our conclusions resting on, Division records.

Prior Audit Recommendations Unaddressed

Unresolved conditions leading to prior audit findings perpetuated inadequately controlled, outmoded, and inefficient examination processes for over a decade. In our *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2006 (2006 Management Letter)* we recommended the Division: 1) develop comprehensive SOPs for Administrative Bureau functions, including examinations; 2) automate beverage tax collection for ease of payment and review; and 3) segregate duties to enable additional oversight of beverage tax collection and examination. Our *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2015* and *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2016* repeated beverage tax-related recommendations. Though the Commission asserted in CY 2006 that the Division would create new SOPs and review beverage tax processes to recommend improvements, SOPs remained inadequate and few changes were made to examination controls and practices. The SOP developed only addressed beverage tax check processing procedures and by CY 2019 was knowingly outdated and incomplete leaving examiners to rely upon improvised, inefficient processes without adequate review and oversight.

No Strategy, Plans, Goals, Objectives, Or Targets

Operations did not consistently produce expected statutory outputs or achieve expected outcomes, nor did operations ensure statutory and regulatory compliance by licensees or the Division. Statutes and rules imposed record creation, retention, and filing requirements on 3,135 licensees during the audit period, for an estimated total of 10,546 records or reports required annually. Of these, 9,717 reports (92.1 percent) were required by statute and 829 reports (7.9 percent) were required by rule. Of the 10,833 required examinations we identified, 1,916 (17.7 percent) were required by statute, 1,080 (10.0 percent) were required by rule, and 7,837 (72.3 percent) were required by policy or practice. Decisions on what, where, when, and how to examine licensees should have been based on statutory and regulatory compliance, strategy, and risk, underpinned by evaluations of licensing and enforcement data. However, without adequate guidance, employees were left without clear priorities to direct and perform duties. Additionally, there was no purpose to product, package, and container approvals, as we discuss in Observation No. 35, and

examiner's licensing and enforcement-related responsibilities were undefined, as we discuss in Observation No. 42.

Division oversight was minimal, with a single examination protocol developed in February 2019. The protocol required examiners:

- operate in a geographic area corresponding to those assigned to Field Operations Bureau sections;
- communicate with Field Operations Bureau section supervisors to coordinate premises inspections and examinations;
- provide biweekly a list of upcoming examinations to Field Operations Bureau section supervisors;
- conduct one examination per year per licensee unless more were required by statute, rule, or directive; and
- report daily any violations observed or addressed.

Before the protocol was issued, interaction between the examiners and Field Operations Bureau investigators was reportedly inadequate. While the protocol identified a need for greater communication between examination and licensing staff and the Field Operations Bureau, it was not tied to performance measures to allow managers to determine efficiency or effectiveness of the protocol's implementation. The protocol did not address Division responsibilities like maintaining proper control, optimizing profitability, and examination processes, like licensing, premises inspections, and product, package, and container approvals. The protocol also did not address how the three examiners would prioritize the thousands of examinations required. Placing oversight of day-to-day examination operations outside the Auditing Section also circumvented established reporting relationships, expanded Field Operations Bureau section supervisors' spans of control, reduced the Auditing Section supervisor's span of control, and reportedly complicated oversight and diluted the chain-of-command. Further, considering the differences in the sophistication of licensee operations, compliance requirements, and amounts of taxes paid between licensees and license types, as we discuss in Observation Nos. 34 and 36, the requirement to examine each licensee no more than once a year lacked an objective, risk-based foundation and may have compromised proper control, optimization of profitability, and statutory compliance. Finally, there was no customer service metric to establish what "good" customer service was and customer service practices were inconsistent, leading to concerns from some within the regulated community regarding overreach, unprofessionalism, and arbitrary disciplinary action.

No Formal Controls

Examination processes were based on improvised, outmoded, and informal practices. Management should develop standardized checklists, guides, or other documents that:

- include all significant statutory, regulatory, or other requirements;
- establish requirements for examinations or premises inspections;
- provide for subsequent reporting;
- describe how noncompliance will be identified;
- clearly demonstrate an examiner can evaluate a licensee's compliance; and

- are easily understood.

While the examination function should have helped ensure regulatory compliance, in practice it focused primarily on collecting and examining tax filings and manufacturer production records. Investigators were to conduct investigations and the Commission was to levy administrative sanctions, but examiners did both in practice without delegated authority, as we discuss in Observation Nos. 45 and 46. Division management never developed criteria-setting documents to standardize processes, so the selection of which statutes and regulations to monitor, how to assess compliance, and determinations of which sanctions for noncompliance to pursue were left to the discretion of examiners. Consistency was supposed to be controlled through training and supervisory review. However, training material was not documented, and there was little documented supervisory review. Reports were not generated after examination completion, and examiners inconsistently generated investigative reports when noncompliance was identified. No managerial oversight at the bureau or Division levels apparently occurred other than limited monthly reports on outputs, and none was documented other than annual individual employee performance evaluations, though even this practice was more perfunctory than an assurance of proper control. The lack of a formalized policy detailing examination, premises inspection, and licensing practices, separate processes with different aims, also prevented holistic compliance monitoring.

No Performance Measurement

The Division lacked a method for evaluating examination outcomes. Other than an output-focused monthly report on the number of examinations conducted, which began in January 2019, Division management had no formal performance measurement methods, and examiners focused on day-to-day tasks. The Division did not translate examination outputs into outcomes, and unlike Field Operations Bureau sections, no weekly reporting occurred to assess examination function outputs. Customer service metrics were similarly lacking. The Division's February 2019 protocol was not based on an evaluation of efficiency or effectiveness to show costs or benefits, nor were performance benchmarks established to help inform management whether the procedural changes were effective. Furthermore, the examination function typically used manual recordkeeping systems rather than the Division's electronic systems, complicating potential managerial oversight and performance measurement. These issues were compounded by broadened spans of control and altered reporting relationships resulting from the February 2019 protocol. Personnel performance management practices, including annual evaluations, were never tied to organizational performance and outcomes.

Ineffective And Inefficient Recordkeeping Practices

The Division was required to create and maintain adequate examination records containing decisions and essential transactions, retain them for at least four years, and store them efficiently. This would include product, package, and container approvals, tax filings, examination reports, premises inspection results, and other work products. However, examination function recordkeeping practices did not comply with statute or SOP and were inefficient and ineffective.

- Examination results were reportedly discarded by employees if no “major” issues were found during a given examination, though the term “major” was undefined. Examination records not discarded were archived after one year. Considering the Division’s February 2019 policy that licensees should be examined once a year, the lack of follow-up examinations, and inconsistent entry of data into the enforcement database, not keeping hardcopy records of previous examinations onsite more than a year made the examination function reliant on individual examiner memory rather than documentation.
- Examination records lacked enough information to inform supervisory review and managerial oversight. Typical examination documentation in all nine examination files we reviewed included a series of signatures and checkmarks on licensee tax filings, with some inclusions of email correspondence and brief handwritten notes. No reports were generated for internal purposes, supervisory review, or managerial oversight.
- Examiners reportedly documented examinations in the Division’s enforcement database but entering as little information as possible. At least 608 of 743 entries (81.8 percent) simply stated an examination was conducted without any accompanying information on results.
- Examination records were inconsistently complete, missing debit and credit memos and documents underpinning specific conclusions by examiners. Of nine examination files we reviewed, two (22.2 percent) lacked debit and credit memos and two (22.2 percent) lacked documents explaining examination conclusions.
- Product, package, and container approval records, numbering in the thousands, were knowingly filed in a sometimes haphazard and inconsistent manner, making filing and use of such documents problematic. Information on these records were stored in the Commission’s enterprise database management system (DBMS) that was not accessible in the field, preventing verification of product approval status onsite.
- The enforcement and licensing DBMS were underutilized by examiners, leading to stand-alone databases for certain data, including product, package, and container approvals.

Recommendations:

We recommend Commission management improve examination-related controls, and:

- **monitor Division examination operations to ensure they efficiently and effectively achieve expected outcomes; and**
- **develop, implement, monitor, and refine comprehensive rules covering all examination activities.**

We recommend Division management improve examination-related controls, and:

- include in strategy and plans elements to establish a management control structure to consistently produce expected examination-related outcomes and automate examination processes;
- develop, implement, monitor, and refine goals, objectives, and targets tied to expected outcomes;
- develop, implement, monitor, and refine comprehensive SOPs compliant with statute, rules, strategy, plans, and examination goals, objectives, and targets, including but not limited to checklists and examination protocols;
- develop, implement, monitor, and refine performance measures to ensure requirements are adhered to and the strategy is followed;
- ensure examination function recordkeeping practices are compliant with statute, effective, and efficient;
- tie employee performance to examination goals, objectives, and targets; and
- periodically report on performance of all examination-related activities.

Agency Response:

We concur.

Proper Control Of Alcoholic Beverages

The Division should operate systems to monitor licensee compliance with requirements, ensure proper control, and comply with statute and rule. To help ensure Division resources were efficiently and effectively employed, licensee compliance monitoring should be risk-based and frequent enough to reasonably ensure proper control. The primary compliance monitoring methods used by examiners to help ensure proper control were tax and compliance examinations. According to unaudited Division data, 737 examinations were conducted during the audit period. The Division employed two distinct approaches to examinations during our audit period:

- through February 2019, informal procedures provided for examinations of certain licensees every six months; and
- after February 2019, a management directive established a formal protocol requiring examinations of individual licensees generally occur no more than once a year.

However, the system of controls over examinations to ensure proper control was undeveloped.

Observation No. 34

Improve Controls Over Examinations To Ensure Proper Control

Examination practices were not risk- or strategy-based, comprehensive, consistent, or measured, undermining the Division's ability to ensure proper control of alcoholic beverages and statutory compliance. Procedures were informal, compelling reliance on individual memory and intuition to control examinations of thousands of establishments covering dozens of license types and ensure licensee compliance with an inordinate amount of statutory, regulatory, and informal procedural

requirements. Supervisory review was sporadic and informal, while managerial oversight was not evident. As a result, several license types with statutory, regulatory, or policy-based examination-related requirements, representing thousands of licensees, went unexamined by the Division, while others without relevant requirements were examined.

Practices Not Risk-based

Examination practices were not risk-based, exposing the State to avoidable risks, including licensee noncompliance and improper control. These limitations rendered compliance monitoring inadequate. The Division lacked analyses to establish relative risk between license types, the necessary frequency between examinations, and which compliance points should be monitored. Examinations were not prioritized based on statutory or rule-based requirements, and rule- and policy-based examination requirements were at times inconsistent with statutory examination requirements. In practice, monitoring began with statutorily required periodic reporting for some licensees and led to examinations to verify report accuracy. Instead of selecting license types and licensees to examine by formal risk assessment, examination selection was instead driven by past practice, examiner intuition, and convenience. The two approaches used by examiners pre- and post-February 2019 were not risk-based, nor were they consistently followed. It was not clear why certain license types and individual licensees were chosen for more frequent examinations in practice, while others were subjected to few or no examinations.

Compliance Monitoring Inadequate

Licensee compliance monitoring efforts were incomplete, inefficient, and inconsistently compliant with requirements. During the audit period, 438 of 5,448 licensees (8.0 percent), representing 21 of 44 of license types (47.7 percent), were examined, while 5,010 licensees (92.0 percent), representing 24 license types (54.5 percent), were not. Of the 737 examinations conducted, 525 (71.2 percent) were conducted of licensees with a requirement, while 212 (28.8 percent) were conducted of licensees without a requirement. As depicted in Table 12, not all licensees of the license types examiners decided to subject to examinations were consistently examined, including wholesale distributors and manufacturers who were identified as key control points within a three-tier system of alcoholic beverage control. While some wholesale distributors and manufacturers were not examined because they were newly licensed or went out of business during the audit period, others were licensed throughout or for the majority of the audit period and still received no examinations. Additionally, certain licensees, including non-wholesale distributors and manufacturers, were inefficiently subjected to an increased frequency of examinations compared to others, even though corresponding enforcement actions were low.

Furthermore, there was no process to monitor gaps between examination and enforcement functions by crosschecking licensing and enforcement data to identify entities that had no premises inspection or examinations. During the audit period, 2,252 of 5,448 total licensees (41.3 percent) went without any inspection or examination, as we discuss in Observation Nos. 10 and 42. There was no process to identify newly-licensed establishments and schedule them for their first examination, and policy establishing when new licensees should receive their first examination did not exist. Investigations conducted and sanctions levied by examiners and investigators in

Table 12

Licensees Receiving An Examination During SFYs 2018-2019¹

License Type	Licensees			Examinations			Examiner Enforcement Actions ³
	Total	Number Examined ²	Percent Examined	Total	Average Number	Maximum Number	
With A Relevant Requirement							
Wine Manufacturer ^{4,5}	43	38	88.4	107	2.8	5	15
Liquor Manufacturer ^{4,5}	15	13	86.7	35	2.7	4	3
Nanobrewery ^{4,5}	48	41	85.4	104	2.5	6	21
Beverage Manufacturer ^{4,5}	39	31	79.5	76	2.5	4	17
Brewpub ^{4,5}	27	21	77.8	60	2.9	5	23
Wholesale Distributor ⁵	8	6	75.0	34	5.7	10	3
Rectifier ^{4,5}	5	2	40.0	3	1.5	2	0
Liquor/Wine/Beverage Warehouse ⁶	3	1	33.3	1	1.0	1	0
Restaurant ⁷	1,835	92	5.0	96	1.0	3	25
Caterers On-site ^{5,6}	39	1	2.6	2	2.0	2	1
Caterers Off-site ⁵	106	2	1.9	2	1.0	1	0
Social Club ⁵	54	1	1.9	1	1.0	1	16
Veterans' Club ⁵	64	1	1.6	1	1.0	1	13
Beverage Vendor ⁵	327	3	0.9	3	1.0	1	2
Subtotals:	2,613	253	9.7	525	2.1	10	139
Without A Relevant Requirement							
Cigar Bar	22	15	68.2	31	2.1	5	8
Racetrack - Motor Vehicle	10	3	30.0	4	1.3	2	1
Wine Manufacturer Retail Outlet	3	1	33.3	2	2.0	2	0
Combination	1,666	154	9.2	163	1.1	2	26
Beer Specialty License	11	1	9.1	1	1.0	1	0
Sports Recreation Facility	135	9	6.7	9	1.0	1	4
Hotel	89	2	2.2	2	1.0	1	0
Subtotals:	1,936	185	9.6	212	1.1	5	39
Total	4,549	438	9.6	737	1.7	10	178

Notes:

1. Excludes 23 license types (52.3 percent), representing 899 licensees (16.5 percent of 5,448 total licenses), that received no examinations during the audit period, including seven license types (15.9 percent) consisting of 522 licenses (9.6 percent) with a relevant requirement.
2. One or more examinations during the two-year audit period.
3. Enforcement action included any verbal counseling, verbal warning, and administrative notice issued.
4. Manufacturers.
5. Examination requirement based in policy.
6. Rule-based examination requirement.
7. Annual examination required by statute.

Source: LBA analysis of unaudited Division data.

conjunction with premises inspections—practices not provided for examiners in statute or rule, as we discuss in Observation Nos. 45 and 46—were also disconnected. For instance, the two files we reviewed where examiners issued verbal warnings to licensees for grocery stock violations showed these licensees also received subsequent verbal warnings for the same violation from investigators. However, there was no connection observed between these violations, nor was there any escalation of enforcement action or levying of fines. It was unclear how the February 2019 protocol was designed to address these gaps.

Practices Inconsistent

Examination practices were inconsistent. Though examination practices were purportedly focused on ensuring licensee compliance with statutory and regulatory requirements, implementing controls were informal, unmonitored, and inconsistently effective.

- Examiners used a convenience approach to selecting certain licensees for examinations purportedly based on whether the licensee was located near an examiner’s travel route to and from another licensee. Overall, 154 of 1,666 combination licenses (9.2 percent) and 92 of 1,835 restaurant licenses (5.0 percent) were examined. However, examiners conducted two or three examinations of certain restaurants and combinations, while others were not examined at all, illustrating the limitations of a convenience approach to selecting licensees to examine.
- Examiners relied on ad hoc rules to subject licensees to certain reporting requirements and examinations through informal procedures and forms containing requirements inconsistently adopted in rules, as we discuss in Observation No. 36.
- Examiners reportedly did not conduct follow-up engagements with licensees to ensure previously identified noncompliance was addressed, particularly after Division management enacted the once a year examination standard in the February 2019 protocol.
- No checklists were created to ensure that examinations were consistent with one another, and that examinations were consistent with field investigator premises inspections, as we discuss in Observation Nos. 33 and 42.
- Twelve of 15 examination-related files (80.0 percent) we reviewed demonstrated examiners inconsistently created examination documentation and sought sanctions for identified noncompliance, including repeated noncompliance.
- Both electronic and hardcopy recordkeeping practices were noncompliant with statute and were inconsistent, forcing a reliance on individual memory and intuition rather than objective risk-based decision-making underpinned by data analysis.

Recommendations:

We recommend Division management ensure examination practices help ensure proper control of alcoholic beverages and:

- include in strategy and plans elements detailing, for example, examination priorities, frequency of examination requirements, when new licensees must receive their initial examination, and when to conduct follow-up on noncompliance;
- design a control structure to ensure all license types comply with examination-related statutory and regulatory requirements;
- ensure recordkeeping practices comply with requirements; and
- develop, implement, monitor, and refine SOPs to cover examination processes that ensure proper control, including checklists and detailed examination procedures.

Agency Response:

We concur.

Product, Package, And Container Approval

Product, package, and container approval was a supply restriction for beverages and wine intended to control container sizes and packaging. According to unaudited Division data, 4,154 requests were received during the audit period. Examiners processed product, package, and container approval requests, approving some and referring others, in particular product with high alcohol content such as specialty beer, to the Commission for approval or denial. The process reportedly underwent review in SFY 2020, but no baseline performance was observed nor was performance monitoring evident, and management's system of controls over product, package, and container approvals was undeveloped.

Observation No. 35

Improve Controls Over Product, Package, And Container Approvals

The Division's product, package, and container approval process was inconsistent with statute and rules, was inadequately controlled, was duplicative of other processes, relied on ad hoc rules and rules that were inconsistent with statute, and lacked demonstrable outcomes, making it inefficient and ineffective. The expected outcome of these requirements was not apparent, and no performance measurement occurred. In practice, Division employees expanded the process beyond statute and rule, lacked controls to determine whether the regulated community complied with statutory requirements, and collected information that was not used to systematically ensure proper control. Instead of approving beverage and wine packaging and containers, documented processes were generally limited to beverages, and practice focused more broadly on product approvals, including requirements for alcohol analysis, which were not based on statute. Regardless, the Division could not demonstrate that alcoholic beverages possessed and transferred in the State had obtained necessary product, package, and container approvals, undermining proper control.

No Clear Purpose

Product, package, and container approvals lacked a clear risk- or strategy-based purpose, plans, goals, and objectives. Expected outcomes were unclear, raising questions regarding benefits derived from the Division’s efforts. Statute and rule did not specify outcomes for product, package, and container approvals, and the process was absent from SOPs. Division staff could not articulate a clear purpose for product, package, and container approvals, referring to it instead as “product approval.” There was no measurement related to the process other than output data on the number of requests received and processed, so the process produced no demonstrable outcome. Without a specified outcome, it was impossible to measure whether the process served a purpose or achieved intended outcomes. Without a cost-benefit or other analysis to understand return on investment, nothing demonstrated the process was cost beneficial. There were no processes to determine whether the Division received all the approval requests it should have, whether beverages with unapproved packaging or containers were being sold within the State, and whether licensees offered beverages with unapproved packaging or containers. Furthermore, practices excluded direct shipper permittees and certain licensees, and excluded wine and liquor altogether.

Statute Exceeded

As depicted in Table 13, product, package, and container approval-related rules, forms, and practices exceeded statutory requirements, creating ambiguity, adding complexity, and constituting ad hoc rulemaking. Statute limited Commission approval to containers and packaging for beverage vendors, brewpubs, nanobreweries, or beverage manufacturers. However, relevant rules excluded nanobreweries because rules were not updated. In addition to requiring container and packaging approval, rules required beverage vendors, brewpubs, or beverage manufacturers to provide:

- a copy of the corresponding federal label approval, if federally required;
- a copy of territorial agreements between vendors and wholesale distributors;
- a list of towns where brewpubs and beverage manufacturers would sell their brands; and
- a certified content analysis of alcohol by volume (ABV) performed at 60 degrees Fahrenheit.

Rules also required applicants provide “any other information required by federal law and regulations or State law,” without providing any clarification, and certain practices extended beyond rules, leading to ad hoc rulemaking. There were no product, package, and container requirements in rule for liquor and wine.

Rules Inadequate

Rules surrounding product, package, and container approvals were inconsistent and incomplete. As depicted in Table 13, statute required beverage vendors and manufacturers obtain product, package, and container approvals, and wine manufacturers were required to obtain bottle and container approvals from the Commission. In practice the Division’s product, package, and container approval process only regulated beverage vendors and manufacturers. Liquor was

altogether excluded from statutory product, package, and container approval requirements. Though rule and practice did not provide for exemption from requirements, products shipped under the Direct Shipper Program, including beverage, wine, and liquor, were not subject to any product, package, and container approval process.

Table 13

Certain Product, Package, And Container Requirements: Gaps Between Statute, Rules, SOP, and Practice

Product	Approval Requirements			
	Statute	Rule	SOP	Practice
Beverage	Product sold by vendors to wholesale distributors	Not required	None	All product regardless of license type
	Not required	Label		Label
	Not required	Certified alcohol content analysis		Provide certified alcohol content analysis and affidavit
	Not required	Federal label approval, if required		Not required
	Packaging and containers	Package size		Packaging
	Provide wholesale distributor territorial agreement	Wholesale distributor territorial agreements		Wholesale distributor territorial agreements required for first product approval only
	Not required	List of towns where product will be sold (beverage manufacturer and brewpub only)		Not required
	Not required	Not required		Provide sample upon request
Wine	Bottles and containers	None	None, but an internal form encompassed approvals for “wine coolers”	
Liquor	None	None	None, but an internal form encompassed approvals for “distilled spirits”	

Note: The sample required for beverages by Division practice was reportedly discontinued by the Commission, but the Division continued to require samples on the product, package, and container approval form and in practice.

Source: LBA analysis of statute, rules, SOPs, and practice.

Product, package, and container rules were outdated and incomplete. Rules purported the product, package, and container approval process implemented a statute that has not existed since at least

CY 1990. Rule did not provide criteria for approval or denial of product, package, and container requests. Liquor was purportedly included in the product, package, and container approval process because it was defined as “beverage” in statute, which was incorrect. Moreover, rules specifically applied to beverage vendors, brewpubs, or beverage manufacturers.

Ineffective Practices

No product, package, and container approval SOP existed and no external forms to facilitate industry compliance were created. Instead, the Division used an internal form to evaluate product, package, and container approval requests, and this form included additional requirements not provided for in statute or rule, such as providing for approvals of “distilled spirits” and “wine coolers.”

Division guidance to beverage vendors required licensees send a letter requesting product, package, and container approval and a copy of federal label approval, if applicable, for “bottles, cans, and kegs” to be sold in New Hampshire. Separately, nanobreweries, though not mentioned in product, package, and container approval rules, were required in practice to obtain approvals using the same process as beverage vendors, beverage manufacturers, and brewpubs. The Commission also made changes to the product, package, and container approval process during the audit period, stating that label facsimiles would be sufficient and product samples would no longer be required. However, these changes were never formalized in rule or policy, and the product, package, and container approval form and practice continued to allow for product sample review. Finally, there was no apparent consistency as to whether Division employees made an approval, or approval recommendations were presented to the Commission for their approval.

Proper Control Not Ensured

Product, package, and container approvals did not help ensure proper control. The Division lacked processes to determine whether products available at licensee establishments had obtained necessary approvals. Approvals were based on product, package, and container approvals requested, not on licensees required to submit products for approval, meaning the Division did not know if available products required, but lacked, approvals. Such checks were not part of tax and compliance examinations or premises inspections. Product, package, and container approval records consisted of hardcopy files and summary data entered into the antiquated Commission enterprise DBMS. This information was purportedly used inconsistently by examiners when conducting examinations and not used at all by investigators when conducting premises inspections or other regulatory activity. Additionally, the statutory requirement for wine package and container approvals was unimplemented and liquor products and direct shipper products were not subject to any formal approval processes, while alcoholic beverages sold by licensees that had an ABV content above six percent were inconsistently subjected to Division approval processes. Regulating some products while excluding others, particularly those of higher alcohol content, was counterintuitive.

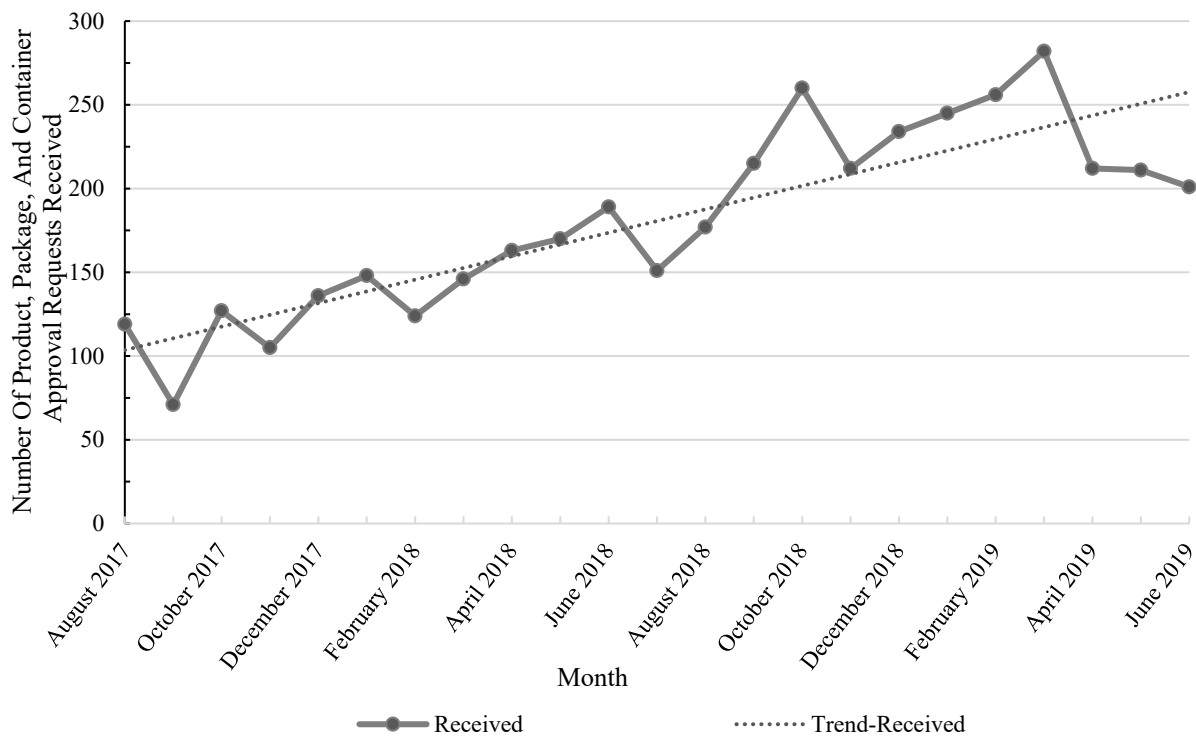
Inefficient Practice

Product, package, and container approval practices were inefficient, duplicated other processes, lacked associated fees, and relied on outmoded procedures despite steady increases in approval

requests, as depicted in Figure 11. The Division relied upon inefficient paper-based manual product, package, and container approval procedures, increasing Division and licensee costs. The Division handled parts of the process by mail, but did introduce the use of email, reportedly during the audit period. Examiners reported that one employee dedicated up to 16 hours per week to product, package, and container approvals, with other employees dedicating fewer hours per week, contributing to overtime. Staff reported processing individual product, package, and container approvals took about a week. Employees reportedly entered approvals into the Commission enterprise DBMS and into stand-alone databases to monitor outputs on the number of requests processed. However, there was no outcome or performance measurement, such as timeliness of processing. Some stakeholders reported general dissatisfaction with the product, package, and container approval process, indicating a desire for a simplified online process. They also indicated confusion about what was required for product, package, and container approval and how licensees should provide product information to the Division.

Figure 11

Product, Package, And Container Approval Requests Received, August 2017 Through June 2019



Source: LBA analysis of unaudited Division data.

The product, package, and container approval process duplicated the beer festival product approval process. Examiners and licensing specialists processed beer festival product approvals. Statute required festival license applicants provide the Division a list of beverages they proposed to make

available for sale at the festival, for a \$10 filing fee per product. Statute did not provide for a fee associated with product, package, and container approvals, making the approval process a net loss to the Commission that also detracted from examiners' other duties.

Inconsistent Delegation of Authority And Improvised Managerial Review

Employees approving products, packages, and containers lacked a delegation of authority. The Commission was the approving authority unless authority was delegated, and one of three employees' supplemental job descriptions (33.3 percent) included this function as a duty. Additionally, examiners lacked authority to issue sanctions, but in at least one case issued a warning to a licensee for perceived noncompliance. No managerial review process was formalized.

Division management reported the product, package, and container approval process was reviewed in CY 2019 and changes were planned to decrease the amount of time required to complete a product, package, and container approval. However, no changes related to rules or SOPs were reported, indicating that ad hoc rulemaking and other systemic deficiencies in the control structure will continue, and there was no risk-based, data-informed, resourced strategy or plans to optimize the process or benchmark performance.

Recommendations:

We recommend Commission management determine whether beverage product, packaging, and container and wine bottle and container approvals meaningfully contributed to accomplishing its statutory duties and achieving expected outcomes. If little or no beneficial outcome from approvals can be identified, we recommend Commission management seek legislative changes to remove the requirements from statute, and subsequently remove relevant rule and procedural requirements from Division practice.

Should approvals be found to have a role in helping the Commission achieve expected outcomes, we recommend Commission management:

- **seek legislative changes to add consistency to requirements, including rationalizing and combining duplicative product approval processes, requiring a fee for all approvals or eliminating the fees associated with beer festivals, requiring all alcoholic beverages undergo label and container approvals, and establishing necessary requirements in law; and**
- **develop, implement, monitor, and refine comprehensive product, package, and container approval-related rules that reflect statutory authority, include all requirements binding upon the public, and properly incorporate required forms.**

We recommend Division management improve control of product, package, and container approvals, and:

- **incorporate product, package, and container approvals into strategy and plans;**
- **review product, package, and container approval processes to ensure they comply with statute and rules to efficiently achieve expected outcomes; and**

- **develop, implement, monitor, and refine SOPs and internal checklists to ensure compliance with statute and rules.**

Agency Response:

We concur.

Optimizing Profitability

Processing tax payments; conducting tax and compliance examinations; identifying, investigating, and remediating noncompliance; and levying sanctions were a cost to the Commission. Statute required liquor manufacturers to pay monthly taxes at a rate of eight percent of sales and wine manufacturers to pay at a rate of five percent of sales. Distributors, beverage manufacturers, nanobreweries, and brewpubs had to pay a \$0.30 per gallon tax on any beverage sold, transferred for sale, or transferred to the public. According to audited Commission data, revenues from beverage taxes increased 0.8 percent, from nearly \$12.7 million collected in SFY 2018 to just over \$12.8 million in SFY 2019. Revenues from wine taxes increased 19.6 percent, from \$249,176 in SFY 2018 to \$297,936 in SFY 2019, while revenue figures on liquor taxes were unavailable. However, management’s system of controls to ensure examination practices optimized profitability was undeveloped.

Observation No. 36

Improve Controls Over Examinations To Optimize Profitability

Despite longstanding, known deficiencies, the examination function relied upon outmoded, inefficient, paper-based tax collection and examination practices to the detriment of taxpayers, examiners, and optimization of profitability. The Division lacked a strategy and risk assessments to establish costs and benefits of examination function tax collection and examination practices. Practices used to collect and examine monthly taxes were underpinned by known ad hoc rulemaking and resulted in inconsistent application of sanctions and inconsistent compliance with applicable statutes. Additionally, unlike wine and liquor taxes that were based on value of sale, the beverage tax—referred to by the Commission as the “beer tax” though statute made no such limitation—rate was a set value based on the volume of product transferred. It was not adjusted for inflation, leading to significantly diminishing value from beverage tax revenue over time.

Known Ad Hoc Rulemaking

The collection of beverage-, liquor-, and wine-related taxes was underpinned by known ad hoc rulemaking. As depicted in Table 14, practices regulating tax filings were inconsistently adopted in rule. Four of seven license types (57.1 percent) were required to submit forms to the Division monthly even though these forms and certain requirements were knowingly not incorporated in rule. The remaining three license types (42.9 percent) had forms with requirements imposed upon licensees that were partially included in rule. Additionally, forms were at times outdated, not published, and inconsistently formatted, compromising provision of good customer service.

Table 14

Monthly Tax Reporting Requirements

License Type ¹	Tax	Number Of Licensed Establishments	Reporting Requirements In Rule	Examination-related Requirements In Rule	Forms Incorporated In Rule
Beverage Manufacturer	\$0.30 per gallon transferred	39	Yes	Form included non-rule requirements	No
Brewpub		27	Yes	Form included non-rule requirements	No
Nanobrewery		48	No	No	No
Wholesale Distributor		8	Yes	Forms included non-rule requirements	Yes ²
Rectifier	Eight percent of retail sales	5	No	No	No
Liquor Manufacturer		15	No	No	No
Wine Manufacturer	Five percent of retail sales	43	No	No	No

Notes:

- Beer festivals were also required to pay beverage taxes, but ten days following the expiration of the festival license and not monthly. Unaudited Division data indicated 60 beer festivals were also licensed during the audit period. The five wine and liquor festivals licensed during the audit period did not have similar 10-day post-event tax requirements.
- Referenced, not properly adopted.

Source: LBA analysis of statutes, rules, forms, and practices.

Inefficient Tax Filing, Collection, And Examination Practices

Tax filing, collection, and examination was inefficient, unnecessarily burdensome on the regulated community and examiners, and compromised optimization of profitability. Licensees were required to file monthly even if the tax amount was insignificant or zero, and in some cases, examiners examined entities on a frequent basis without regard to filing amount. Meanwhile, other licensees with examination-related requirements received no examinations or were examined sporadically months after a low or zero value filing. These practices were an inefficient use of resources and contributed to waste.

Filing And Examining Insignificant Amounts

Examinations of insignificant amounts of tax revenue without demonstrated cost effectiveness was an inefficient use of resources. Statutory monthly filing requirements on beverage manufacturers, brewpubs, and nanobreweries were inefficiently and ineffectively implemented. During the audit period, 122 licensees were required to pay monthly beverage taxes. In SFY 2019, nearly \$12.0 million of \$12.2 million (98.4 percent) in beverage tax revenue was paid by eight of these licensees (6.6 percent), all wholesale distributors. However, each of the 122 licensees were subject to the same monthly tax filing, collection, and examination requirements. We reviewed six relevant licensee examination files, three beverage manufacturers (50.0 percent) and three nanobreweries (50.0 percent). We found these licensees paid an average of \$173 per month in taxes, with the lowest average monthly payment being \$7 per month. The lowest average monthly payment was notable because examiners purportedly wrote-off incorrect tax filings of \$5 and under. Further, licensees with these license types were inconsistently examined, with 31 of 39 beverage manufacturers (79.5 percent), 21 of 27 brewpubs (77.8 percent), and 41 of 48 nanobreweries (85.4 percent) receiving one or more examinations in the two-year audit period according to unaudited Division data. In addition, the 60 beer festival licensees, required to file ten days after the event concluded, constituted more tax filing requirements and examination opportunities. None were examined.

Filings Or Record Creation And Retention Required, But Inconsistently Examined

Thirteen license types were subject to monthly tax filing or reporting requirements, but none were subjected to monthly examinations and were instead subjected to examinations at irregular intervals, if at all. For example, since CY 1934, clubs have been required to provide the Commission monthly reports on liquor sold and all chargeable expenses. However, during the audit period, one of the 54 social clubs (1.9 percent) and one of the 64 veterans' clubs (1.6 percent) were examined, and no college clubs or military clubs were. Nine veterans' clubs (14.1 percent of veterans' clubs) and 12 social clubs (22.2 percent of social clubs) were recorded in the Division's enforcement database as violating filing requirements a total of 29 times during the audit period. Additionally, other licensees were subjected to annual, multiyear, or other periodic requirements.

- Restaurants – Statute subjected the 1,835 restaurants to annual sales ratio examinations, but 92 restaurants (5.0 percent) were examined, with one examined three times, two examined two times, and 89 examined once. The remaining 1,743 (95.0 percent) were not examined. Two of 1,835 restaurants (0.1 percent) were listed in the Division's enforcement database as not conforming to sales ratio requirements.
- Alcohol Consultants And Direct Shippers – Alcohol consultants and direct shipper permittees were required to retain three years of records to inform examinations. However, none of the 81 alcohol consultants or 1,418 direct shipper permittees were examined.
- One-day Licensees – One-day licensees were required to retain one year of records detailing sales of alcoholic beverages, expenses, and distribution of profits but none of the 323 licensees were examined.

- Beer Festivals – Beer festivals were required to file taxes and related forms within ten days of the event concluding, but none of the 60 beer festivals were examined.
- Public Tastings At Farmers’ Markets – Licensees taking part in tastings at farmers’ markets were required to retain sales documentation, but no examinations were recorded.

Inconsistent Frequency Of Examinations

Before the February 2019 protocol providing for annual examinations was developed, examinations were to occur every six months as a matter of practice for certain license types. However, Division data demonstrated the frequency of examinations was inconsistent, with as little as 30 days and as many as 239 days between examinations of the same licensee being recorded. No violations indicated the short reexamination time we observed was warranted.

Examinations Without Requirements

Of the 438 licensees examined during the audit period, 253 (57.8 percent) were of licensees with relevant requirements. However, 185 (42.2 percent) were of licensees without relevant requirements, representing resources expended where no requirement existed and without a demonstrated need.

Filing Dates

Multiple filing dates for different State taxes and fees reportedly complicated licensee compliance efforts and increased the regulatory burden for licensees. Most alcohol-related taxes were due on the tenth of the month following sale or transfer, a date of payment which has been in place since CY 1933. Meanwhile, some stakeholders suggested another filing date corresponding with the State’s business enterprise and meals and room taxes. Both could be filed less frequently than monthly and required filing on the fifteenth of a given month following taxable activity, a date that was also the required filing date for monthly club licensee filings.

Inefficient Practices

Examination practices were outmoded and inefficient. Collecting taxes by mail and check, coupled with the lack of controls over check handling, exposed the Division to avoidable risk we previously appraised the Commission of in at least six audits dating to CY 1989. For over a decade, we have recommended the Commission automate tax filings, but no changes were made and during the audit period the Commission continued to require monthly checks for alcoholic beverage-related taxes be mailed or hand delivered. Other State agencies collected taxes, such as the business enterprise and the meals and rooms taxes, online.

The examination process was a paper-based, manual process of reviewing each licensee’s monthly tax filing, and lacked the quality control procedures we recommended in our *2006 Management Letter*. Though the Division allowed licensees to email monthly reports, examiners printed tax returns to conduct examinations manually. The outmoded nature of examination processes,

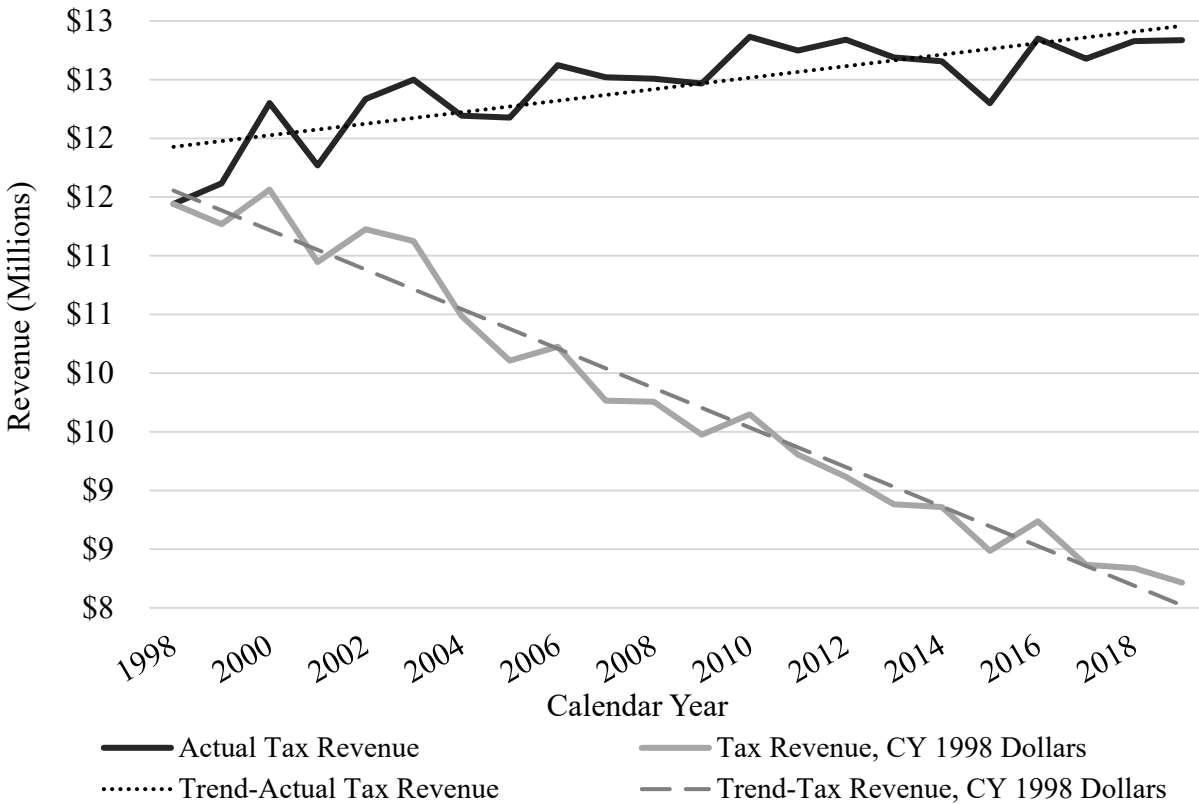
coupled with insufficient quality control, contributed to errors identified in prior LBA audits and during the current audit period. Considering the amount of calculations required to examine a monthly report, leveraging available information technology resources could have improved efficiency and potentially decreased errors.

Value Of Beverage Tax Revenue Declining

The value of inflation-adjusted beverage tax revenue decreased over time, as shown in Figure 12. Commission records demonstrated unadjusted beverage tax revenue increased 12.3 percent, from \$11.4 million in CY 1998 to \$12.8 million in CY 2018. However, when adjusted for inflation, the value of tax revenue in CY 2018 was \$8.3 million, a decrease of 27.2 percent since CY 1998. If the tax rate increased with inflation, it would have been \$0.46 in CY 2018, which would have generated a total of \$18.7 million based on the same amount of transfers. Meanwhile, fees associated with wine and liquor were based on a percentage of retail sales and thus theoretically avoided the need for adjustment based on inflation, creating potential inequity in taxation approaches among license types. The Commission inconsistently reported wine and liquor tax revenues, limiting analysis of changes in the value of those taxes over time.

Figure 12

Inflation-adjusted And Unadjusted Beverage Tax Revenues And Trends, CYs 1998-2018



Source: LBA analysis of unaudited Commission and federal data.

Inconsistent Disciplinary Actions And Sanctions

The Division did not collect required examination-related administrative fines or seek other sanctions. The Division was required to collect an additional ten percent of total fees for the month if an entity did not provide beverage tax filings by the tenth of the following month. While this additional ten percent was purportedly not exacted because “99 percent” of filings were delivered timely, the six examination files representing a combined 118 reporting periods we reviewed illustrated 32 instances (27.1 percent) where tax filings were not provided timely, including three instances (2.5 percent) where no filing was provided. Further, failure to comply with filing requirements was a misdemeanor and failure to pay all fees due was a felony. None of these instances of noncompliance resulted in disciplinary action by the Division, and we found no evidence that the Division exacted the extra ten percent of total fees.

Recommendations:

We recommend Commission management optimize examination function profitability, and:

- **conduct a risk assessment to determine the most efficient and effective methods, frequency, and timing of tax filings for each type of license and determine what, and for how long, relevant records should be retained by licensees;**
- **seek amendment to statute to remove legacy requirements and eliminate requirements to create, file, and retain records imposed upon licensees the Commission has no intention or ability to examine;**
- **seek amendment to statute to require periodic adjustment of the beverage tax rate to reflect changes in inflation, or migrate beverage tax to a percent of value sold, like wine and liquor taxes;**
- **monitor the taxes collected for each tax type and regularly report their values internally and externally;**
- **develop risk-based rules on tax filing methods and frequency to include an option for annual filing;**
- **remove from rules requirements to create, file, and retain records the Commission has no intention or ability to examine; and**
- **develop rules to change all filing dates to the fifteenth of a given month to correspond with other Commission and State tax filing dates.**

We suggest the Commission consider whether other State agencies that collect business taxes could more efficiently collect alcoholic beverage-related taxes instead of trying to develop a Commission-unique online tax collection system.

We recommend Division management optimize examination function profitability, and:

- **include in strategy and plans elements to optimize profitability of examinations and develop an automated system to replace manual control processes, including tax filing, payment, and examinations;**
- **discontinue monthly filing requirements and migrate smaller entities to less frequent filing requirements and examinations; and**

- **develop, implement, monitor, and refine policies and procedures to provide quality control of examinations.**

Agency Response:

We concur in part.

The Commission does not agree that another agency that collects business taxes might more efficiently collect alcohol beverage-related taxes. By collecting and monitoring alcohol beverage tax payments, the Division is alerted to facts indicating that a licensee might be purchasing alcohol through sources other than licensed beverage wholesalers, in violation of state law. Removing the tax collection function would impair the Division's ability to enforce these laws and could result in lost revenues and a breakdown of the three-tier system.

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STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING

CHAPTER FIVE
ENFORCEMENT

The Division of Enforcement and Licensing's (Division) enforcement function involved field investigator operations, licensing, the Direct Shipper Program, and examinations and was the State's primary means of systematically ensuring proper control of alcoholic beverages. The Division, as the Liquor Commission's (Commission) regulatory arm, was responsible for ensuring compliance with *Alcoholic Beverages* and related rules through efficient and effective employment of its organizational components and employees. Investigators, and sometimes section supervisors, in the Field Operations Bureau's field sections were at times assigned one of nine geographic regions that were primarily based on county lines. Examiners were historically assigned statewide responsibilities but were assigned a geographic region corresponding to a field section starting in February 2019. Investigators not assigned to a field section were either assigned to special investigations, outside the Commission, or had administrative assignments. Allocation of certain investigators was based at least in part on the number of licensed establishments in the nine assigned regions, but a staffing analysis had not been completed since at least calendar year (CY) 2013.

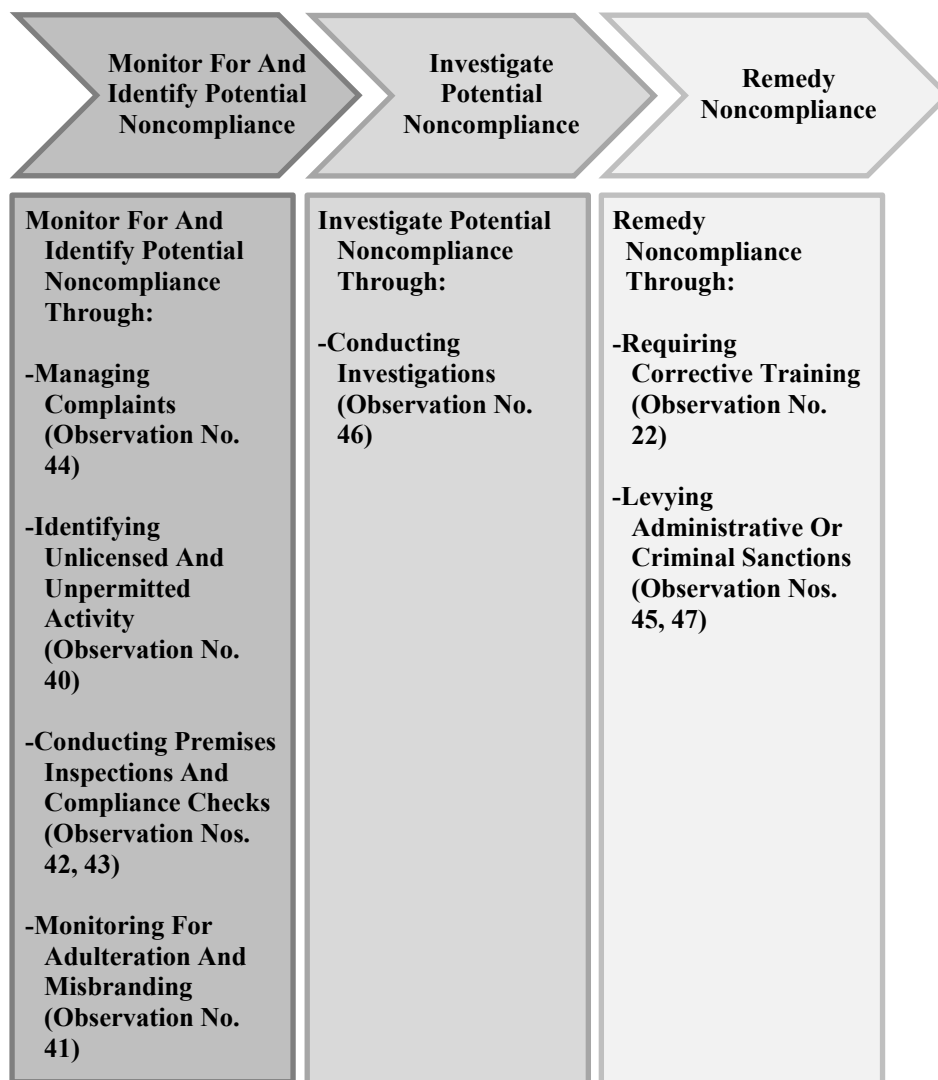
Effective enforcement relied upon effective systems of control over strategic, risk, compliance, performance, and knowledge management. As shown in Figure 13, proactive and reactive compliance monitoring, investigations, and levying of administrative and criminal sanctions were integral to achieving expected outcomes. The Division should identify potential noncompliance through proactive and reactive licensee and permittee compliance monitoring, then refer potential noncompliance to field investigators for formal investigation. If noncompliance was proven to have occurred, the Division was to recommend administrative sanctions to the Commission for adjudication or seek criminal sanctions through the courts. However, in practice, control systems were at times absent and when present, were ill-designed, incomplete, unmonitored, or ineffective. Licensee and permittee compliance monitoring efforts were stove-piped, lacking effective internal communication, and were inconsistently effective. Additionally, investigative and sanctioning practices were inconsistent and inadequately controlled.

Enforcement operations, such as premises inspections, complaints, and investigations, were typically memorialized as calls for service in the Division's enforcement database. Investigators responded to calls for service, such as complaints; undertook investigations; inspected licensed establishments; provided licensee education and training; recommended and sometimes levied sanctions, including fines, revocations, and license suspensions; and collected licensing fees and enforcement fines. Examiners conducted some of the same activities as investigators, including conducting investigations and premises inspections, and recommending and sometimes levying sanctions. Licensing and training specialists primarily conducted compliance monitoring activities related to enforcing licensing and training requirements. During the audit period, the Division:

- expected to record 25,700 calls for service, and recorded 25,974 (101.1 percent) in the enforcement database;
- expected to conduct 13,050 premises inspections, and recorded 8,707 (66.7 percent) in the enforcement database;

Figure 13

Enforcement Processes To Achieve Expected Outcomes



Source: LBA analysis.

- recorded 168 calls for service related to complaints in the enforcement database;
- recorded 583 investigations in investigator case management logs, of which 318 (54.5 percent) were not tied to a licensee or permittee; and
- recorded 2,343 sanctions in the enforcement database, including 822 arrests (35.1 percent), 270 administrative notices (11.5 percent), 625 verbal warnings (26.7 percent), and 626 verbal counselings (26.7 percent), and, overall, 526 sanctions (22.4 percent) were not tied to a licensee or permittee.

While management's system of controls over enforcement operations was the most developed of the Division's functions we examined, it was nonetheless at an initial level of maturity.

Observation No. 37

Improve Controls Over The Enforcement Function

The Division's controls over enforcement to ensure compliance with *Alcoholic Beverages* and related rules were inadequate and lacked a discernable design to achieve expected outcomes. Compliance monitoring, through licensing, permitting, examinations, complaint management, and field enforcement activities, was necessary to help identify noncompliance and ensure proper control. Statute provided investigative authority to investigators, under the direction of the Commission, and gave the Commission authority to administratively sanction individuals and entities for noncompliance. Rules delegating investigative authority to investigators limited investigations to licensee and permittee noncompliance. However, Division compliance monitoring and complaint management activities were incomplete, leading to some unidentified and uninvestigated noncompliance. Further, unsworn employees conducted investigations, some sanctions were levied without Commission approval, and investigative and sanctioning activities were internally inconsistent. Extra-jurisdictional and other ineffective activity, including elective training efforts, investigations, and sanctions, routinely occurred.

The Division lacked a data-informed, risk-based enforcement strategy and plans; formal risk assessments; adequate rules; comprehensive, consistently implemented standard operating procedures (SOP); and adequate performance and information management systems. Without a formal, objective risk assessment, there was no way to determine what risks enforcement practices were designed to mitigate. Without any cost-benefit or similar analysis, there was no way to determine whether enforcement practices efficiently mitigated risks. Some controls and corresponding actions were unauditible because they were poorly documented and other data quality issues compelled us to qualify our use of, and our conclusions resting on, Division data.

Furthermore, prior audit findings were not addressed. Although improvement efforts were purportedly made to, among other things, improve information systems, coordination, reporting, data collection, and training, longstanding deficiencies and waste persisted, in some cases for more than a decade.

Proper Control Not Ensured

Division enforcement operations inconsistently ensured proper control. As depicted in Figure 13, ensuring proper control required processes that effectively identified, investigated, and remedied noncompliance. However, in practice, a systematic approach to ensuring proper control did not exist. Compliance monitoring systems, spread across the Division with differing SOPs, informal practices, and levels of control system maturity, were incomplete and inconsistently coordinated, in some cases leading to unidentified, identified but unremedied, or accommodated noncompliance. Complaint and investigation management was inadequate. Elective training efforts were never shown to produce the results they were purported to achieve. Sanctioning practices were noncompliant with statute and rule, with the Division and its employees levying

administrative sanctions instead of the Commission, and were internally inconsistent, lacking rules, SOPs, or other standards detailing how the Division's improvised graduated sanctions concept should be implemented.

No Risk-based, Data-informed Enforcement Strategy

Division enforcement was not guided by a comprehensive, risk-based, data-informed enforcement strategy. Determining what requirements to monitor, along with where, when, and how requirements would be monitored, were made at the section level or by individuals with inconsistent input from Division management and were at times reactive and based on past practice. SOPs and knowledge management systems were incomplete, inadequate, and disconnected. The Criminal Intelligence Unit (CIU)—tasked with collection, analysis, and dissemination of “crime” data—was not fully functional during the audit period. Predictive analysis to structure enforcement efforts was a long-term, but unrealized, goal with no resourced, time-phased plan for implementation. Creating a risk-based, data-informed enforcement strategy was all the more important for the Division due to reported resource constraints and the reported loss of staff positions prior to the audit period.

Lacking a Division-developed risk model, we developed one. Our risk model, while only one way to examine relative licensee risk, focused on risk arising from enforcement actions, including complaints, *Alcoholic Beverages* noncompliance, and arrests, against particular license types. Using the risk model, we associated investigator and examiner premises inspection and examination activity with noncompliance. The model depicted in Table 15 shows that at least 852 licensees, including some with enforcement actions, were license types that were medium or higher risk but did not receive a regulatory visit.

Additionally, the lack of a risk model contributed to:

- inefficiently distributed staff and workloads;
- uncoordinated, duplicative, and excessive premises inspections and examinations; and
- extra-jurisdictional related enforcement activities, such as traffic violations and certain elective training, education, and outreach efforts.

These activities took time away from investigator and examiner responsibilities to ensure proper control. Without a unifying strategy, enforcement operations were typically, but not exclusively, stove-piped within organizational units, leading to inconsistency.

Inconsistent Effectiveness

The Division lacked adequate controls to ensure consistency. Inconsistent enforcement efforts led to inconsistent outcomes. For example:

- controls to ensure alcoholic beverages were possessed and transferred by properly licensed and permitted entities were inadequate, resulting in illegal sales and activity;
- licensing was unduly complex, relying on ad hoc rules and informal procedures, resulting in some entities being incorrectly licensed and improperly relicensed;

Table 15

Licensee Risk Of Noncompliance By License Type And Subtype, SFYs 2018-2019

Risk Level	License Type And Subtype	Total Licenses	Number Of Licensees Subject To Examinations Or Inspections				Number Of Licensees Subject To Enforcement Action			
			Yes	Percent	No	Percent	Yes	Percent	No	Percent
High	Seasonal On-site Caterer	1	1	100.0	0	0.0	1	100.0	0	0.0
	Subtotal	1	1	100.0	0	0.0	1	100.0	0	0.0
Medium-High	Combination	1,635	1,272	77.8	363	22.2	280	17.1	1,355	82.9
	Racetrack	2	1	50.0	1	50.0	1	50.0	1	50.0
	Restaurant	1,790	1,316	73.5	474	26.5	357	19.9	1,433	80.1
	Subtotal	3,427	2,589	75.5	838	24.5	638	18.6	2,789	81.4
Medium	Ballroom	8	5	62.5	3	37.5	3	37.5	5	62.5
	Veterans' Club	64	53	82.8	11	17.2	17	26.6	47	73.4
	Subtotal	72	58	80.6	14	19.4	20	27.8	52	72.2
Medium-Low	Brewpub	27	23	85.2	4	14.8	5	18.5	22	81.5
	Off-site Caterer	102	54	52.9	48	47.1	17	16.7	85	83.3
	Hotel	88	55	62.5	33	37.5	12	13.6	76	86.4
	Performing Arts Facility	22	14	63.6	8	36.4	5	22.7	17	77.3
	Seasonal Hotel	1	1	100.0	0	0.0	1	100.0	0	0.0
	Seasonal Motor Vehicle Racetrack	5	3	60.0	2	40.0	1	20.0	4	80.0
	Social Club	54	35	64.8	19	35.2	16	29.6	38	70.4
	Sports Recreation Facility	122	85	69.7	37	30.3	18	14.8	104	85.2
	Sports/Entertainment Complex	4	1	25.0	3	75.0	2	50.0	2	50.0
	Subtotal	425	271	63.8	154	36.2	77	18.1	348	81.9
Low¹	Subtotal	817	190	23.3	627	76.7	55	6.7	762	93.3
Negligible²	Subtotal	706	87	12.3	619	87.7	4	0.6	702	99.4
Total		5,448	3,196	58.7	2,252	41.3	795	14.6	4,653	85.4

Notes:

1. Represents 11 license types and subtypes.
2. Represents 30 license types and subtypes.

Source: LBA analysis of unaudited Division data.

- controls to ensure licensees met necessary product, package, and container approval requirements were not always developed, and were inadequate when developed, resulting in noncompliance;
- license expiration was ineffectively monitored, resulting in some entities operating without a license and others renewing their license while ineligible to do so;
- examinations were inadequate, relying on ad hoc rules and informal procedures, and incomplete, with numerous examination-related requirements being inconsistently examined or unexamined;
- premises inspections, conducted by both examiners and investigators, were unstructured and uncoordinated, leading to numerous uninspected and unexamined licensees, but also excessive inspections, leading to waste;
- compliance checks were inconsistently conducted, especially in higher-risk municipalities, with 12 of 29 municipalities (41.4 percent) with medium or higher risk levels being subjected to compliance checks;
- licensees were inconsistently checked when a compliance check operation occurred in a given municipality;
- investigations were inconsistently compliant with statute and rule, investigation management and associated recordkeeping practices were inconsistent across the Division, and investigations were inconsistently effective; and
- sanctioning was noncompliant with statute and rules, reliant upon ad hoc rules and informal procedures, and internally inconsistent.

There was no system of control to ensure operations conformed to statute and rules. Some Division employees acknowledged the, at times, internally inconsistent nature of enforcement operations. Some employees expressed the need for flexibility with interpreting and implementing requirements, and some employees minimized the need to develop standardized enforcement practices and follow SOPs. Purportedly, it took time for new employees to obtain necessary experience to ensure consistency. However, consistency might just refer to an employee being consistent with their trainer and not SOPs or other standards, showing the need for greater formalization of enforcement practices Division-wide. Furthermore, SOPs were incomplete, inadequately prescriptive, and not always followed, leaving undue discretion to employees across all sections and functions. Lacking effective performance and personnel management controls, SOP inadequacies compounded inconsistency with enforcement practices and noncompliance with statute and rules.

Unoptimized Profitability

The Division did not conduct cost-benefit or other analyses of enforcement operations to determine the optimal use of resources, leading to duplicative, extra-jurisdictional, and other ineffective and inconsistent activities. The Division had a duty to effectively use public funds, achieve expected outcomes, protect the State's citizens, and benefit the regulated industry. Fiscal analysis, within the context of a broader, risk-based enforcement strategy, could have helped the Division coordinate enforcement operations, improve efficiency and effectiveness, and optimize profitability. However:

- premises inspections and compliance checks both were conducted, even though compliance check operations were purportedly costly and dealt with a small number of regulatory requirements, as we discuss in Observation Nos. 42 and 43;
- examinations by examiners and premises inspections by investigators were conducted at the same entities, even though these examinations involved evaluations of some similar regulatory requirements, as we discuss in Observation Nos. 34 and 42;
- premises inspections were conducted by both examiners and investigators without adequate coordination, as we discuss in Observation No. 42;
- investigations were conducted and sanctions levied by both sworn and unsworn employees without adequate authority, as we discuss in Observation Nos. 45, 46, and 47;
- examiners and investigators engaged in extra-jurisdictional and ineffective enforcement activity without authority, as we discuss in Observation No. 38; and
- employees engaged in elective and extra-jurisdictional training efforts, as we discuss in Observation No. 39.

Inconsistent Statutory And Regulatory Compliance

The Division lacked controls to ensure its enforcement operations complied with statutory and regulatory requirements.

- There was no objective demonstration enforcement operations effectively and efficiently ensured achievement of expected outcomes. When performance measurement occurred, it was focused on outputs, not outcomes.
- SOPs and practice allowed unsworn employees to conduct investigations and levy administrative sanctions. However, statute and rule limited investigative authority to investigators and sanctioning authority to the Commission.
- The Commission was to adopt all investigative procedures in rule, specify disciplinary action for specific violations, and consider aggravating and mitigating factors when determining administrative sanctions. However, rules did not cover all investigative practices, as we discuss in Observation No. 46, such as examiner investigative practices, which differed from those of investigators. Rules also did not specify aggravating and mitigating factors for determining administrative sanctions for violations, and there was little documentary evidence that evaluations of aggravating and mitigating factors occurred in Division investigations.
- Controls to ensure adulteration and misbranding did not occur and prevent unlicensed or unpermitted possession or transfers of alcoholic beverage were incomplete, as we discuss in Observation Nos. 40 and 41.
- Licensees were not inspected or reviewed annually, with 2,252 out of 5,448 total licensees (41.3 percent) not being subject to a regulatory visit, as we discuss in Observation No. 42.

- Licensees with examination requirements were not examined, as we discuss in Observation No. 34, with 90.3 percent of licensees with a requirement going unexamined.
- Compliance with certain Direct Shipper Program requirements, including provisions to prevent illegal shipments and collect monthly taxes, were inconsistently monitored, as we discuss in Observation Nos. 28 and 32.
- Extra-jurisdictional enforcement activity, outside the scope of enforcing *Alcoholic Beverages*-related requirements, led to waste and continued despite longstanding stakeholder concerns and repeated legislative oversight during the past two decades, as we discuss in Observation No. 38.

Inadequate And Inconsistent Performance Measurement And Knowledge Management

The Division lacked a method for evaluating enforcement outcomes. Field enforcement-related reporting was the most mature in the Division but was output-focused and inadequately detailed to demonstrate outcomes were achieved. The Division did not develop systematic methods to connect licensing and enforcement data with other electronic and hardcopy records to ensure performance was objectively measured and performance management was effective. Decades-old goals to ensure enforcement personnel spent 95 percent of their time on enforcement activities were not institutionalized or replaced. Additionally, personnel performance management practices, including annual evaluations, were never tied to organizational performance and outcomes.

Enforcement management was hindered by uncoordinated, disparate knowledge management practices. Effective enforcement practices required clearly formalized knowledge management systems and practices with consistent data entry ensuring data were reliable. However, individual Division components conducted enforcement activity in relative isolation from each other. The Division used a variety of electronic and hardcopy records and forms to document and monitor enforcement activities without consistently formalizing recordkeeping procedures in rule or SOP, or utilizing formal database management systems (DBMS). The means and practices used differed, as shown in Table 16.

Data used for enforcement operations was not reliable and maintained, undermining enforcement objectives and complicating use and reporting. The Division lacked formal data entry and management procedures for the enforcement DBMS, improvised databases, and other electronic systems and records. These systems and data were used to develop weekly and monthly management reports, inform various enforcement operations, and document Division activity. Hardcopy records were also inconsistently maintained, with investigative and sanctions-related recordkeeping inconsistencies present to varying degrees across all sections, preventing effective performance management and compromising transparency.

Table 16

Knowledge Management Systems Used In Monitoring Licensee And Permittee Compliance

Component Or Activity	Knowledge Management Systems					
	Electronic Records					Hardcopy Records ¹
	Enforcement DBMS	Case Management Logs	Commission Enterprise DBMS	Licensing DBMS	Process-unique Database	
Field Operations Bureau	Yes	Yes	No	Yes ²	No	Forms, reports
Examinations	Yes ³	No	Yes	No	No	Forms, tax filings
Direct Shipper Program	Yes ³	No	No	No	Yes ⁴	Forms, reports, tax filings
Licensing	Yes ³	No	Yes	Yes	Yes	Forms, reports
Training	No	No	Yes	Yes	Yes	Forms, reports

Notes:

1. Hardcopy records were held separately by individuals and sections, not in a unified records management system. Forms were typically specific to the section and to individual subprocesses.
2. Few Field Operations Bureau employees had licensing DBMS access.
3. Use of the enforcement DBMS was limited and inconsistent.
4. Also included electronic monthly carrier reports and monthly permittee tax filings.

Source: LBA analysis of Division information systems, documents, and employee surveys and interviews.

Recommendations:

We recommend Commission management improve enforcement function controls, and:

- **monitor Division enforcement operations to ensure they efficiently and effectively achieve expected outcomes; and**
- **develop, implement, monitor, and refine comprehensive rules covering all enforcement activities.**

We recommend Division management improve enforcement function controls, and:

- **demonstrate enforcement operations effectively and efficiently help achieve expected outcomes;**

- include in strategy and plans an element to establish a management control structure to consistently achieve enforcement expected outcomes;
- develop, implement, monitor, and refine goals, objectives, and targets tied to enforcement expected outcomes;
- develop, implement, monitor, and refine comprehensive SOPs compliant with statute, rule, strategy, plans, and enforcement goals, objectives, and targets;
- develop, implement, monitor, and refine performance measures to ensure requirements are adhered to and the strategy followed;
- develop, implement, monitor, and refine comprehensive data management procedures for all enforcement-related information systems, electronic and hardcopy;
- tie employee performance to enforcement goals, objectives, and targets; and
- periodically report on performance of all enforcement-related activities.

Agency Response:

We concur.

Extra-jurisdictional Enforcement

The Commission was obligated to maintain proper control over alcoholic beverages, and had primary responsibility for enforcing related statutory requirements. The Division's investigators were the statutorily-authorized investigative and enforcement personnel, and were provided the same powers as county sheriffs to ensure proper prosecutions of noncompliance with *Alcoholic Beverages*, at the direction of the Commission. The Commission delegated investigative and enforcement authority to investigators by rule and limited this authority to licensees and permittees. Neither statute nor rules provided the Division or its investigators a secondary function, such as general law enforcement, or provided any mode or manner to conduct investigations into any entity other than a licensee or permittee, which would overlap the enforcement jurisdiction of State and local law enforcement agencies. Management's system of control over ensuring enforcement activity complied with statute and rules and ensured proper control was at initial level of maturity.

Observation No. 38

Discontinue Extra-jurisdictional And Ineffective Enforcement Activities

The Division engaged in enforcement activities unrelated to a licensee or permittee or without connection to *Alcoholic Beverages* in noncompliance with rule and, in some cases, with statute. Extra-jurisdictional enforcement activity undermined the Division's achievement of expected outcomes. The Division lacked a strategy, plans, goals, objectives, targets, risk assessments, performance management mechanisms and initiatives to control extra-jurisdictional activities, while some SOPs actually encouraged extra-jurisdictional enforcement.

Extra-jurisdictional Activity

The expansion of the Division's scope of activity beyond *Alcoholic Beverages*, or scope creep, was a longstanding, unresolved concern subjected to multiple legislative inquiries. In the 1990s, the Division's primary focus reportedly evolved from that of a regulatory agency to focus more on general law enforcement activities. The expansion of the scope of enforcement activity was improvised and not due to changes to statute or rule, and changes made were neither accommodated by nor codified in statute or rule. Sworn employee investigative and Commission sanctioning authority in statute and rule remained focused on regulating the industry and investigating and sanctioning noncompliance occurring with licensees and permittees or on licensee premises. However, following the decision to change the focus of enforcement, identification of so-called "minor administrative violations" decreased while fines increased. Concerns related to extra-jurisdictional investigator enforcement activity, among others, led to: 1) a series of legislative hearings in CYs 2009-2010 and after, and 2) the passage, then repeal, of legislation to move the Division to the Department of Safety. Ultimately, the Legislature recommended the Commission constrain the Division's enforcement operations and prevent extra-jurisdictional activity, such as enforcing general laws under the purview of law enforcement agencies, and required quarterly reporting on extra-jurisdictional activities beginning in January 2018. The Commission asserted it would restrict Division extra-jurisdictional enforcement, focus enforcement on internal security so investigators would not have time to conduct general law enforcement activities, and report quarterly on extra-jurisdictional enforcement activity.

While most of the changes to the scope of enforcement activities occurred before the current administration's tenure, extra-jurisdictional enforcement persisted during the audit period, no quarterly reports were provided to the Legislature, and no effort was made to monitor extra-jurisdictional activities and collect data to enable quarterly reporting. Since extra-jurisdictional efforts were not tied to Division outcomes using objective risk assessments and cost-benefit or other analysis, the Division could not determine whether extra-jurisdictional activities and investigations furthered *Alcoholic Beverages*-related enforcement objectives and complied with statute and rules. Extra-jurisdictional enforcement activity unnecessarily overlapped with responsibilities of law enforcement agencies and led to waste and inefficiency.

The Drug Task Force And The Drug Recognition Expert Efforts

Management lacked a system to demonstrate Drug Task Force (DTF) or Drug Recognition Expert (DRE) activity contributed to achieving expected outcomes. For at least a decade, the Commission dedicated one of its two senior full-time investigators and other resources to the DTF. DTF activity was neither tied to enforcing *Alcoholic Beverages* nor within the scope of authority delegated by statute to the Commission and by rules to the Division. The DTF identified and disrupted illegal drug trafficking. Participation in the DTF transferred day-to-day supervisory oversight of the assigned investigator to task force personnel and allowed the employee to exceed the Division's jurisdiction. Though the Commission retained the responsibility for conducting personnel evaluations of the employee, task force personnel actually conducted evaluations and the Division did not maintain records of the employee's activities, complicating Division oversight and management of the employee. Additionally, the Division obtained DTF grant funding for 16 other investigators to engage in 268 hours of general law enforcement activity during the audit period

according to unaudited Division data. However, the disparate nature of Division information systems made it difficult to evaluate grant funding-specific enforcement activity to determine whether investigators exceeded Division jurisdiction, complicating potential oversight.

The Division also dedicated resources to administering DRE activities for over a decade despite the lack of a connection to *Alcoholic Beverages*. The purpose of DRE activities was to train general law enforcement professionals to recognize impairment in motor vehicle drivers under the influence of substances other than alcohol. The Division dedicated at least 42 hours of one investigator's time to functioning as a DRE coordinator during the audit period according to unaudited Division data.

Investigations

The Division investigated potential criminal activity and noncompliance beyond the scope of *Alcoholic Beverages*, overlapping the jurisdictions of law enforcement agencies but without basis in rules, underpinning risk assessments, and analysis demonstrating such activity was the most effective use of Division investigator resources and achieved expected outcomes. Division extra-jurisdictional investigations were conducted by examiners and investigators, particularly by special investigations investigators.

Special Investigations

The Division's special investigations SOP provided for investigations into illegal gambling, organized crime, identity theft, and employee theft occurring on licensed premises and State liquor stores. However, the SOP was inconsistently followed, and special investigations lacked formal performance standards or measures. In practice, special investigations were a revenue retention and loss prevention function for the Commission, primarily investigating internal reports of theft or other criminal activity at State liquor stores without authority provided by statute or rule. Purportedly, special investigations were coordinated with local police departments, but investigators would seek to retain responsibility for special investigations.

As shown in Table 17, special investigations investigated theft and other criminal activity at State liquor stores, but investigations into licensee and permittee noncompliance were also conducted. Unlike examiners who reportedly disregarded tax filing discrepancies under \$5, investigators lacked a similar threshold under which they would not conduct an investigation. Purportedly, some theft investigations were conducted into stolen goods worth as little as \$10 to \$15, amounts which some local police departments would disregard due to the small value. None of these benchmarks for examiners and investigators were risk-based. Absent a standard for what dollar threshold of stolen goods would result in a special investigation, the Division incurred an increased risk that the cost of special investigations would be greater than the cost of stolen goods potentially recovered. Special investigations were also conducted into checks with insufficient funds submitted by licensees and permittees and untimely license and permit renewals, in addition to those listed in Table 17.

Special investigations into licensees and permittees inefficiently overlapped or duplicated noncompliance monitoring by and responsibilities of other employees, including investigators

assigned specific geographic areas and examiners. The SOP lacked adequate guidance on transferring investigations between special investigations and other sections in the Division, and other investigation standards and requirements. No analyses were conducted to demonstrate why investigator special investigations were a more efficient way to achieve outcomes related to remediating licensee and permittee noncompliance, nor why investigator special investigations were more efficient and effective than local law enforcement agencies in investigating crimes.

Table 17

Special Investigations Not Tied To A Licensee Or Permittee, SFYs 2018-2019¹

Investigation Type	Total	Percent
Liquor Store Theft	121	76.1
Fraudulent Identification Cards ²	10	6.3
Liquor Store Criminal Trespass Order	8	5.0
Liquor Store Fraud	4	2.5
Other ³	16	10.1
Total	159	100.0

Notes:

1. Division data reliability was limited by inconsistency.
2. Included investigations related to State liquor stores and licensees.
3. Included miscellaneous investigations into offenses related to State liquor stores and other non-licensed or non-permitted entities and premises.

Source: LBA analysis of unaudited Division data.

Motor Vehicle Violations

Division investigators engaged in an unknown number of extra-jurisdictional motor vehicle violation investigations, with some investigators conducting significantly more than others, leading to increased risk of waste and inconsistency. Eighteen investigators recorded at least 297 motor vehicle stops during the audit period based on unaudited enforcement data, 276 (92.9 percent) occurred off a licensed premises and were unrelated to *Alcoholic Beverages*. Nine were field investigators assigned geographic areas and we refer to them as Investigators 1 through 9 to anonymize them in this report. Three field investigators recorded most of the 276 off-premises investigations, with Investigator 9 recording 72 (26.1 percent), Investigator 3 recording 56 (20.3 percent), and Investigator 2 recording 46 (16.7 percent). The remaining investigators recorded 21 or fewer of the remaining 102 investigations (37.0 percent).

Extra-jurisdictional motor vehicle violation investigations resulting in illegal drug possession, driving under the influence (DUI), and minors transporting alcoholic beverage charges, and routine traffic violations were not tied to Division outcomes. For example, 155 motor vehicle stops, which constituted 52.2 percent of the total 297 extra-jurisdictional motor vehicle violation investigations recorded in unaudited Division data, resulted in charges of minors transporting alcohol. These were typically the result of surveillance activity at licensed premises or State liquor stores, but also

the result of general police activities. The Division lacked controls to ensure the time spent to produce such investigations was an effective investment of investigator time. We reviewed 12 cases of minors transporting alcoholic beverage conducted by 11 investigators and found all were the result of surveillance activity, but it was unclear how much surveillance activity was conducted to produce the investigations. Minors transporting alcoholic beverage violation investigations were also disproportionately recorded by certain investigators. Investigators 9, 3, and 2 again recorded the highest percentages: 42 (27.1 percent), 30 (19.4 percent), and 24 (15.5 percent), respectively. The remaining investigators recorded 17 or fewer of the remaining 59 violations (38.1 percent). Without tying violations back to licensees, ensuring proper control objectives were achieved was not the focus of these investigations, with investigative and enforcement efforts ending at the individual accused and not addressing potential systematic noncompliance by licensees.

Other Noncompliance

Other sworn and unsworn employees conducted an unknown number of extra-jurisdictional investigations not tied to motor vehicle violations, overlapping with jurisdictions of law enforcement agencies. Investigator and examiner investigations covered widely diverse issues, including:

- one investigation into trademark approval for an alcoholic beverage label;
- three investigations into possession of illegal drugs, fraud related to a liquor store, and credit card fraud;
- three arrests for DUI;
- ten arrests for possession of illegal drugs; and
- 24 instances where investigators engaged in other general law enforcement activity unrelated to *Alcoholic Beverages*.

Enforcement Activity Not Tied To A Licensee Or Permittee

Sworn and unsworn Division employees engaged in investigations and enforcement activity related to *Alcoholic Beverages*, but unrelated to a licensee or permittee and unconnected to expected outcomes. Rule did not allow for unsworn staff to conduct investigations or for investigations or sanctions of non-licensed or non-permitted entities, as we discuss in Observation No. 45. There were no risk assessments or analyses to demonstrate enforcement activities not tied to licensees or permittees efficiently achieved outcomes, leading to waste. Nonetheless, Division data indicated investigators engaged extensively in investigations without connection to a licensee or permittee during the audit period, including:

- 65 arrests by investigators for possession of alcohol,
- 17 arrests by investigators for using a fraudulent identification card to obtain alcohol,
- 16 sobriety checkpoints and saturation patrols by investigators,
- 14 arrests by investigators for violations of municipal open container of alcoholic beverage ordinances,
- five investigations by examiners to determine whether unlicensed establishments sold alcoholic beverages,

- three investigations by examiners to determine whether alcoholic beverages were advertised on roadside signs,
- two investigations by an investigator into alcoholic beverage sales and manufacturing at private residences,
- two investigations by investigators into individuals seeking to obtain fraudulent identification cards,
- one investigation by an investigator into an unlicensed carrier and unpermitted direct shipper, and
- one arrest by an investigator for sales of alcoholic beverage to an underage or intoxicated individual.

While we identified enforcement activity not tied to a licensee, our scope did not include comprehensively identifying such activity. Additional instances of noncompliant investigations and enforcement activity potentially occurred, but inconsistent reliability of Division data prevented identification and analysis.

Recommendations:

We suggest the Legislature institutionalize the receipt and processing of quarterly reports on Division extra-jurisdictional enforcement activities to further Legislative oversight of Division operations.

If the Commission can demonstrate the cost effectiveness of continuing activities that are within the scope of *Alcoholic Beverages* but not within the authorities delegated to the Division and its investigators, we suggest it revise rules accordingly.

We recommend Division management constrain its enforcement activity to that allowed by statute and rule, and:

- migrate DTF and DRE responsibilities to a law enforcement agency;
- develop, implement, monitor, and refine comprehensive controls properly constrained to reflect the Division's role as a regulatory agency;
- refine SOPs covering all enforcement activity to ensure compliance with rule;
- refine performance measures to ensure compliance with rule; and
- develop, implement, monitor, and refine a system to monitor extra-jurisdictional activity and quarterly report to the Legislature.

The Commission's and Division's responses to our recommendations are presented below. The Division additionally provided detailed comments which, along with corresponding LBA comments, are in Appendix C.

Agency Response:

We concur in part.

*The Commission **does not concur** with the suggestion that increased legislative oversight is warranted based on its commitment, as set out in its response to Observation No. 1, to implement a multi-year plan to address the audit findings.*

*The Division **does not concur** with the recommendation to migrate DTF and DRE responsibilities to a law enforcement agency.*

*The Division **does not concur** with the recommendation that it develop, implement, monitor, and refine a comprehensive control framework properly **constrained to reflect the Division's role as a regulatory agency** (emphasis added).*

*The Division **concurs** with the recommendation that it refine SOPs covering all enforcement activity to ensure compliance with rule.*

*The Division **concurs** with the recommendation that it refine performance measures to ensure compliance with rule.*

*The Division **does not concur** with the final recommendation of Observation No. 38. The Division disagrees with the “extra-jurisdictional” aspect of this recommendation. The Division does not engage in extra-jurisdictional law enforcement activity.*

LBA Rejoinder:

As discussed in Observation Nos. 14 and 38, the Commission has not provided quarterly reports detailing extra-jurisdictional enforcement since January 2018, compromising transparency and legislative oversight.

The Commission did not address our recommendation to, if it can demonstrate the cost effectiveness of continuing activities that are within the scope of *Alcoholic Beverages* but not within the authorities delegated to the Division and its investigators, revise rules accordingly. The Commission should describe how it will ensure its enforcement operations are consistent with its duly promulgated enforcement policy and underpinned by rules that conform to the Commission's statutory authority, a condition that did not prevail during the audit period.

We have noted errors embedded in narratives rationalizing Division employees engaging in extra-jurisdictional activities, compromising achievement of expected outcomes. The Commission and LBA have substantially different interpretations of extra-jurisdictional activities, which also has been a point of concern for the Legislature in the past. Many of these differences are described in Appendix C.

Elective Training, Education, And Outreach

Training, education, and outreach not required by statute, rule, or settlement agreement was undertaken by two training specialists in the Administrative Bureau and investigators from the Field Operations Bureau. Education, training, and outreach were reported to be integral

components of Division operations. Training programs for owners, managers, and staff of licensed establishments to build knowledge and skills related to responsible alcoholic beverage service were recommended by State strategies to help reduce misuse of alcohol. Preventing underage consumption of alcoholic beverages was considered a key outcome, and education and outreach were reportedly essential to the Division reaching its goal of reducing the number of alcohol-related incidents for all ages. The Division reported training licensees and law enforcement agencies, educating the public on alcohol management by attending public events, and publishing alcohol safety related materials. The Division also provided training to law enforcement agencies through their DRE and Advanced Roadside Impaired Driving Enforcement efforts. However, management's system of control over elective training, education, and outreach efforts for licensees, law enforcement agencies, liquor stores, and the public was inadequately structured, measured, and monitored, and at an initial level of maturity.

Observation No. 39

Discontinue Elective Training, Education, And Outreach Without Demonstrated Benefits

Elective training, education, and outreach were not shown to achieve expected outcomes, were not shown to cost-effectively expend Division resources, and were at times outside the scope of *Alcoholic Beverages*. No rules existed to structure elective training, education, and outreach efforts, and while some were mentioned in SOPs, others were not. The relevant SOPs were not comprehensive, lacked controls to ensure consistency and quality, and lacked procedures to objectively measure outcomes and establish costs and benefits. There were no relevant risk-based, data-informed strategies or plans, or performance goals, objectives, or targets established for elective training, education, and outreach efforts. At least one training effort was offered to non-licensed establishments.

Rules And SOPs Inadequate

Rules did not address any elective training, education, and outreach efforts. SOPs were incomplete, did not address some efforts, and some were outdated. SOPs did not account for:

- how training events would be conducted;
- where and when events should be conducted;
- what controls for event consistency would be used;
- what materials would be used to facilitate efforts;
- how identified risks would be addressed through events;
- how performance, cost-benefit, and effects of additional training duties on staff core functions would be measured; and
- how customer service would be provided and measured.

Related practice was more expansive for some efforts than SOPs provided, imposing requirements that contributed to ad hoc rulemaking.

During the audit period, the Division reportedly undertook at least 11 elective training, education, and outreach activities, eight of which (72.7 percent) were directly related to alcohol. None were

required by statute or rule. The three activities (27.3 percent) outside the scope of *Alcoholic Beverages* included two for law enforcement agencies on identifying illicit drug impairment and one for employees of State liquor stores, licensees, and non-licensees on responding to active shooters. Training specialists conducted some of the events, while investigators conducted others. Training specialists were required to create and maintain data on their activities. DRE activities required the program administrator to conduct periodic training sessions and maintain a statewide DRE roster. All activities affected the employees' ability to carry out core functions related to statutory duties.

Identification Of Risk Unstructured

Elective training, education, and outreach efforts lacked a structured approach to identify, quantify, and qualify risk to determine where efforts would be the most effective or whether the benefits derived from these efforts offered outweighed their costs. Efforts unrelated to alcohol were not based on statutory or rule obligations and, at times, were instead driven by requirements in SOPs developed to obtain national accreditation under law enforcement agency standards. For alcohol-related courses, repositories of alcohol-related incident and violation data existed at the Division and other State agencies, but reportedly were not used to focus elective efforts on identifiable risks. Instead, elective efforts were distributed around the State or conducted by request.

Additionally, while training was available to most licensees, permittees and carrier licensees were not required to undertake any type of training, nor was any available. Our *State of New Hampshire Liquor Commission Performance Audit Report April 2009* suggested carrier licensees should receive training to ensure they complied with direct shipping requirements such as obtaining signatures from age-appropriate recipients for packages containing alcohol. This suggestion was not acted upon, and we found significant noncompliance with direct shipping requirements during our current audit.

Performance Unmeasured

The Division did not collect and monitor data related to performance. There was neither a demonstration of a transfer of knowledge or learning for elective efforts, nor was there a demonstration of how these efforts affected behaviors that contributed to reducing underage drinking, increasing alcohol awareness, reducing the number of alcohol-related incidents, enhancing responses to active shooters, or reducing illicit drug-impaired driving. The Division only collected and reported output data, such as quantifying the number of events and attendees at events, and the number of DRE training events and drug impairment evaluations conducted to identify illicit drug-impaired driving.

- Some output data for some training, education, and outreach efforts was not collected, not counted, or skewed. For example, output measurement for some outreach efforts were skewed by simply totaling the number of attendees and presenting them as the number of individuals "trained" or "educated," even though individuals merely attended an event at which Division training, education, or outreach also occurred. Outcome data did not exist.

- The Division did not identify, quantify, or qualify staff performance of training-related duties. The supplemental job description (SJD) for the full-time employee who was responsible for DRE activities did not reflect this responsibility and related individual performance was unmeasured in performance evaluations. Training specialist and investigator performance evaluations also lacked measurement of how effectively they conducted their elective training, education, and outreach responsibilities.
- Staffing needs were not analyzed. Nonetheless, investigators accumulated additional training, education, and outreach duties, both within and outside the scope of *Alcoholic Beverages*, including duties for training offered by another State agency. Without a cost-benefit or other analysis, the Division could not demonstrate there was a return on investment for using staff to carry out elective training, education, and outreach efforts.
- The Division did not systematically measure provision of customer service. Measuring customer service could have helped the Division identify community concerns and potential problems bearing on training, education, and outreach, which could then have informed Division operations. However, practice reportedly relied on post-course or post-event evaluations to obtain attendee input.

Recommendations:

We recommend Commission management revise rules to reflect all requirements and formal and informal procedures available for training, education, and outreach efforts found to be cost-beneficial and produce expected outcomes.

We recommend Division management improve control of training, education, and outreach efforts, and:

- **divest the Division from training, education, and outreach efforts not found to be cost-beneficial and produce expected outcomes;**
- **establish costs and benefits for jurisdictional training, education, and outreach efforts;**
- **include in strategy and plans elements over all retained jurisdictional training, education, and outreach efforts;**
- **objectively measure the effectiveness, including transfer of knowledge, for all retained training, education, and outreach efforts;**
- **develop, implement, monitor, and refine comprehensive SOPs over training, education, and outreach efforts;**
- **systematically analyze course evaluation forms and modify courses to optimize efficiency and effectiveness;**
- **consider establishing training dedicated to direct shipper permit holders and carriers; and**
- **monitor controls to ensure compliance with statute, rule, and SOPs.**

Agency Response:

We concur.

However, as discussed in our response to Observation No. 38, the Commission disagrees with the characterization that the Commission engages in extra-jurisdictional activities.

Proper Control Not Ensured Through Enforcement Operations

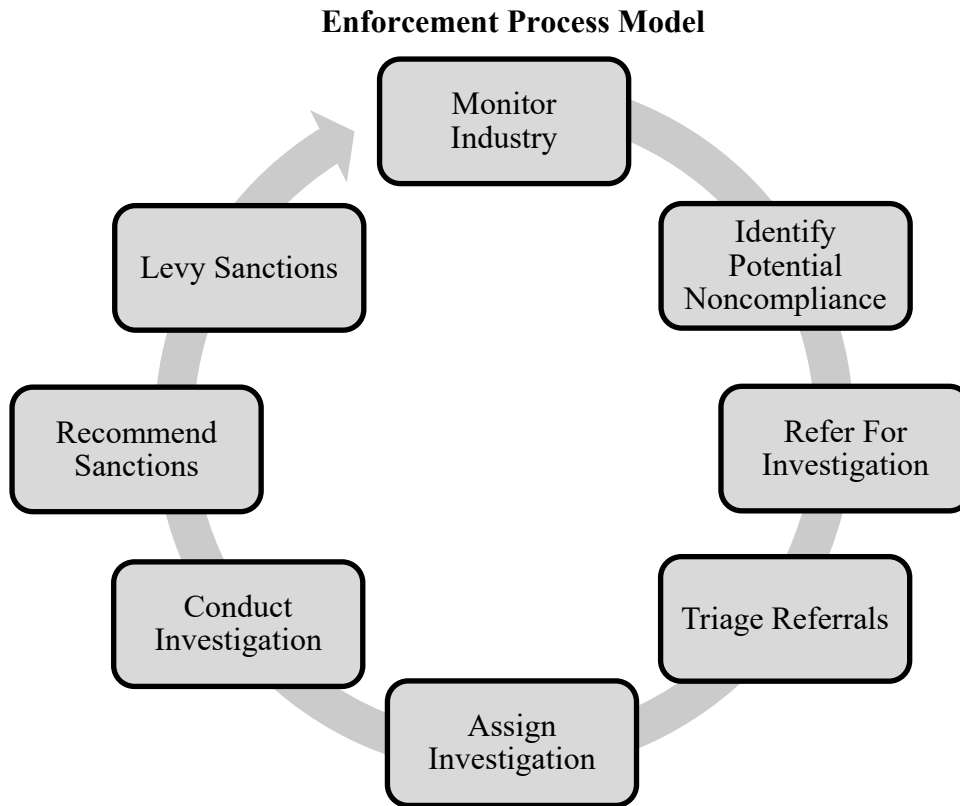
Regulation of alcoholic beverages was intended to safeguard the public's health and welfare. Enforcement operations encompassed conducting effective licensing and permitting, monitoring compliance, identifying potential noncompliance, conducting investigations, and pursuing sanctions when warranted. Compliance monitoring was both proactive and reactive. Proactive compliance monitoring included monitoring for unlicensed or unpermitted activity or possession or transfers of alcoholic substances, licensing and permitting, examinations, and premises inspections and compliance checks. Reactive compliance monitoring included compliant management and renewal licensing and permitting processes. As shown in Figure 14, noncompliance identified through monitoring was to be referred, vetted, investigated, and if called for, recommended for Commission administrative sanction.

Unlicensed And Unpermitted Activity

Ensuring proper control started with monitoring to ensure entities and individuals were properly licensed or permitted and unlicensed or unpermitted activity was identified. Individuals and entities involved in the commercial possession or transfer of alcoholic beverages were to be licensed or permitted in compliance with statute and rule. To help properly control alcoholic beverages, the Division needed procedures to proactively:

- identify individuals and entities required to have a license or permit to operate;
- notify individuals and entities of the requirements they must meet to operate, the steps required to obtain a license or permit, and the sanctions for noncompliance;
- inform consumers of the requirements imposed on the regulated industry; and
- solicit, receive, and process complaints about individuals or entities operating without a license or permit.

Figure 14



Note: Depicts a model, not actual Division controls operating during the audit period.

Source: LBA analysis of control principles.

However, related efforts were at times uncontrolled or inadequately controlled, uncoordinated, and not tied to proper control outcomes, and management’s system of controls over preventing unlicensed or unpermitted activity was at an initial level of maturity.

Observation No. 40

Improve Controls Over Preventing Unlicensed Or Unpermitted Activity

Division controls to help ensure alcoholic beverages were possessed and transferred only by licensed and permitted entities in compliance with statute and rules were inadequate to ensure proper control. Controls to help prevent unlicensed or unpermitted activity were at times absent, inadequate, or incomplete, and consequently the Division could not ensure only licensed and permitted entities possessed or transferred alcoholic beverages. Compliance monitoring was inconsistent in practice. In some cases, available data demonstrated unlicensed or unpermitted entities possessed or transferred alcoholic beverages and noncompliance went unremedied, or was even allowed.

The Division's organizational elements operated in relative isolation from one another and relied on ad hoc rules, and knowledge management was disconnected and incomplete. The Division lacked strategies, plans, goals, objectives, targets, risk assessments, performance measures, and initiatives; clear and consistently followed rules and SOPs; and effective knowledge management to help ensure alcoholic beverages were possessed or transferred only by licensed or permitted entities. Considering the use of employees to conduct extra-jurisdictional, elective, and other ineffective activities, the Division had more resources to allocate toward preventing or identifying and remedying unlicensed and unpermitted activity than were allocated.

Ensuring individuals or entities possessing or transferring alcoholic beverages were properly licensed or permitted was a core Division function and essential to proper enforcement and realizing accurate revenue. Individuals or entities may have been unaware of the need to obtain a license or permit to operate, while others may have operated intentionally without obtaining a license or permit. Other than a few narrow exceptions, licensing and permitting was the entry point for an individual or entity to legally possess or transfer alcoholic beverages. To ensure proper control, compliance monitoring activities were to identify noncompliant possession or transfers by unlicensed and unpermitted entities for potential sanctions to curtail illegal activity. However, control weaknesses prevented achievement of proper control outcomes.

- Division Outreach – External communication and outreach was incomplete and license or permit requirements were inconsistently published through other State agencies, like the Secretary of State's business registration or the Department of Revenue Administration's tax filing processes.
- Licensing – Licensing relied on ad hoc rules, overly complex requirements, and disconnected and incomplete knowledge management systems to control licenses and monitor licensee compliance. Licensing decisions were at times improvised, leading to some entities not being properly licensed or relicensed. License expiration requirements were inconsistently monitored and enforced, and administrative sanctions levied for noncompliance were inconsistent, allowing some entities to operate with expired licenses. Knowledge management systems, including the licensing database and hardcopy records, inconsistently formed complete records of a licensee's history, making compliance monitoring unnecessarily complex. Licensing staff access to the enforcement database to monitor compliance and sanctions was discontinued during the audit period, making it difficult to evaluate disciplinary history, including the number of points issued, when making recommendations on license renewal. Knowledge management system deficiencies also prevented efficient coordination between examiners and investigators that performed licensing inspections and compliance monitoring functions.
- Permitting – Permitting relied on ad hoc rules, incomplete procedures, and disconnected and incomplete knowledge management systems to control permits and monitor compliance. Unpermitted and otherwise noncompliant direct shippers were inconsistently sanctioned. Compliance monitoring of direct shipments, necessary to ensure only compliant entities were allowed to renew permits, was incomplete. The Division's primary control used to sanction, the unauthorized direct shipper list, was

ineffective at preventing illegal shipments. Direct Shipper Program records, including the licensing and enforcement databases, hardcopy records, and various improvised databases, inconsistently formed a complete record of permittee history and complicated compliance monitoring necessary to evaluate initial and renewal permit applications. Unpermitted and unlicensed pack and ship (P&S) entities were also allowed to ship alcoholic beverages into the State under improvised procedures without any underpinning statutory or regulatory authority.

- Examiners And Investigators – Examiners and investigators involved in licensing were responsible for compliance monitoring but relied on ad hoc rules and incomplete procedures. Certain license types were required to receive examinations, but were unexamined or inconsistently examined, and all licensees were to be inspected annually, but were not. Requirements for premises inspections, conducted by both examiners and investigators, were inconsistent and not formalized Division-wide. Complaint management was incomplete, lacking rules and adequate public disclosure, as we discuss in Observation No. 44. The Division inconsistently monitored for adulteration and misbranding, as we discuss in Observation No. 41, and for the sale of unapproved products, packages, and containers. Knowledge management systems were incomplete or inadequate to facilitate effective compliance monitoring. Coordination between examiners and investigators, as well as with other Division components, was inadequate, complicating efforts to detect and sanction unlicensed and unpermitted noncompliant activity.

The disconnected control framework led to unlicensed and unpermitted sales and transfers during the audit period, including:

- an unknown amount of alcohol, with bottle counts numbering at least in the thousands, that was illegally shipped into the State by an unknown number of unpermitted direct shippers;
- an unknown number of entities that operated with expired licenses for as many as 205 days, including 207 that were listed in the enforcement database as being subjected to administrative sanctions for untimely permit renewal;
- at least 37 P&S entities that shipped an unknown amount of alcohol, with bottle counts numbering at least in the thousands, on behalf of direct shippers without obtaining a license or permit;
- at least 13 New Hampshire-based entities, 12 (92.3 percent) of which were licensees, that illegally shipped at least 402 bottles of alcoholic beverage to New Hampshire addresses;
- a manufacturer that was identified as producing alcoholic beverages before obtaining a license, but was not sanctioned nor was the noncompliance recorded in the enforcement database;
- an unlicensed entity that delivered alcoholic beverages to consumers until given a cease and desist letter by the Division, as we discuss in Observation No. 45;
- an unlicensed entity that attempted to, but did not, obtain a license during the audit period, but nonetheless provided alcoholic beverages to consumers; and

- an unlicensed carrier that shipped alcoholic beverages for an unpermitted direct shipper, both of which were investigated by the Division but without any definitive result or sanction, as we discuss in Observation No. 46.

Recommendations:

We recommend Commission management develop, implement, monitor, and refine comprehensive rules, based on the Division’s risk assessment, to effectively detect and control unlicensed and unpermitted activity.

We recommend Division management improve controls over unlicensed and unpermitted activity, and:

- **conduct a risk assessment of current and potential unlicensed and unpermitted *Alcoholic Beverages*-related activity;**
- **facilitate development of a rule framework designed to comprehensively prevent unlicensed and unpermitted *Alcoholic Beverages*-related activities;**
- **include in strategy and plans elements to comprehensively monitor for and prevent unlicensed and unpermitted *Alcoholic Beverages*-related activity, and when identified, properly remedy noncompliance and levy sanctions;**
- **develop, implement, monitor, and refine SOPs to implement rules and ensure practices are well integrated with one another;**
- **ensure outreach is comprehensive, and that any entity needing a license or permit has an opportunity to obtain one;**
- **consolidate, coordinate, and improve knowledge management systems to ensure unlicensed and unpermitted activity is prevented or identified, investigated, sanctioned, and discontinued; and**
- **develop, implement, monitor, and refine performance measures to ensure statutes, rules, and SOPs are followed.**

Agency Response:

We concur.

Adulteration And Misbranding

Statute required the Commission take precautions to ensure alcoholic beverages were free from adulteration and misbranding, a duty not assigned to any other State agency. Preventing adulteration and misbranding required active compliance monitoring to ensure proper control. In CY 1994, the Commission recognized the need to ensure alcoholic products were pure in quality and packaging was accurate and not misleading. However, the Division ultimately did not know what was being sold in the State or whether required approvals had occurred, and management’s system of control to ensure purity and proper branding and prevent the unlawful manufacture for sale or sale of adulterated liquor or beverages was undeveloped.

Observation No. 41

Develop Controls Over Adulteration And Misbranding

The implementation of long-standing statutory provisions against adulteration and misbranding of alcoholic beverages was incomplete, inefficient, and inconsistently effective. Underlying statutory requirements were incomplete and inconsistent. Management lacked risk-based and data-informed strategies and plans; related initiatives; a performance measurement system tied to adulteration and misbranding prevention outcomes; adequate oversight, monitoring, and enforcement; clarifying rules and implementing SOPs; and integrated knowledge management systems. Consequently, the requirements to prevent adulteration and misbranding had been unfulfilled for years. Furthermore, requirements established for as few as one of the 44 license types (2.3 percent) were more broadly applied than statute and rule provided, leading to ad hoc rules and unclarity. Inconsistency and unclarity made related practices unauditible.

Implementation of statutory adulteration and misbranding requirements was incomplete, leading to inconsistency in the regulation of alcoholic beverages. No rules addressed purity and misbranding, and the Division lacked procedures to achieve statutory expectations. No enforcement processes to prevent adulteration and misbranding were developed or implemented. The only related controls implemented may have been the beverage product, package, and container approval and beer festival product registration processes, but these processes were incomplete, inefficient, and ineffective; exceeded authority provided in statute; and relied upon ad hoc rules.

As shown in Table 18, adulteration and misbranding requirements were incomplete, inconsistent, and unclear. Many requirements were unchanged since CYs 1933 or 1934. Statute required the Commission ensure against adulteration and misbranding of all *liquors* sold, and made it unlawful to manufacture or sell any adulterated *liquor* or *beverage*. Separately, certain licensees were alternatively required to obtain package and container or bottle and container approval, sell only approved product, or register their product. The purpose of these separate requirements was not explicit, but it appeared a common goal was in part to prevent misbranding. Regardless of purpose, the application of various statutory requirements was inconsistent among substances and licensees and permittees. For instance, certain substances, including some beverage, wine, and specialty beer products, had various product, package, or container approval or registration requirements in statute, while others, particularly liquor, had none. Requirements imposed on licensees and permittees were also inconsistent. Beer festivals, beverage manufacturers, beverage vendors, brewpubs, nanobreweries, and wine manufacturers had various requirements to obtain product, package, or container approval, or register product. Other licensees, particularly liquor manufacturers, wine and liquor festivals, and direct shippers, had none. Additionally, not all licensees or permittees with relevant requirements were subjected to improvised product, package, and container approval processes, particularly wine manufacturers, while others lacked any similar requirements, including liquor manufacturers and direct shippers, compounding inconsistency in how licensees and permittees were regulated.

Table 18

Statutory Requirements And Division Controls

Statutory Requirement	Substance Regulated	Licenses And Permittees Regulated	Division Control Process ¹
The Commission was to take “precautions...to ensure the purity and freedom from misbranding of all <i>liquors</i> sold.” [emphasis added]	Product over six percent alcohol by volume (ABV), except specialty beer	All	None
Manufacturing for sale or selling “any <i>liquor</i> or <i>beverage</i> which was adulterated with any deleterious drug, substance, or liquid” [emphasis added] was unlawful.	Liquor and beverage, including beer, specialty beer, wine, and similar products	All	None
Adulteration of “ <i>beverage</i> and <i>wine</i> so as to increase...alcoholic content” [emphasis added] was a misdemeanor, and licensees who sold such products were to have their license revoked for at least six months.	Beverage and wine	Misdemeanor sanction—all License suspension—limited to licensees	None
The sizes of beverage packaging or containers were to be “specifically approved by the Commission.”	Beverage	Beverage manufacturers and vendors, brewpubs, and nanobreweries	Product, package, and container approval
Only beverage products and packages approved by the Commission were to be sold to retailers. ²	Beverage	Beverage vendors	Product, package, and container approval ³
The Commission was to authorize the size of bottles and containers used for the sale of wine.	Wine	Wine manufacturer licensees	None
Specialty beer with over 12 percent ABV was to be clearly labeled as such.	Specialty beer	All	Product, package, and container approval ⁴
Beer festivals could temporarily register beverages and specialty beer not currently registered with the Commission. ⁵	Beverage and specialty beer	Beer festivals ⁶	Beer festival product registration ⁷

Notes:

- Some beverages were subjected to Commission approval, which amounted to label approval.
- There was no product approval requirement in statute, nor processes in rules or practice. In effect, statute required sale of approved products, but did not require product approval or frame how and why product would be approved.
- Product, package, and container approval processes lacked product approval components.
- Specialty beer was inconsistently subjected to Commission approval, with some being approved only by Division employees.
- There was no statutory registration for sale requirement for beverages or specialty beers. Beverages or specialty beers not having gone through the product, package, and container approval process would have to be registered.

6. Wine and liquor festivals did not have similar requirements.
7. Products registered inconsistently received Commission approval.

Source: LBA analysis of statutes, rules, SOPs, practices, and records.

The need for improved controls to assure purity and proper branding was increased due to the proliferation of small-scale manufacturers, including liquor, wine, and beverage manufacturer licensees, and increasing numbers of direct shippers, all of whom could sell product directly to consumers and approved licensees. While the Division did not develop controls to protect against adulteration and misbranding, it engaged in plausibly related but improvised efforts, further showing the need for a comprehensive approach to enforcing adulteration and misbranding requirements.

- According to unaudited enforcement data, the Division received at least two complaints of misbranding and one complaint of adulteration of alcoholic substances. While the Division reportedly investigated these complaints, they served to demonstrate adulteration and misbranding were contemporary concerns. However, the single documented instance of laboratory analysis of alcohol content was not related to the adulteration complaint.
- Some staff asserted that they incorporated procedures into premises inspections to ensure refilling of used bottles did not occur, an offense statutorily tied to adulteration and misbranding. However, the Division lacked adequate premises inspection SOPs and these practices were not standardized. During the audit period, unaudited enforcement data indicated the Division recorded administrative action against 14 licensees for refilling used bottles.
- The Division reportedly engaged in administrative action against a licensee for selling alcoholic beverages containing cannabidiol, a cannabinoid substance. Subsequently, the Division disseminated industry guidance stating it would not allow licensees to sell beverages or food containing cannabidiol, citing the adulteration and misbranding statutory requirement as a basis for its authority. Violations would lead to fines or loss of license.

Recommendations:

We recommend Commission management develop controls over adulteration and misbranding, and:

- **develop, implement, monitor, and refine a holistic strategy to ensure alcoholic beverages sold or manufactured for sale in the State are not adulterated or misbranded; and**
- **develop, implement, monitor, and refine comprehensive rules governing processes to protect against adulteration and misbranding.**

If rationalization of requirements through rules is not possible, we recommend Commission management seek necessary legislative changes to help ensure statutes standardize controls over adulteration and misbranding requirements across substances, licensees, and permittees.

We recommend Division management improve controls over adulteration and misbranding, and:

- **include in strategies and plans elements covering adulteration and misbranding requirements;**
- **rationalize all package, container, and product approval requirements in statute with adulteration and misbranding requirements in existing rules and practice, identifying necessary rule changes to the Commission;**
- **determine which substances, licensees, and permittees should be subject to such requirements based on objective risk assessments to identify necessary rule and statute changes to the Commission;**
- **develop, implement, monitor, and refine goals, objectives, targets, and performance measures for adulteration and misbranding-related processes; and**
- **develop, implement, monitor, and refine SOPs designed to protect against adulteration and misbranding.**

Agency Response:

We concur.

Premises Inspections

In addition to final licensing inspections discussed in Chapter 2 and examinations discussed in Chapter 4, investigators and examiners conducted premises inspections at licensed locations. These inspections were part of the Division's active compliance monitoring to ensure proper control. All licensees were to be inspected at least once each calendar year. Investigators were required to conduct 24 premises inspections per 40-hour work cycle (24/40 standard). Examiners had no similar performance benchmark. The Division recorded 8,707 premises inspections during the audit period, 8,662 (99.5 percent) of which were conducted by investigators while the remaining 45 (0.5 percent) were conducted by examiners. During State fiscal year (SFY) 2018, 4,112 inspections (47.2 percent) were recorded, and 4,595 (52.8 percent) were recorded in SFY 2019. Also, 480 inspections (5.5 percent) took place at an unlicensed premises like a liquor store. However, the Division lacked systematic monitoring of premises inspections to determine which licensees had been subjected to premises inspections in a given year, and management's system of controls over premises inspections was at an initial level of maturity.

Observation No. 42

Improve Controls Over Premises Inspections

The Division's premises inspection practices were inefficient and inconsistently effective to ensure proper control. Frequent premises inspections conducted by investigators and examiners were required to help ensure licensees complied with all aspects of *Alcoholic Beverages*. However, the Division has long lacked data-informed, risk-based strategies, plans, goals, objectives, targets, and performance measurement systems to ensure it achieved expected outcomes. Rules were silent on inspection requirements and SOPs were incomplete and inconsistently operationalized, leaving some establishments uninspected, unexamined, or under inspected, while others were excessively inspected without discernable risk indicators.

During the audit period, 2,252 of 5,448 licensees (41.3 percent) were neither examined nor subjected to premises inspections—effectively going without a regulatory visit or review—and 1,247 licensees (22.9 percent) received one premises inspection. Some uninspected, unexamined, and under-inspected licensees had liquor law violations during the same period. Meanwhile, other licensees were excessively inspected. Of the 8,662 premises inspections conducted by investigators, 2,745 (31.7 percent) were excessive, with, for example, one licensee receiving 35 inspections from six different investigators over two years without any recorded liquor law violations. Further, certain investigators engaged in a significant amount of excessive inspections, both inside and outside of their assigned geographic area, without discernable risk indicators or other documented reasons, contributing to waste and potentially introducing bias.

Prior Audit Recommendations Unaddressed

Inadequate controls over premises inspections have persisted for more than a decade and remained unaddressed through our current audit period. In our *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2006* we concluded the Commission's compliance with statutory premises inspection requirements was unclear. The Commission could not provide criteria for determining the required frequency of inspections, asserting instead it *reacted* to complaints or referrals to determine when to perform inspections. We recommended the Commission establish policies and procedures more clearly describing its inspection program to better comply with statute or seek Legislative clarification if it could not develop a compliant program. The Commission concurred. However, while the Division subsequently created premises inspection SOPs, the SOPs were incomplete, inconsistently followed in practice, and lacked data-based, risk-informed underpinnings.

SOPs Incomplete And Ineffective

Premises inspection practices were inadequately incorporated into SOPs, undermining proper control. Management should develop standardized checklists, guides, or other documents establishing requirements to be checked during a premises inspection and provide for subsequent reporting. With undue complexity in the regulatory framework, formal, written checklists would be integral to helping ensure premises inspection consistency across the 44 license types and between investigators and examiners. Criteria-setting documents should:

- include all significant statutory, regulatory, or other requirements;
- provide guidance for conducting premises inspections;
- describe how violations will be measured or detected;
- be designed clearly to demonstrate an investigator or examiner can evaluate any licensee's compliance; and
- be easily understood.

Absent any guidance from rule on how the Commission's requirement to frequently inspect the premises of all licensees would be accomplished, the Division developed guidance in an SOP. However, the SOP was incomplete, lacking details on:

- which licensees would be subject to examinations or premises inspections;
- when such examinations and premises inspections would occur;
- how employees would conduct examinations and premises inspections, including what constituted a sufficient premises inspection and what compliance points would be monitored;
- whether, and how, a premises inspection by an examiner was equivalent to a premises inspection by an investigator; and
- what risk assessments, data analyses, goals, objectives, targets, and performance measures would be used to inform and evaluate efficiency and effectiveness of premises inspections.

The SOP allowed supervisors to waive the 24/40 standard and provided that each inspection was to take no more than 20 minutes. No other performance standards for investigators or examiners were formalized.

In practice, every licensee was to be inspected at least once a calendar year by an investigator but enforcement supervisors did not require the 24/40 standard be met, viewing it more as an aspirational goal than a requirement. The standard was neither mentioned in investigator SJDs nor tied to personnel evaluations. No monitoring of the duration of a premises inspection was evident.

The 24/40 standard was not based on analysis of risk or available data, increasing the risk of inefficient and ineffective premises inspection activity. Investigators were assigned to geographic areas, and since no area had more than 813 licensees, it was impossible to conduct 24 inspections each 40-hour work week, or 1,248 premises inspections a year, without multiple visits to numerous establishments. Further, with the number of licensees in each area ranging from 181 to 813, following the 24/40 standard would subject licensees to between one and six premises inspections a year depending on their respective area. Lacking guidance from SOP, decisions on what, when, at what frequency, and how licensees should be inspected were left to investigators, leading to inefficiency, inconsistency, and increased risk of introducing bias.

Inadequate Performance Measurement

The Division's measurement of premises inspection activity was inadequate. The Division's weekly section-level reports listed investigators' calls for service, including premises inspections. Starting in January 2019, formal monthly management reporting began, but monthly reports did

not include a breakdown by investigator or section to determine whether the annual inspection of each licensee requirement was achieved.

Purportedly, enforcement supervisors evaluated long-term investigator premises inspection activity through analyzing data from the enforcement database. However, the database was not organized by sections or geographic area, making it impossible to determine whether inspection requirements were met and whether actual premises inspection activity was appropriate without dedicating supervisor time to restructuring and sorting the data. Additionally, since SOPs lacked criteria for which, when, and how licensees should be inspected, supervisors could not consistently evaluate performance even if data allowed. Furthermore, while premises inspection activity was aggregated periodically and “100 percent” of “annual” premises inspections were purportedly conducted, these activities and assertions were misinformed due to data control inadequacies, and any internal or external reporting relying upon these aggregations were similarly inaccurate.

During the audit period, 2,252 of 5,448 licensees (41.3 percent) were not inspected or examined and, of the 8,662 premises inspections conducted by investigators, 2,745 (31.7 percent) were excessive. Given then-current staffing levels and based on the number of licensees and premises inspections conducted during the audit period, the Division had the ability to ensure every licensee received an annual inspection. Had the Division divested itself of elective and extra-jurisdictional activities and inefficiencies, and controlled excessive inspections, additional premises inspection capacity would have existed.

Improper Control

Premises inspections were not demonstrated to be an effective enforcement tool. During the audit period, investigator-assigned areas and responsibilities were inefficiently distributed, 2,252 of 5,448 total licensees (41.3 percent) did not receive a regulatory visit, the 24/40 standard was largely unachieved, and investigators engaged in a significant amount of excessive and duplicative inspections. Noncompliance, inefficiency, and inconsistency resulted in improper control and potentially led confirmation bias by investigators, a practice by which an investigator could focus on a particular licensee despite lack of evidence of noncompliance, then find noncompliance through subjecting the establishment to an increased number of premises inspections.

Statutory Standard Unachieved

The Division did not comply with requirements to inspect every licensee. Of the 2,252 uninspected and unexamined licensees, 1,740 (77.3 percent) were in-State entities representing 51 of 56 license types and seasonal license subtypes (91.1 percent) active during the audit period. Though some of these licensees may not have been inspected because they were newly licensed or went out-of-business during the audit period, others were licensed throughout or for the majority of the audit period and still received no premises inspections.

Failure to inspect licensees may have contributed to licensee noncompliance with relevant requirements. Though 2,158 of 2,252 uninspected and unexamined in-State and out-of-State licensees (95.8 percent) did not have any enforcement actions, the remaining 94 (4.2 percent) had between one and three enforcement actions each. Additionally, 1,247 of 5,448 total licensees (22.9

percent) received one premises inspection and 145 (11.6 percent) had between one and five enforcement actions each. Though it was unclear whether premises inspections could have prevented noncompliance, the purpose of premises inspections was to help ensure licensee compliance. Without a Division-developed risk model, we developed one. While it is only one way to examine relative licensee risk, our risk model indicated that at least 852 licensees (37.8 percent) that did not receive a regulatory visit, including some with enforcement actions, were license types that were medium or higher risk.

SOP Standards Unachieved

Investigators did not achieve the 24/40 standard, under which each investigator should have conducted 1,248 premises inspections a year. Division managers acknowledged the 24/40 standard was not achieved. As shown in Table 19, investigators on average conducted between 3.7 and 12.8 inspections, or between 15.4 and 53.3 percent of the 24/40 standard, per week during SFY 2019. Meanwhile, investigators inefficiently engaged in a significant amount of excessive premises inspections. Between 1.3 and 30.7 percent of the inspections conducted within an investigator's assigned area, and between 1.5 and 25.7 percent of the inspections outside an investigator's assigned area, were excessive. At least one Division manager acknowledged that investigators, in an effort to achieve the 24/40 standard, conducted inspections of licensees which were more easily accessible.

Table 19

Premises Inspections By Area And Investigator, SFY 2019^{1,2}

Area	Licensees	Individual Investigator Premises Inspection Activity					Weekly Average Premises Inspections
		Total Premises Inspections ³	In Assigned Area		Outside Assigned Area		
			Premises Inspections ⁴	Excessive Premises Inspections ⁴	Premises Inspections ⁴	Excessive Premises Inspections ⁴	
Rockingham 1 ⁵	813	568	473 (83.3%)	76 (13.3%)	95 (16.7%)	9 (1.6%)	10.9
Rockingham 2 ⁵	348	237	33 (13.9%)	3 (1.3%)	204 (86.1%)	61 (25.7%)	4.6
Strafford	353	667	303 (45.4%)	129 (19.3%)	364 (54.6%)	106 (15.9%)	12.8
Cheshire And Sullivan ⁶	398	N/A	N/A	N/A	N/A	N/A	N/A
Grafton	496	329	292 (88.7%)	91 (27.7%)	37 (11.2%)	5 (1.5%)	6.3
Hillsborough 1	569	417	256 (61.4%)	41 (9.8%)	161 (38.6%)	59 (14.1%)	8.0
Hillsborough 2	717	553	404 (73.1%)	85 (15.4%)	149 (26.9%)	49 (8.9%)	10.6
Belknap And Carroll ⁵	583	459	408 (88.9%)	141 (30.7%)	51 (11.1%)	12 (2.6%)	8.8
Coos	181	191	128 (67.0%)	26 (13.6%)	63 (33.0%)	12 (6.3%)	3.7
Merrimack ⁵	476	527	308 (58.4%)	117 (22.2%)	219 (41.6%)	57 (10.8%)	10.1
Total	4,934	3,948	2,605 (66.0%)	709 (28.0%)	1,343 (34.0%)	370 (9.4%)	

Notes:

1. Analysis was limited to SFY 2019 due to volatility of investigator assignments and staffing changes.
2. We could not determine the appropriateness of premises inspection activity using Division data.
3. Under SOP, investigators should have conducted 1,248 premises inspections. Not all premises inspections shown were conducted in the assigned area.
4. Percentages are of the total premises inspections conducted by the assigned investigator or, for totals, of all 3,948 premises inspections.
5. Assigned investigator was either a supervisor, newly hired investigator, or reassigned investigator during SFY 2019.
6. No investigator was assigned during SFY 2019; however, 319 premises inspections, 112 (35.1 percent) of which were excessive, were conducted by nine investigators assigned to other areas and responsibilities.

Source: LBA analysis of unaudited Division data.

Excessive And Duplicative Premises Inspections

Investigators engaged in a significant amount of excessive inspections of licensees without documented noncompliance or enforcement actions during the audit period, constituting waste, indicating potential bias, and likely contributing to licensee noncompliance. Of 8,662 premises inspections conducted by investigators, 2,745 (31.7 percent) were excessive. As shown in Table 20, multiple investigators also frequently visited certain establishments outside their assigned areas which lacked any recorded noncompliance during the audit period.

Table 20**Licensees Receiving The Most Excessive Premises Inspections, SFYs 2018-2019**

License Type ¹	Town	Number Of Premises Inspections	Number Of Investigators Who Inspected ²
Combination	Concord	35	6
Combination	Hooksett	33	3
Restaurant	Durham	26	5
Restaurant	Laconia	24	9
Combination	Alton	24	2
Restaurant	Claremont	22	1
Combination	Farmington	21	2
Combination	Farmington	20	3
Restaurant	Keene	20	3
Restaurant	Concord	19	8
Combination	Somersworth	19	2
Restaurant	Dover	19	2
Combination	Durham	19	3
Combination	Hooksett	17	4
Combination	Portsmouth	17	4
Restaurant	Concord	17	6
Combination	Manchester	17	5
Restaurant	Manchester	16	2
Restaurant	Concord	16	3
Restaurant	Hampton	16	8
Restaurant	Laconia	15	7

Notes:

1. All combination licensees listed were convenience stores.
2. Visits were not simultaneous.

Source: LBA analysis of unaudited Division data.

Additionally, investigators with higher overall numbers of premises inspections also had higher numbers of excessive premises inspections. Some of the excessively-inspected licensees were conveniently located gas stations or restaurants, including four Concord locations, readily accessible from main thoroughfares, indicating some premises inspections were conducted as a

matter of convenience. The timing of excessive premises inspections at the same licensee by different investigators was sometimes a matter of days or hours, with the closest spaced instances recorded as 30 minutes apart. While it was unclear why investigators engaged in this activity, premises inspections of high-risk establishments were purportedly conducted on a frequent basis as a mitigating factor against licensee noncompliance. However, since these establishments lacked any recorded noncompliance and other licensees, with and without recorded noncompliance, were not inspected, excessive premises inspections of compliant licensees were a waste of investigator resources and contributed to Division noncompliance with statute. Importantly, management lacked a system to identify excessive inspections.

Investigators and examiners also duplicated efforts by conducting premises inspections and examinations of the same licensees. SOP considered examinations to be premises inspections, and in practice, examiners separately recorded both examinations and premises inspections while investigators only recorded premises inspections. However, examiner and investigator activity was not formally coordinated through February 2019, with investigators inspecting licensees which were regularly examined by examiners and vice versa. As shown in Table 21, examiners and investigators examined and inspected 309 of the same licensees out of 5,448 total licensees (5.7 percent), representing 15 of 44 license types (34.1 percent), during the audit period. This included several licensees that received multiple premises inspections and examinations during the two-year audit period without any enforcement action, including:

- a combination that received one examination and 24 premises inspections,
- a restaurant that received two examinations and 14 premises inspections,
- a brewpub that received four examinations and eight premises inspections, and
- a beverage manufacturer that received four examinations and four premises inspections.

Though the Division developed a protocol mandating examiners cover a specific geographic area and coordinate efforts with the area's field enforcement supervisor in February 2019, duplicative examination and premises inspection activity continued through the end of the audit period in June 2019.

Table 21

Investigator Premises Inspection And Examiner Examination Duplication, SFYs 2018-2019

License Types	Licensees Affected		Premises Inspections		Examinations	
	Total	Percent	Total	Maximum ¹	Total	Maximum ¹
Beverage Manufacturer	13	4.2	18	4	35	4
Brewpub	16	5.2	66	23	47	5
Caterers Off-site	1	0.3	9	9	1	1
Cigar Bar	12	3.9	34	13	24	5
Combination	138	44.7	349	24	146	2
Hotel	1	0.3	7	7	1	1
Liquor Manufacturer	3	1.0	3	1	10	4
Liquor/Wine/Beverage Warehouse	1	0.3	5	5	1	1
Nanobrewery	19	6.1	25	3	58	6
Restaurant	83	26.9	223	16	85	2
Social Club	1	0.3	2	2	1	1
Sports Recreation Facility	7	2.3	20	5	7	1
Veterans' Club	1	0.3	3	3	1	1
Wholesale Distributor	2	0.6	4	3	9	6
Wine Manufacturer	11	3.6	13	2	30	4
Total	309	100.0	781		456	

Note:

- ¹. Maximum values represent the highest number of premises inspections or examinations to which an individual licensee was subjected.

Source: LBA analysis of unaudited Division data.

Inefficient And Uneven Distribution Of Responsibilities

Geographic areas assigned to investigators were not risk-based or data-informed, being neither reflective of the distribution of licensees and risk of potential noncompliance nor based on analyses of past enforcement actions. Sometimes supervisors or multiple investigators covered geographic areas if staffing levels were insufficient. As shown in Table 22, of the 5,448 licensees, 4,934 (90.6 percent) were in-State and the distribution of in-State licensees ranged from 181 (3.3 percent) in Coos County to 813 (14.9 percent) in Rockingham County's area 1. While geographically larger, more rural areas may have required more travel between licensee locations to conduct premises inspections, the lack of a risk-based, data-informed staffing analysis made it impossible to determine the efficiency of workload distribution. No investigator was assigned out-of-State licensees.

Table 22

Premises Inspections¹ By Area, SFY 2019

Section	Area	Licensees	Percent Of Total Licensees	Subjected To Premises Inspection		Not Subjected To Premises Inspection	
				Total	Percent Of Area Total	Total	Percent Of Area Total
A	Rockingham 1	813	14.9	508	62.5	305	37.5
	Rockingham 2	348	6.4	213	61.2	135	38.8
	Strafford	353	6.5	226	64.0	127	36.0
	Subtotal	1,514	27.8	947	62.5	567	37.5
B	Cheshire And Sullivan	398	7.3	270	67.8	128	32.2
	Grafton	496	9.1	302	60.9	194	39.1
	Hillsborough 1	569	10.4	338	59.4	231	40.6
	Hillsborough 2	717	13.2	465	64.9	252	35.1
	Subtotal	2,180	40.0	1,375	63.1	805	36.9
C	Belknap And Carroll	583	10.7	410	70.3	173	29.7
	Coos	181	3.3	129	71.3	52	28.7
	Merrimack	476	8.7	333	70.0	143	30.0
	Subtotal	1,240	22.8	872	70.3	368	29.7
None	Out-Of-State	514	9.4	2	0.4	512	99.6
Total		5,448	100.0	3,196	58.7²	2,252	41.3²

Notes:

1. Includes all premises inspections in Division data, including mis-coded activities, excessive inspections, and other inaccuracies.
2. Percentages are of total licensees.

Source: LBA analysis of unaudited Division data.

Investigators had many responsibilities other than premises inspections, decreasing the amount of time they could dedicate to conducting premises inspections. Investigators were not only responsible for premises inspections and other enforcement activity in their assigned area, but also:

- conducted licensing-related inspections,
- administered aspects of the Division's licensing-related training efforts,
- trained other Division employees,
- covered areas lacking an assigned investigator,
- helped other section members with various duties, and
- assisted with large events and busy locales.

Further, inefficiency existed within investigator-involved licensing and training activities, and investigators conducted extra-jurisdictional, elective, and ineffective enforcement operations. These duties decreased the time investigators could dedicate to conducting premises inspections and helping ensure proper control.

Inconsistent Premises Inspection Practices

Premises inspection and recordkeeping practices were inconsistent due to a lack of sufficient guidance in rule and SOPs.

- The “annual” inspection standard was inconsistently met, with premises inspections, if they occurred, occurring between 11 and 485 days apart, a range of 474 days.
- There was no standard for how quickly a new licensee should be subjected to a premises inspection following initial licensure. We found instances where licensees were inspected as many as 373 days after initial licensure and where premises inspections recorded as “annual” inspections occurred as few as 68 days after.
- Rules contained ambiguous requirements and terms. For instance, combination licensees were required to have grocery items, including breads, meat, dairy, milk, cereals, vegetables, fruit, and snacks, but none of these terms were defined in rule and investigator and examiner interpretations were reportedly inconsistent. We reviewed ten verbal warnings issued to combination licensees for grocery stock violations and found three cases (30.0 percent) where investigators and examiners inconsistently interpreted rules. Investigators and examiners were also reportedly inconsistent with how they defined food requirements for certain license types, including beverage manufacturers, brewpubs, and nanobreweries.

Inadequate Information Management

Premises inspection data did not accurately reflect the number of inspections conducted and information technology resources inadequately supported information management. A lack of inter-bureau communications and readily-shared data led to some premises inspections being attempted at licensee locations after they were out-of-business, in one case, for nearly two months. The activity code used in the enforcement DBMS for premises inspections was also used for other activities, including liquor store and Commission office patrols, beverage destruction observations, and compliance checks. The code was applied to 321 locations (3.7 percent of all premises inspections) without a license or without a valid license number. The Division also did not differentiate between so-called “annual inspections” which were supposed to be conducted once a year and other premises inspections, such as spot checks, which were conducted more frequently, an important difference in practice. The premises inspection activity code appeared to be a “catch-all.” Since data entered in the Division’s enforcement DBMS was the final record in most cases, the Division could not determine the appropriateness of instances where licensees received multiple premises inspections only using enforcement data.

The Division reported reconstituting the defunct CIU and planning to do more analyses to identify potential threats to the Commission, licensees, and the State as a whole, thereby potentially guiding premises inspection activity. However, these efforts were still under development during the audit period, lacking a resourced, time-phased plan to accomplish their objective.

Recommendations:

We recommend Commission management develop rules covering all premises inspection criteria and activities, including clarifying grocery stock and food definitions for licensees.

We recommend Division management improve premises inspection controls, and:

- **comply with statute requiring regular premises inspections of all licensees;**
- **conduct regular, comprehensive risk assessments and data analysis to determine which, when, how, and how often licensees will be subjected to premises inspections;**
- **incorporate risk assessments and data analysis into a Division-wide strategy on premises inspections;**
- **develop, implement, monitor, and refine goals, objectives, and targets tied to premises inspection outputs and outcomes;**
- **improve and standardize data entry procedures to ensure premises inspection-related data is consistent, comprehensive, and reliable;**
- **develop, implement, monitor, and refine a comprehensive, risk-based, data-informed SOP and checklist covering premises inspection activity, incorporating data quality and entry controls, the February 2019 protocol, and other inspection related practices;**
- **refine, implement, and monitor performance standards;**
- **rationalize investigators' and examiners' duties related to premises inspections;**
- **undertake comprehensive data collection to memorialize results; and**
- **routinely monitor and report on performance by individual and section, as well as Division-wide.**

Agency Response:

We concur.

Compliance Checks

In addition to premises inspections, investigators conducted compliance checks at licensed locations to help proactively ensure proper control. Compliance checks involved Division investigators or law enforcement personnel using an underage buyer to attempt alcoholic beverage purchases from licensees. Not conducting compliance checks purportedly put the public's safety and wellbeing at risk. Unaudited Division data indicated 717 of 5,448 licensees (13.2 percent) were subjected to one or more compliance checks during SFYs 2018-2019. However, the use of compliance checks reportedly decreased "significantly" by CY 2016 and management's system of control over compliance checks was at an initial level of maturity.

Observation No. 43

Improve Controls Over Compliance Checks

Compliance check operations did not efficiently and effectively ensure proper control. Compliance checks were sporadically conducted and reliant on third-party requests, complaints, or referrals. They were not guided by a comprehensive, data-informed, risk-based enforcement strategy. Though the Division developed a detailed SOP to guide compliance check operations, the SOP provided for administrative sanctions that exceeded rules, included ad hoc rules, and was incomplete and inconsistently followed. In practice, some licensees in jurisdictions subjected to compliance checks were skipped and received no follow-up, and licensee compliance rates from compliance checks by municipality ranged from zero to 100 percent. The Division ultimately did not know how many compliance checks were conducted due to data collection and entry inconsistencies. Additionally, the Division could not demonstrate whether municipalities with high-risk licensees were consistently subjected to compliance checks, and unaudited Division data demonstrated they were not. Data collected was related to specific enforcement activity conducted at licensees during compliance checks with no connection to larger trends, and there were inconsistencies with what information was collected and how it was recorded.

No Risk-based, Data-informed Strategy

Compliance checks were not guided by strategy or data-informed risk assessments, but instead by intuition, the availability of third-party funding, and requests, complaints, or referrals. Without a comprehensive strategy, implementing plans, and effective fiscal management, it was unclear why compliance checks would be reliant on third-party funding rather than available Division resources if they were an effective enforcement tool. The Division lacked cost-benefit or other analyses to determine whether compliance checks were an effective use of resources. It had not established the relative effectiveness of compliance checks versus premises inspections or other compliance monitoring activities. Meanwhile, the Division asserted that conducting compliance checks could help save lives, ensure public safety, reduce underage access to alcoholic beverages, and decrease the likelihood that certain youth would engage in criminal behavior, but lacked evidence compliance checks achieved these results. Considering investigators at times undertook elective, non-jurisdictional, and inefficient activities, the Division had more resources to conduct compliance checks than it committed.

Lack Of Risk Basis

Compliance check operations were not risk-based. Without a Division risk management process or relevant risk assessment, we created a risk model, shown in Table 23, based on Division data to illustrate relative risk among municipalities. Municipality risk level was based on the likelihood of *Alcoholic Beverages* noncompliance occurring and included municipalities with 20 or more licensees and with risk levels of medium or higher. Operations were inconsistently carried out in high risk municipalities, with three of five medium high or high risk municipalities (60.0 percent) having compliance check activity recorded during the audit period. Meanwhile, operations, some of them extensive, were conducted in 19 of the 190 municipalities (10.0 percent) having between one and 19 licensees and low or negligible risk levels.

Table 23

Compliance Check Operations During SFYs 2018-2019 And LBA-assessed Risk Level

Municipality	Licensees					LBA-assessed Risk Level ¹
	Total	Subjected to Compliance Check		Not Subjected to Compliance Check		
		Subtotal	Percent	Subtotal	Percent	
Manchester	466	263	56.4	203	43.6	High
Nashua	308	0	0.0	308	100.0	High
Portsmouth	254	1	0.4	253	99.6	Medium-High
Concord	198	0	0.0	198	100.0	Medium-High
Dover	124	26	21.0	98	79.0	Medium-High
Keene	115	0	0.0	115	100.0	Medium
Hampton	110	0	0.0	110	100.0	Medium
Conway	109	0	0.0	109	100.0	Medium
Salem	97	0	0.0	97	100.0	Medium
Laconia	87	0	0.0	87	100.0	Medium
Rochester	84	0	0.0	84	100.0	Medium
Exeter	77	0	0.0	77	100.0	Medium
Londonderry	75	0	0.0	75	100.0	Medium
Hudson	71	0	0.0	71	100.0	Medium
Merrimack	65	45	69.2	20	30.8	Medium
Bedford	64	41	64.1	23	35.9	Medium
Milford	61	0	0.0	61	100.0	Medium
Somersworth	54	0	0.0	54	100.0	Medium
Seabrook	52	0	0.0	52	100.0	Medium
Hooksett	50	0	0.0	50	100.0	Medium
Claremont	48	35	72.9	13	27.1	Medium
Lincoln	47	29	61.7	18	38.3	Medium
Plymouth	46	0	0.0	46	100.0	Medium
Berlin	40	24	60.0	16	40.0	Medium
Windham	37	0	0.0	37	100.0	Medium
Epping	37	0	0.0	37	100.0	Medium
Rye	35	4	11.4	31	88.6	Medium
Gilford	35	0	0.0	35	100.0	Medium
Durham	23	20	87.0	3	13.0	Medium

Note:

- ¹ Risk denotes likelihood of *Alcoholic Beverages* noncompliance occurring for each license type and subtype.

Source: LBA analysis of unaudited Division licensing and enforcement data.

A small proportion of licensees were subject to compliance checks, as shown in Table 24. Though all six investigators we surveyed or interviewed asserted that necessary compliance check operations were carried out, 717 of 5,448 licensees (13.2 percent) were listed as being subject to one or more compliance checks in unaudited Division enforcement and licensing data. While a

Division employee purported compliance checks were only conducted of licensees that sold alcoholic beverage directly to the public, 325 of 1,635 combination licensees (19.9 percent) and 301 of 1,790 restaurants (16.8 percent), the two most common license types, were listed as receiving compliance checks in Division data.

Table 24

Licensees Subjected To Compliance Checks, SFYs 2018-2019^{1,2}

License Types And Subtypes	LBA-assessed ³	Checked	Not Checked	Total
Combination	Medium-High	325	1,310	1,635
Restaurant	Medium-High	301	1,489	1,790
Ballroom	Medium	1	7	8
Veterans' Club	Medium	16	48	64
Brewpub	Medium-Low	3	24	27
Caterers Off-site	Medium-Low	6	96	102
Hotel	Medium-Low	7	81	88
Performing Arts Facility	Medium-Low	2	20	22
Social Club	Medium-Low	23	31	54
Sports Recreation Facility	Medium-Low	11	111	122
Sports/Entertainment Complex	Medium-Low	2	2	4
Beverage Manufacturer	Low	1	38	39
Caterers On-site	Low	2	36	38
Cigar Bar	Low	3	19	22
Retail Table Wine	Low	9	60	69
Wine Manufacturer	Low	1	42	43
College Club	Negligible	1	1	2
Nanobrewery	Negligible	2	46	48
Seasonal Caterers Off-site	Negligible	1	3	4
Totals		717	3,464	4,181

Notes:

1. Excludes 1,267 licensees of 37 license types and seasonal subtypes active during the audit period and not subjected to compliance checks according to Division enforcement data.
2. Data were limited by inconsistent and incomplete data entry.
3. Risk denotes likelihood of *Alcoholic Beverages* noncompliance occurring for each license type and subtype.

Source: LBA analysis of unaudited Division licensing and enforcement data.

Inconsistent Effectiveness

The results of compliance check operations showed Division enforcement was inconsistently effective. When asked about noncompliance rates of licensees in municipalities subjected to compliance checks, the six investigators we interviewed or surveyed, responded rates ranged from 10 to 50 percent. However, we reviewed 12 subjectively-selected compliance check operations the

Division recorded conducting during SFY 2019 and found these resulted in noncompliance rates ranging between zero and 100 percent by municipality. We also found certain licensees were skipped during compliance check operations, with as many as 67.6 percent of licensees in one municipality not being checked, for inconsistently discernable reasons and without consistent follow-up. Of 717 licensees listed as subjected to compliance checks in Division enforcement and licensing data, 206 (28.7 percent) were subjected to enforcement actions not necessarily tied to compliance checks. Of these, 192 (93.2 percent) were also subjected to premises inspections, calling into question whether premises inspection activity was an effective means to ensure compliance. Also, in one case, we identified a compliance check with accompanying enforcement action for noncompliance occurred 15 days after the licensee passed a premises inspection.

Inadequate Information Management

The Division inadequately controlled data quality and monitored compliance check data. Consequently, the Division could not determine how many compliance check operations occurred, nor which licensees were checked and how many instances of noncompliance occurred in a given operation. Unaudited Division enforcement data indicated 13 of 27 investigators (48.1 percent) logged between five and 178 compliance checks, for a total of 803 during the audit period. However, these data not only included establishments receiving a compliance check, but also planning activities, police department visits, and other activities erroneously coded as compliance checks. Data collected on compliance check activity was inconsistent, with required forms and data missing. Investigators were also inconsistent in how they coded compliance check-related events. In the enforcement database, compliance check operations were at times coded as one event or several events, some duplication of compliance check records occurred, and some compliance checks were coded as premises inspections. Licensee noncompliance was coded as arising from both compliance checks and premises inspections.

SOP Not Followed, Current, Or Consistent With Rules

Aspects of the SOP were reportedly not reflective of current practices, the SOP was inconsistent with rules, and the Division inconsistently followed SOP requirements.

- Though compliance check operations were to be overseen by the Field Operations Bureau Administrator, there was no evidence that such oversight occurred. Rather, it appeared compliance check operations were done sporadically and originated at the individual investigator level without managerial oversight.
- Compliance check routes were to be planned and a list of licensees obtained, but the Division inconsistently retained such documentation in its records. Investigators purportedly did compliance checks by intuition rather than data-informed planning pursuant to a strategy.
- Compliance checks were to include all licensees within a community, including State liquor stores. However, investigators purportedly only conducted compliance checks of licensed premises where alcoholic beverage was being served directly to the public and they could conveniently access the establishment. Even these types of premises

were inconsistently checked. Furthermore, not all licensees in a jurisdiction were subjected to compliance checks during a given operation and licensees not operating at the time of the compliance check operation inconsistently received follow-up.

- Investigators were required to use specific forms and enter information into the enforcement database, including information about licensee noncompliance, the underage buyer used for the operation, and the items sold, but inconsistently did so in practice.
- If an establishment failed a compliance check, investigators were to issue a notice of verbal instruction, informing establishment management about the violation, that four points would be assessed to the liquor license, and that a member of management would be required to attend a Management Training Seminar (MTS) class within 90 days. A standard form was also to be completed and issued to each establishment at the time of the failed alcohol compliance check. For a first offense the investigator could make a plea offer to the licensee to just attend a Total Education in Alcohol Management class within a 90-day time period and have the prohibited sales charge placed “on file” for one year. For subsequent violations, the investigator was to proceed with the criminal prosecution, and enhanced sanctions were recommended. However, the Division inconsistently levied administrative sanctions during compliance checks, as we discuss in Observation No. 45, and there was insufficient documentation to determine whether sanctions were levied as required by policy. The MTS and Total Education in Alcohol Management training requirements went beyond the sanctions specified by rule, plea offers were contrary to the minimum sanctions required by rules, and, in SFY 2019, sanctions were consistently those provided for in SOP, not rules. Rule stated that compliance check-related offenses would result in a fine of \$500 and imposition of no more than four license points annually for one licensee.

Compliance Check Rules Incomplete

In addition to rules-related issues with SOPs, compliance check-related rules did not detail:

- processes whereby non-Commission volunteers would participate in a panel to select underage buyers and underage buyers would participate in compliance checks,
- processes partner local law enforcement agencies had to follow,
- prohibitions on Division participation in a compliance check operation when a partner agency would not seek administrative action for licensee noncompliance, and
- provisions that the Division would issue only a verbal notice to a licensee if a partner agency did not follow the Division’s compliance check protocol when conducting operations.

Recommendations:

We recommend Commission management develop comprehensive compliance check rules.

We recommend Division management ensure compliance check operations assure proper control, and:

- conduct comprehensive, ongoing risk assessments of the Division’s operating environment and *Alcoholic Beverages*-related activity in the State;
- based on assessed risks, determine to what extent compliance checks should be done, including how, when, and where;
- include in strategies and plans elements on compliance checks;
- develop, implement, monitor, and refine goals, objectives, targets, and performance measures on compliance check processes;
- refine, implement, and monitor compliance check SOPs and performance;
- routinely monitor and report on performance by individual and section, as well as Division-wide; and
- standardize compliance check data entry procedures and data coding standards to ensure reliability.

Agency Response:

We concur.

Complaint Management

Investigators conducted administrative and criminal investigations in response to complaints, referrals, and self-identified potential noncompliance. Complaint management was a reactive compliance monitoring control and there were 90 licensees listed in enforcement data as being subject to complaints. However, management’s system of control over complaints was undeveloped.

Observation No. 44

Improve Controls Over Complaint Management

The Division’s system of control over complaint management was inadequately structured, measured, and monitored. Complaint management was integral to achieving expected outcomes and helping ensure the public, licensees, permittees, and Division employees were treated consistently. Two distinct types of complaints existed in practice:

- complaints against licensees, which lacked an SOP but did have a complaint form and instructional brochure; and
- complaints against the Division or its employees, which had an SOP and supporting form that was not publicly available.

Rules contained neither process nor their forms, thereby making both processes products of ad hoc rulemaking. All available procedures, formal or informal, were required to be in rule to have effect and statutory time limits on agency actions applied to complaints. SOPs should operationalize rules

and further effective and efficient operation. Each complaint should be recorded and fully and timely investigated, and complainants should be kept informed during the investigation's lifecycle. Summary statistical reports should be published. However, the Division lacked a strategy, plans, goals, objectives, targets, performance measures, or initiatives to ensure compliant management achieved expected outcomes.

Licensed Establishment Complaints

Practices for managing complaints against licensed establishments did not ensure outcomes were achieved. Complaints could help inform the Division's efforts to ensure proper control of alcoholic beverages and protect the public. The published complaint process underpinned the public's right to expect efficient, fair, and impartial enforcement and licensing, and reportedly provided for "a fair and equitable system by which complaints or concerns from the public [were] thoroughly, completely, and impartially investigated." However, the Division's licensed establishment complaint form and an accompanying brochure were outdated and:

- required submission of a variety of information, without supporting rules;
- lacked a formal triage process and supporting processes, such as recordkeeping and analysis;
- lacked monitoring, such as timeliness and compliance with time limits, and performance reporting;
- lacked procedures to keep complainants informed throughout the lifecycle of the process; and
- lacked follow-up, supervisory oversight, and close out procedures.

Practice provided multiple modes by which someone could submit a complaint, but these were not accommodated in other, relevant SOPs, such as those related to intelligence operations, investigations, compliance check operations, examinations, and licensing. Reportedly, licensed establishment complaints were not readily accessible by field investigators and resolution of complaints through investigations was unmonitored. Where data were available, as many as 84 days lapsed between a complaint and subsequent regulatory visits.

Complaints Against The Division Or Its Employees

The SOP on complaints against the Division or its employees was incomplete and procedures were not included in rules. The SOP on complaints against the Division and its employees was intended to improve the quality of service "through a fair and equitable system, by which complaints are received, investigated, and evaluated." The SOP provided specific procedures to follow and a form to use when citizens filed complaints, but without underpinning rules. The SOP provided "[a]ll persons who file a citizen complaint shall be included in the 'Master Name Index File,'" but there was no clear procedure to notify citizens of their inclusion into this database, nor was there a rule to underpin it. Neither were database security and expunging citizen data therefrom addressed by the SOP. Formal investigations were to be concluded in 14 or fewer days, except under extenuating circumstances. There was no corresponding time limit on informal complaint investigations. Output data were to be collected for statistical purposes and an annual summary of formal complaints and internal investigations completed was to be created at the conclusion of each

calendar year. However, no relevant report was published and there was no monitoring of timeliness.

Recommendations:

We recommend Commission management develop, implement, monitor, and refine complaint-related rules and forms.

We recommend Division management improve complaint management, and:

- **develop, implement, monitor, and refine complaint management SOPs consistent with rules;**
- **ensure SOPs reflect the complaint lifecycle and include complainant communication throughout;**
- **fully integrate related and dependent SOPs, such as licensing, intelligence, and investigations;**
- **incorporate complaint data into intelligence production;**
- **monitor investigation timeliness and compliance with statutory time limits; and**
- **publicly report on complaints cyclically, and their effect on ensuring proper control and public safety.**

Agency Response:

We concur.

Investigating And Sanctioning Noncompliance

Statute generally provided all noncompliance with requirements of *Alcoholic Beverages* or implementing rules was a misdemeanor, and licensees not paying all fees due, among other noncompliance, was a felony. Statute provided some instances of noncompliance were a violation-level offense. While statute established some specific administrative sanctions, statute also required the Commission adopt a formal enforcement policy in rules that defined disciplinary action the Commission would take for noncompliance. Commission rules required administrative sanctions be imposed on noncompliant licensees and permittees and established general sanctions for broad ranges of offenses. Sanctions were to be preceded by investigations. As shown in Figure 15, rules structured two distinct procedures investigators were required to follow.

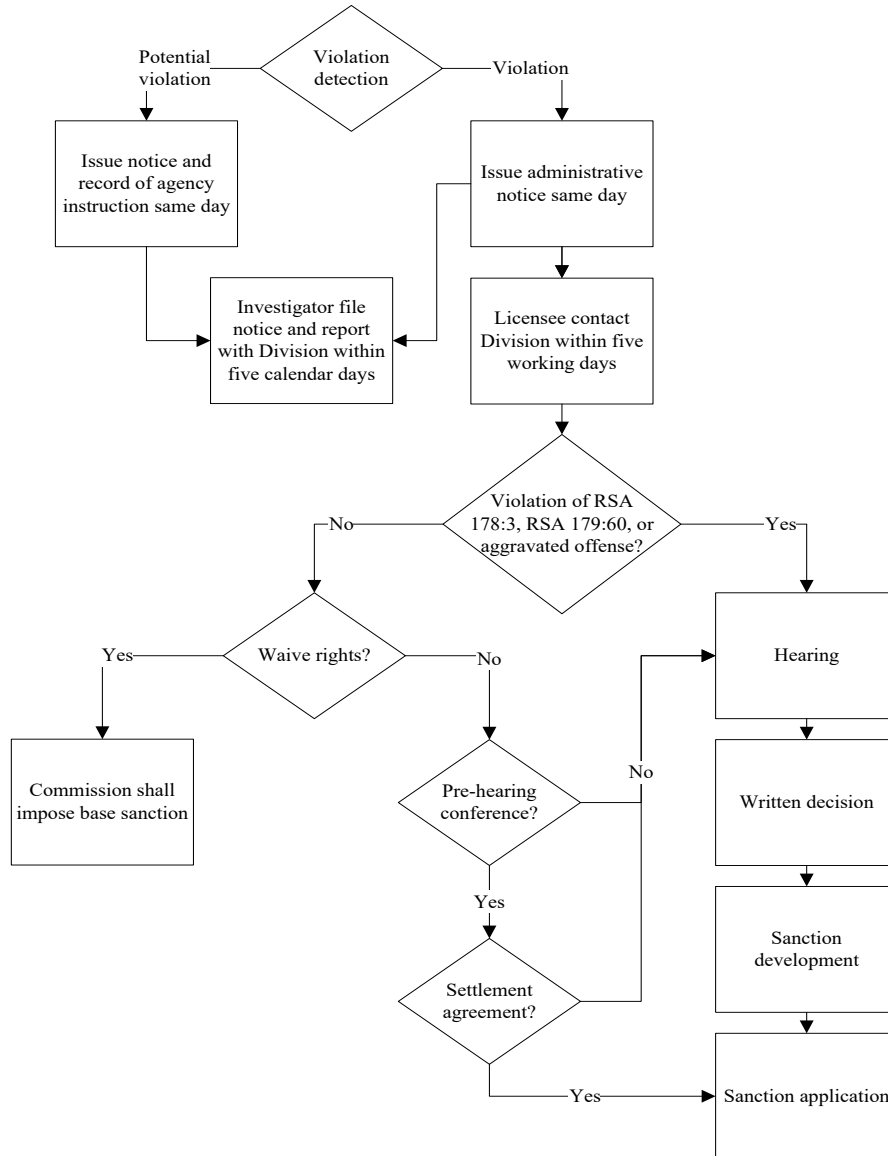
- Upon detecting a violation, investigators were required to issue an administrative notice of agency action specifying the violation and sanction, and file the notice and a full report of the violation with the Division within five days.
- Upon detecting conditions that could lead to violations, investigators were required to discuss the problem and corrective action with the licensee, issue a notice and record of agency instruction, and file the notice with a narrative detailing the conditions and circumstances with the Division within five days.

Rules provided only the Commission had authority to levy administrative sanctions for noncompliance.

As shown in Figure 15, once a violation was identified, the Division was to bring it before the Commission. If the offense involved statutory violations related to *License Applications, Qualifications, and Renewal* or *Interference with Liquor Investigators*, or was an aggravated offense, the Commission would schedule a hearing. If not, the licensee was required to contact the Commission within five working days to specify whether they would like to schedule a hearing or pre-hearing conference, or waive their rights to a hearing and accept the base sanctions established by rules. Instances where a notice and record of agency instruction were issued would not lead to a hearing.

Noncompliant licensees or permittees could be fined and have their license or permit suspended or revoked after notice and hearing. The Commission could also accept petitions from municipalities to revoke the license of a licensee in their community. A licensee or permittee had a right to appeal an administrative sanction; however, the Commission held the discretion to suspend a license pending an appeal. There was no routine aggregation of sanctions-related data on a periodic basis, such as annually, to demonstrate trends. Reportedly, in CY 2016, the latest data published, 207 cases were reviewed by the Commission, 101 fines totaling \$42,750 were collected, 27 settlement agreements prepared, 80 license suspension days negotiated or implemented, and 11 administrative hearings were planned, while four were conducted. Unaudited Division case management logs listed 583 investigations during the audit period, 318 (54.5 percent) of which were not tied to a licensee or permittee. The enforcement database listed 2,343 sanctions, including 822 arrests (35.1 percent), 270 administrative notices (11.5 percent), 625 verbal warnings (26.7 percent), and 626 verbal counseling (26.7 percent). Overall, 526 sanctions (22.4 percent) were not tied to a licensee or permittee.

Figure 15

Commission Investigation And Sanctioning Process In Rule^{1, 2}

Notes:

1. Practice was inconsistent with the rule-based process depicted.
2. The reference to Revised Statutes Annotated (RSA) 178:3, *License Applications, Qualifications, and Renewal*, in Commission rules may be outdated, and may refer to RSA 178:1, *Licenses Required; Enforceability of Contracts*. RSA 179:60 was *Interference with Liquor Investigators*.

Source: LBA analysis of rules.

However, statutory and regulatory requirements controlling investigations and sanctions were inconsistently followed and management's system of control over complying with investigation and sanctions-related statutes, rules, and SOPs was at an initial level of maturity.

Observation No. 45

Comply With And Improve Regulatory And Procedural Construct Over Investigations And Sanctions

Investigations into, and sanctions for, noncompliance with *Alcoholic Beverages* were underpinned by a fragmented, inconsistently implemented, and inconsistently controlled regulatory and procedural construct, leading to scope creep, inconsistent results, unoptimized profitability, and improper control. Management lacked risk-based and data-informed strategies and plans; a performance measurement system demonstrating outcomes were achieved; adequate oversight, monitoring, and enforcement; comprehensive rules and SOPs; and complete, integrated knowledge management systems. There was no systematic evaluation of practices, and controls to ensure consistency between statute, rules, SOPs, and practice did not exist.

Most noncompliance with *Alcoholic Beverages* was a misdemeanor and could have also involved a variety of administrative sanctions based on statute and rule. The Commission alone was authorized to levy administrative sanctions. However, in practice only some violations were treated as a misdemeanor and Division employees, sworn and unsworn, independently levied administrative sanctions without consistently informing the Commission. Additionally, the Division inconsistently followed sanctions-related requirements in rule and instead used an improvised collection of graduated sanctions without adopting or standardizing procedures in rules or SOPs, leaving undue discretion for levying sanctions with staff and accommodating unequal treatment of violators. Compared to the Commission's tobacco administrative sanctions rules, which included graduated sanctions and incorporated evaluations of aggravating and mitigating factors, alcohol-related enforcement rules were disorganized, inconsistently and unclearly provided for graduated sanctions, and did not require evaluations of aggravating and mitigating factors unless an administrative hearing was held.

Fragmented Construct Contributed To Inconsistency

The regulatory framework for investigations and sanctions was fragmented, inconsistently clear, and not fully implemented. The Division was to fairly and impartially enforce statutes and rules, but requirements in statutes and rules were inconsistently implemented and followed. Without a sound framework consistently followed, the Division could not ensure fairness and impartiality were always achieved. Not applying required sanctions for noncompliance increased the risk of noncompliance persisting and inconsistent treatment of licensees and permittees. Fragmentation and inadequate clarity can compromise consistency and provide for multiple interpretations of the same requirement.

Rules, SOPs, And Practices Deviated From Statute

Rules, SOPs, and practices were inconsistent with statute. Of 27 sanctions listed in statute, eight (29.6 percent) were either unimplemented or inconsistently implemented by rules or practices.

- The Division inconsistently treated violations of liquor laws and rules as a misdemeanor, which was required by statute, with rules requiring administrative action but being silent on criminal penalties. Unaudited enforcement data indicated 1,521 of 2,343 sanctions (64.9 percent) levied were solely administrative, involving warnings, notices, fines, or other administrative sanctions, while the remaining 822 sanctions (35.1 percent) involved arrests.
- The Division inconsistently sanctioned entities possessing or transferring alcoholic beverages without a license or permit. Such offenses were a felony and the Commission was required to prosecute illegal direct shipments, but rule mandated a \$100 fine be levied and corrective Commission order be issued for each violation. Sanctions for noncompliance during the audit period were inconsistent. For instance, unpermitted direct shippers sent an unknown quantity of alcoholic beverage into the State, some of which was identified and even allowed by the Division, yet none were charged with a felony or prosecuted, and no fines were levied. Furthermore, at least 207 licensees operated without valid licenses after expiration during the audit period due to inadequate Division controls over license expiration, and a manufacturer was found producing alcoholic beverage before obtaining a license, but no sanction was levied and the noncompliant activity was not recorded in the enforcement database.
- Rules did not incorporate the statutory sanction of \$250 for direct shippers that untimely filed required monthly reports, instead requiring a \$100 fine. The Division inconsistently sanctioned direct shippers for untimely reporting during the audit period, as we discuss in Observation No. 47.
- The Division did not implement a statutory and regulatory requirement to fine beverage vendors, brewpubs, nanobreweries, or beverage manufacturers \$250 for noncompliance with product, package, and container approval requirements. The Division lacked a comprehensive understanding of whether products sold statewide had obtained necessary product, package, and container approvals. Requirements for wine manufacturers to obtain bottle approvals were unimplemented and beverage vendor, brewpub, nanobrewery, or beverage manufacturer product, package, and container approval requirements were inconsistently implemented. Additionally, none of the four instances of noncompliance with product, package, and container requirements recorded in unaudited Division enforcement data resulted in a fine.

Investigative Practices Deviated From Rule

Division investigative practices did not comply with rules. Some violations occurred without any formal sanctions; certain Division employees, sworn and unsworn, levied administrative sanctions without delegated authority; the Division allowed non-investigators to engage in investigative

procedures that rule limited to investigators; and the Division did not monitor compliance with the five-day report filing requirement in rule. Additionally, instead of using the rule-based administrative notice of agency action for noncompliance or the notice and record of agency instruction for potential noncompliance, the Division instead used:

- verbal counseling recorded only in the enforcement database;
- multiple versions of “written verbal” warning forms;
- emails;
- illegal shipment letters for multiple types of noncompliance related to the Direct Shipper Program in addition to illegal shipments;
- debit and credit memos for examination-related noncompliance;
- warning letters, which sometimes inaccurately reflected the potential sanction for noncompliance; and
- cease and desist letters.

None of the forms or letters were adopted in or accommodated by rule. Furthermore, the notice and record of agency instruction was not used for potential noncompliance, and verbal counseling and “written verbal” warnings were at times used instead for actual violations. The verbal warning form itself demonstrated a violation occurred but a corrective instruction was instead issued. Some documents conveying noncompliance to licensees also imposed other administrative actions on licensees, such as requiring training, but without a basis in rule or a Commission order following a hearing. Offenses could also lead to other administrative sanctions following hearings or settlement agreements, such as the Commission ordering licensees take certain educational courses, issuing points, restricting alcoholic beverage service locations and hours, and suspending licenses.

Hearings Practices Deviated From Rule

Hearing procedures specified in rules were inconsistently followed in practice. Division practices deviated substantially from rules, by:

- disregarding the same-day licensee notification and five-day investigator reporting requirements and instead relying on conflicting investigation timelines in SOP that allowed for reporting at least ten days after noncompliance was discovered, and which could take days, months, or years in practice to complete, as we discuss in Observation No. 46;
- circumventing hearing requirements for certain direct shipper violations, particularly related to the Commission’s improvised strategy to deny permits to retailer direct shippers by inconsistently offering a hearing to permittees denied permit renewal;
- not including or inconsistently including necessary due process information on verbal warning and administrative notice forms provided to licensees when noncompliance occurred, such as information on whether the licensee could waive a hearing and the notification timeline requirements to schedule a hearing;
- inconsistently notifying the Commission when administrative sanctions were administered, including 20 of 110 instances (18.2 percent) where an administrative

notice listed in enforcement data was tied to an offense but the Commission was not apprised; and

- allowing noncompliance lacking an administrative notice to come before the Commission for the application of administrative sanctions, including four instances where either a verbal warning or verbal counseling tied to an offense was listed in enforcement data, but was referred to the Commission for administrative sanctions.

Inconsistent And Improvised Graduated Sanctions Practices Deviated From Rule

The few graduated sanctions in rule were inconsistently implemented and the Division purportedly used a separate, improvised graduated sanctions process without associated requirements in rule and without codifying procedures in SOPs.

- Multiple violations related to gambling, illegal lotteries, sports betting, and similar activities on licensee premises were to lead to a series of three sanctions in rules, culminating with license revocation. Implementation was inconsistent, with two related violations listed in Division of Enforcement and Licensing Meeting (Division Meeting) minutes, and neither included the 30-day suspension required by rule for noncompliance. Additionally, enforcement data included nine more gambling violations investigated or observed during the audit period, none of which led to any of the rule-based specific sanctions being levied, but instead resulted in verbal counseling or verbal warning.
- Aggravated violations, vaguely defined in rule as any violation of statute or a Commission order endangering the public or resulting in injury, death, or property damage of at least \$1,000, committed within a 24 month period, were to lead to a series of three increasingly strict sanctions, culminating with license revocation. However, unaudited enforcement data demonstrated aggravated violations committed, even by repeat offenders, did not lead to the graduated sanctions specified in rule. For instance, there were 37 repeat offenders listed in Division Meeting minutes during the audit period, 22 (59.5 percent) of whom served alcoholic beverages to underage or intoxicated individuals, but no rule-required graduated sanctions were recorded. Additionally, defining aggravated violations as any violation which endangered public safety created a vague standard, making it unclear what violations the Commission did or did not consider aggravated.

Instead of following graduated sanctions requirements in rule, the Division purportedly improvised its own graduated sanctions process that was inconsistently followed in practice. Division management generally articulated a progressive approach to remediating noncompliance. Initially involving education instead of seeking administrative sanctions, such as fines, license modification, or suspension and revocation, progressively harsh sanctions would be sought for continued noncompliance. However, this approach was contrary to statute and rule, was not formalized in SOP, and was unmeasured for effectiveness. Further, sanctions did not always increase with repeat offenses. For instance:

- three of 12 grocery stock violation investigations (25.0 percent) we reviewed, levied by both investigators and examiners, involved a repeated offense of the same violation, yet the sanctions levied were all verbal warnings and there was no escalation;
- some direct shippers repeatedly violated statute, rules, and informal requirements, including 23 of 259 entities (8.9 percent) listed on the unauthorized direct shipper list during the audit period, subjecting them to a \$100 fine and corrective Commission order, but the Division neither followed rules and applied a sanction nor escalated disciplinary action against entities with multiple offenses;
- certain licensees required to monthly file beverage taxes failed to file or file timely, including two of six licensees (33.3 percent) whose tax filings we reviewed, subjecting them to a felony charge, \$100 fine, a corrective Commission order, and a sanction of ten percent of additional fees for unpaid taxes, but the Division neither sought sanctions nor applied the additional ten percent tax penalty; and
- unaudited enforcement data indicated three of nine investigators (33.3 percent) assigned geographic areas favored more severe administrative or criminal sanctions over less severe administrative sanctions, as we discuss in Observation No. 47.

Unclear Points Requirements And Uncontrolled Monitoring

Rules required the Commission issue points to licensees for certain administrative sanctions, but these requirements excluded more noncompliance than they included. The use and management of points was inconsistent, making points an ineffective means of helping ensure proper control. Rules provided four points would be issued to a licensee for violations related to serving alcoholic beverage to underage or intoxicated individuals and two points would be issued for noncompliance with beverage distributor agreement requirements. No other rule-based point assignments existed and permittees were excluded from the “point” system altogether.

Points were to accumulate on a license and be considered by the Commission when deciding whether to approve or deny license renewals. Twelve or more points made licensees ineligible for license renewal. However, details on how long points would remain on a license, how points could be removed, and whether points could be transferred to a new license obtained by the same licensee were not included in rules or addressed in an SOP or practice guide. Additionally, the Division lacked information systems to monitor or manage points issued to licensees, and points were not mentioned in licensing procedures or systematically evaluated during the license renewal process. The Commission also did not review and approve license renewals in practice, so licenses with 12 or more points potentially were not timely identified and denied. Unaudited Division enforcement data demonstrated one of six licensees (16.7 percent) issued 12 or more points during the audit period, and met criteria for denial, was nonetheless allowed to renew their license. Furthermore, rules and practice lacked any formalization of a statute of limitations or other timeframe outside which prior noncompliance would no longer be considered.

Additional Practice Deviations From Rule

There were additional instances where sanction-related practices deviated from rule.

- The Division inconsistently sanctioned licensed carriers for shipping products for unauthorized direct shippers. Transporting alcoholic beverages without a license was a felony, the Division was to prosecute entities that shipped alcoholic beverages into the State for unpermitted direct shippers, and noncompliance also required administrative sanctions, including a \$100 fine and a Commission-issued order. Carriers and unpermitted P&S entities made an unknown number of shipments of alcoholic beverages into New Hampshire for unauthorized direct shippers during the audit period without criminal prosecution or administrative action.
- Commission administrative sanctions against licensees who sold alcoholic beverages to underage or intoxicated individuals, unrelated to a compliance check, were inconsistent with rule. Rule required such violations result in a \$500 fine, four license points, and a three day license suspension for a first offense; possible liquor liability insurance requirements for a second offense within a 24-month period; and possible license revocation for a repeat offense. However, of 80 violations for alcoholic beverage sales to underage or intoxicated individuals unrelated to compliance checks during the audit period listed in unaudited Division data, 11 (13.8 percent) involved a first time offense where fines, points, suspension, or some combination of these were not applied. An additional 12 violations (15.0 percent) involved six repeat offenders, with one repeat offender (16.7 percent) required to obtain liquor liability insurance. None had their license revoked.
- Commission administrative sanctions against licensees who sold alcoholic beverages to underage or intoxicated individuals related to a compliance check were inconsistent and noncompliant with rule. Rule required such violations result in a \$500 fine and no more than four license points in a calendar year. However, of 91 violations for alcoholic beverage sales to underage or intoxicated individuals related to compliance checks listed in unaudited data, fines were imposed in one instance (1.1 percent). There were no repeat offenses.
- The Division inconsistently disciplined licensees for untimely license renewal and allowed unlicensed establishments to operate after license expiration. Licensees were to have their license renewal postmarked at least 30 days before their license expired. Untimely license renewal before license expiration would result in a \$100 fine and a corrective order. However, the Division inconsistently levied administrative sanctions for untimely license renewal prior to license expiration. For instance, we found 207 instances where noncompliance was identified after licenses expired, and these violations led to inconsistent sanctions. We also reviewed license renewal records for five licensees and found one licensee (20.0 percent) submitted their license renewal application untimely but was not subject to any sanctions. Some entities operated without a license for up to 205 days.

Recommendations:

We recommend Commission management improve the investigative and sanctions framework, and:

- **conduct a comprehensive risk assessment based on violations of *Alcoholic Beverages*, including the risk these violations pose to preventing the Commission from achieving outcomes;**
- **based on the risk assessment, develop a comprehensive, clear, and consistent enforcement policy in rule which includes evaluations of aggravating and mitigating factors and a graduated administrative sanctions process, if this approach is objectively demonstrated to be the most efficient and effective approach to ensuring compliance;**
- **ensure rules establish, and the Commission enforces, specific determinate administrative sanctions for specific offenses;**
- **clarify procedures in rule for what administrative sanctions require Commission approval and the process of how administrative sanctions will be approved, and monitor procedures to ensure proper implementation by the Division;**
- **assign points to all violations, or consider abandoning the concept; and**
- **develop, implement, monitor, and refine performance measures to ensure consistency of sanctions levied.**

We recommend Division management ensure proper investigation and prosecution of noncompliance, and:

- **follow statute and rules, including pursuing criminal and administrative sanctions;**
- **discontinue ad hoc rulemaking, such as the improvised approach to graduated sanctions;**
- **include in strategy and plans an element to ensure Division compliance with investigation- and sanction-related requirements in statute and rule;**
- **develop, implement, monitor, and refine comprehensive SOPs covering sanctions-related requirements in statute and rule, including documenting comprehensive evaluations of aggravating and mitigating factors for all administrative sanctions and ensuring employees levying sanctions are properly authorized to do so;**
- **develop, implement, monitor, and refine performance measures to ensure consistency of sanctions levied; and**
- **consolidate and streamline information systems to allow for efficient and effective monitoring and management of sanctions.**

Agency Response:

We concur.

Investigating Potential Noncompliance

Investigations into potential noncompliance with *Alcoholic Beverages* and rules were a basic and important Division function, and were underpinned by a goal to successfully conclude cases to help properly control alcoholic beverages. Investigations were dependent upon reliable information; clear criteria; consistent, transparent, and objective practices; and documented results to consistently and effectively produce outcomes. Unaudited Division data recorded 583

investigations in investigator case management logs, with 318 (54.5 percent) not tied to a licensee or permittee. However, management's system of controls over investigations into potential licensee and permittee noncompliance was at an initial level of maturity.

Observation No. 46

Improve Controls Over Investigations

Investigations into potential licensee and permittee noncompliance were inconsistently effective and efficient. The Division did not follow investigative practices required by rule. Management lacked risk-based and data-informed strategies and plans; a performance measurement system demonstrating investigative outcomes were achieved; adequate oversight, monitoring, and enforcement; comprehensive rules and SOPs; and complete, integrated knowledge management systems efficiently and effectively used to inform management about performance. Consequently, bureaus, sections, and staff inconsistently conducted and documented investigations into potential licensee and permittee noncompliance, and results were similarly inconsistent. Inconsistency in investigative practices, particularly inconsistency between sworn and unsworn employees, contributed to inefficient and improper control of alcoholic beverages and inconsistent sanctions, as we discuss in Observation No. 47.

Furthermore, the Division allowed investigations into potential noncompliance outside the scope of *Alcoholic Beverages* and potential noncompliance not tied to a licensed establishment, neither of which were authorized by statute or rule. Statute and rule limited investigations to potential licensee and permittee noncompliance and investigations were to be conducted by investigators, but the Division allowed unsworn Administrative Bureau employees to conduct investigations. Investigations conducted were inconsistent between the Field Operations Bureau and the Administrative Bureau. SOPs broadly applied to any investigation, such as those conducted by examiners and investigations outside the scope of *Alcoholic Beverages*. However, while Field Operations Bureau investigations in practice had some elements of control in the form of documentation requirements, supervisory and managerial oversight, and information systems for monitoring investigation duration, controls over Administrative Bureau investigations lacked these elements, were less mature, and were less consistently documented. Examiners also engaged in levying administrative sanctions against licensees and permittees for noncompliance following investigations, a function statute and rule limited to the Commission. Lastly, controls to ensure ongoing consistency between statute, rules, SOPs, and practice did not exist.

Effectiveness Unmeasured And Inconsistent

The Division inconsistently created and implemented controls to ensure effective and consistent investigation closure. Investigations into licensee and permittee noncompliance occurred without consistently documented supervisory review, negatively affecting efforts to ensure proper control, increasing the risk of inconsistency, and compromising transparency. Insufficient oversight and undocumented investigations could also lead to arbitrary or unethical behavior.

There were no Division-established criteria for effective investigations. SOP required supervisory review and managerial oversight for the submission and review of investigation reports and closure

of investigations, but these controls were inconsistently implemented in practice indicating no formal, well-supervised investigation occurred and was recorded for these investigations. For instance, 126 of 643 licensees and permittees (19.6 percent) listed in licensing and enforcement data as violating liquor laws during the audit period were also listed in Field Operations Bureau case management logs used to monitor investigations. At the same time, enforcement data listed 774 administrative sanctions levied against noncompliant licensees and permittees that were not listed in case management logs. We reviewed hardcopy investigative files for 11 licensees not complying with grocery stock ratio requirements and found all were issued violations at the time the violation was identified and three (27.3 percent) were missing a hardcopy investigative report. Consequently, some investigations resulting in administrative sanctions were conducted in the field without documented review or oversight, some even without a documented report of investigation.

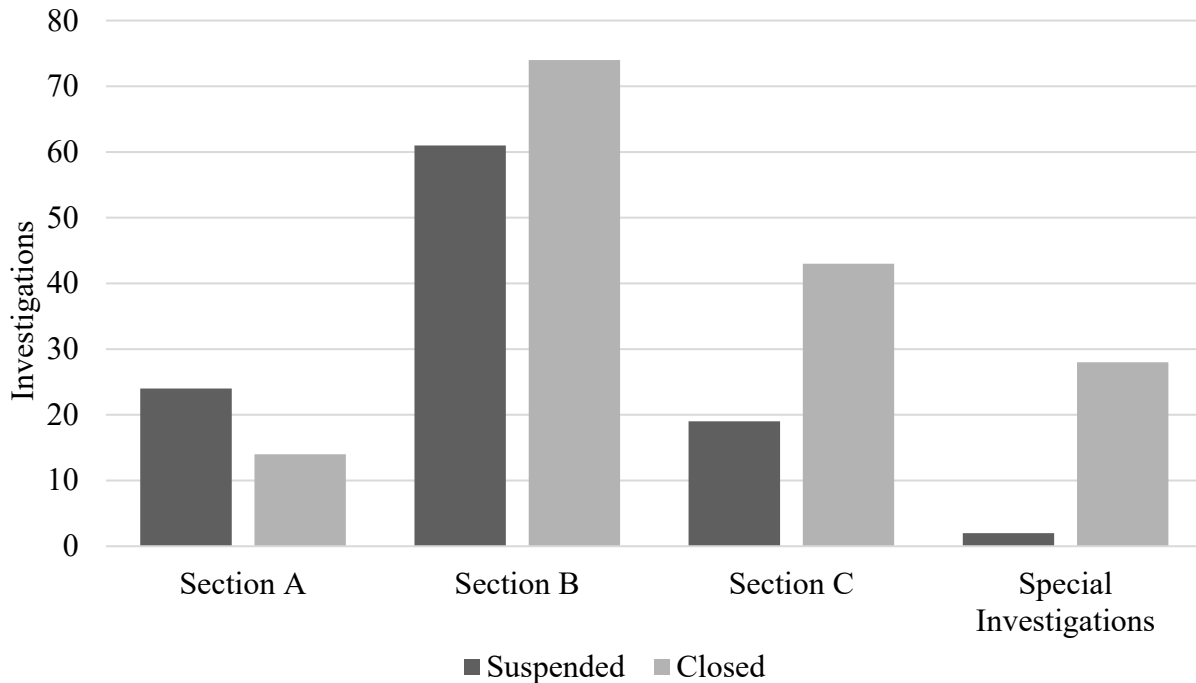
Case management was inadequately controlled. The Division inconsistently closed investigations into licensee and permittee noncompliance, with almost one third of investigations during the audit period being suspended without a definitive result. No performance measures or targets were created regarding successful case closure, investigation clearance rates were not measured or reported, and personnel evaluations were not tied to investigative outcomes. Some Division employees reported the Division effectively prosecuted most “criminal” cases, but “administrative” cases were less successfully closed. Meanwhile, Division information systems were focused on monitoring investigation duration without focus on effectiveness and outcomes, and did not systematically identify suspended investigations, complicating evaluation of case closure rates. During the audit period, 583 investigations were listed in case management logs and 265 (45.5 percent) were explicitly tied to a licensee or permittee. Of these, 106 investigations (40.0 percent) were suspended without a criminal offense or administrative sanction and 159 investigations (60.0 percent) were closed with a criminal offense or administrative sanction, as shown in Figure 16. Section A had 24 of 38 investigations (63.2 percent) and Section B had 61 of 135 investigations (45.2 percent) tied to licensees or permittees suspended. These rates were higher than the bureau-wide rate and significantly higher than Section C and special investigations, where 19 of 62 investigations (30.6 percent) and two of 30 investigations (6.7 percent), respectively, were suspended. No similar monitoring system existed for the Administrative Bureau, so similar comparisons could not be completed.

Inconsistent Timeliness

The Division lacked systems to adequately control and measure timeliness, and investigations into licensee and permittee compliance were not always timely. This led to Division noncompliance with rules, employee noncompliance with SOPs, increased costs that undermined optimization of profitability, and poor customer service.

Figure 16

Closure Of Field Operations Bureau Investigations Into Potential Licensee Or Permittee Noncompliance, SFYs 2018-2019^{1,2}



Notes:

1. Division data reliability was limited by inconsistency.
2. Data shown represents investigations tied to a licensee or permittee.

Source: LBA analysis of unaudited Division data.

Notice Filings Unmeasured

Rule established two paths for investigations into licensee and permittee compliance to follow.

- Upon detecting a violation, investigators were to issue an administrative notice of agency action specifying the violation and administrative sanction, and file the notice and a full report of the violation with the Division within five days.
- Upon detecting conditions that could lead to violations, investigators were to discuss the problem and corrective action with the licensee or permittee, issue a notice and record of agency instruction, and file the notice with a narrative detailing the conditions and circumstances with the Division within five days.

However, SOPs did not reflect these requirements and no system to assess Division compliance with rules existed. SOPs deviated from rules by allowing investigators and examiners to submit an

investigative report for review to a supervisor within five days, then provided the supervisor five days to review and return the draft for correction. Additionally, investigations that lasted more than 30 days could continue if supervisory approval was obtained. As a result, investigations could take far longer than the five-day time limit established by rule, resulting in noncompliance with rules and delaying resolution and sanctions. Notices were also inconsistently issued, adding another layer of noncompliance with rule, as we discuss in Observation No. 47.

Investigation Completion Inconsistently Timely

Alone, the amount of time required to investigate licensee or permittee compliance was not a measure of success or investigation effectiveness. Nonetheless, timeliness affected administrative costs, including calculations of fine amounts assessed to licensees and permittees, planning of future Division resource needs, and optimization of profitability. Division employees acknowledged investigations were inconsistently timely since at least CY 2012, but investigations did not have performance benchmarks for investigation duration or cost, and personnel evaluations inconsistently included assessments of investigation timeliness. Though investigations were untimely at times due to factors beyond the Division's control, including Commission administrative proceedings and external judicial proceedings, others were untimely due to Division actions. No system to monitor the cause of untimeliness and minimize or eliminate obstacles to timely completion was developed and operated.

As shown in Table 25, investigations did not always meet the 30-day timeliness requirement of SOP, making those investigations also noncompliant with the five-day rule-based time limit. We analyzed timeliness based on the 30-day standard in SOP and not the five-day standard in rule because it was clear the Division did not observe the rule-based time limit. Our review of 46 investigative files of licensee and permittee noncompliance demonstrated 25 (54.3 percent) were completed timely, nine (19.6 percent) were completed untimely due to factors beyond the Division's control, and one (2.2 percent) was completed untimely due to Division-controlled actions. However, this analysis was limited by the Division's inconsistent recordkeeping which prevented timeliness evaluations for six investigations (13.0 percent) that had no documented report of investigation and five investigations (10.9 percent) that were inconsistently documented.

Table 25

Timeliness Of Investigations Into Licensee And Permittee Compliance, SFYs 2018-2019¹

Organizational Component	Total Investigations	Days To Close Investigations			Investigation Timeliness ²		
		Average	Maximum	Minimum	Timely	Untimely	Not Evaluated ³
Field Operations Bureau	25	114	573	1	9	1	15
Administrative Bureau	21	8	72	0	16	0	5
Examinations	5	27	72	0	3	0	2
Direct Shipper Program	5	0	0	0	2	0	3
Licensing	11	1	1	0	11	0	0
Overall	46	62	573	0	25	1	20

Notes:

1. Investigations had varying degrees of complexity.
2. Timeliness based on SOP standards only, not statute or rule.
3. Investigations without timeliness evaluations included those where no investigation was conducted, documentation was inconsistent, or circumstances leading to untimeliness were beyond the Division's control.

Source: LBA analysis of a subjectively selected sample of unaudited Division records.

Division case management logs showed additional inconsistency with investigation timeliness. As shown in Table 26, investigation timeliness varied between Field Operations Bureau sections, particularly for open investigations, and average and median days to close an investigation went beyond the 30-day threshold in SOP for completion. Some investigations were open for over a year, with the longest case being open for over two years. As with other records, systems did not provide for documentation of supervisory approval to show approval for investigations lasting more than 30 days.

Individual investigator timeliness was similarly inconsistent based on unaudited investigative case management log data. For the 259 closed cases included in Table 26, individual investigators closed between one and 41 cases during the audit period, taking between:

- six and 130 days on average,
- one and 63 median days,
- 12 and 843 maximum days, and
- zero and 21 minimum days.

For the six open cases included in Table 26, investigators had between zero and three open cases that were open between 63 and 312 days. Suspended investigations also took longer than other investigations, being open for an average of between 16 days and 161 days, which meant the Division incurred potentially avoidable costs through drawing out certain investigations.

Table 26

Timeliness Of Field Operations Bureau Investigations, SFYs 2018-2019¹

Organizational Component ²	Closed Investigations					Open Investigations ³					Subtotal
	Subtotal	Days To Close Investigations				Subtotal	Days Investigations Were Open				
		Average	Median	Maximum	Minimum		Average	Median	Maximum	Minimum	
Section A	37	100	55	393	0	1	67	100	67	67	38
Section B	133	53	29	603	0	2	116	188	174	57	135
Section C	62	84	38	843	0	N/A	N/A	N/A	N/A	N/A	62
Special Investigations	27	41	12	279	0	3	138	118	169	118	30
Bureau Total	259	65	29	843	0	6	119	114	174	57	265

Notes:

1. Division data reliability was limited by inconsistency.
2. Section A included Rockingham and Strafford counties; Section B included Cheshire, Grafton, Hillsborough, and Sullivan counties; Section C included Belknap, Carroll, Coos, and Merrimack counties; and special investigations had no geographic assignment.
3. Days open at the end of the audit period.

Source: LBA analysis of unaudited Division data.

Imbalanced Investigative Workload Distribution

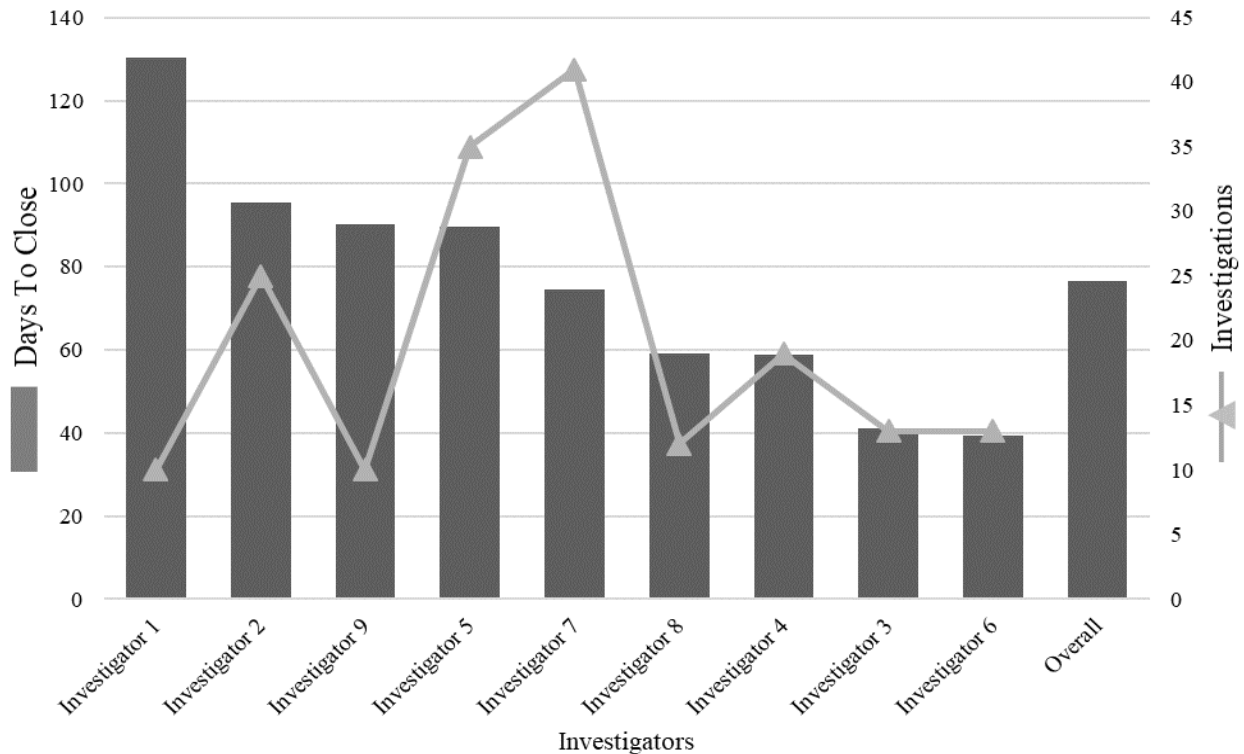
As shown in Table 26, the distribution of investigations among Field Operations Bureau sections was inconsistent, and:

- Section B, which had a higher proportion of licensees and the most investigator areas, recorded the highest number of investigations during the audit period with 135 of 265 of investigations (50.9 percent),
- Section C, which had the least number of licensees, recorded 62 (23.4 percent),
- Section A recorded 38 investigations (14.3 percent), and
- special investigators recorded 30 investigations (11.3 percent).

Investigators were inefficiently assigned geographic areas based primarily on county lines instead of analyses of risk or workload. The distribution of investigations among investigators was also inconsistent, as shown in Figure 17. The nine field investigators assigned areas during the audit period were assigned caseloads of between ten and 41 during the audit period, with an overall average of 19.8 cases. However, four investigators were either employed for only part of the audit period or were a supervisor with investigator duties.

Figure 17

Investigation Caseload And Average Days To Close Investigations For Certain Investigators, SFYs 2018-2019^{1, 2, 3}



Notes:

1. Division data reliability was limited by inconsistency.
2. Investigators included field investigators assigned geographic areas within the State.
3. Investigators 1, 3, 6, and 8 were either employed for only part of the audit period or were a supervisor with investigative duties.

Source: LBA analysis of unaudited Division data.

Wasteful, Inefficient, And Ineffective Investigative Practices

The Division engaged in several inefficient investigative practices that led to inconsistent outcomes and waste, and did not ensure proper control.

- To efficiently ensure proper control and achieve other outcomes, investigations into licensee and permittee noncompliance should be based on risk and conform to relevant statutory and regulatory requirements. However, investigations were inconsistently based on analysis of risk and were, at times, the result of improvised practices. For instance, carriers allowed an unknown quantity of illegal direct shipments into the State, yet the only investigation of a carrier during the audit period was the result of an improvised investigation by an investigator who by happenstance observed an unpermitted direct shipper delivery. Improvised investigations, lacking formal criteria,

were conducted into an unknown number of direct shippers as a result of the Commission's improvised strategy to disallow retailer direct shipper permits, leading to confusion among the regulated community, inconsistent administrative sanctions, and the eventual end of the Commission's strategy within months of its inception. Several investigations conducted by examiners were initiated and underpinned by improvised practices, including investigations of non-licensed establishments to determine whether alcoholic beverages were being sold and roadside signs to determine whether alcoholic beverages were being advertised. Investigators also spent time investigating potential noncompliance outside the scope of *Alcoholic Beverages* on an improvised basis, leading to waste.

- Certain Administrative Bureau investigations, particularly those related to licensing violations, were inefficiently handled by the administrative staff sergeant rather than a Field Operations Bureau investigator. Unaudited enforcement data indicated the administrative staff sergeant conducted 253 investigations into untimely license renewals during the audit period instead of geographically-assigned investigators. When combined with internal communication and information system deficiencies, not having the geographically assigned investigators conduct these investigations meant the Division could not effectively monitor licensee compliance in the field. Delays in enforcement also led to inefficiency as investigators attempted premises inspections of out-of-business entities.
- Controls over complaint management did not ensure complaints were consistently identified, collected, processed, and resolved. There was no licensed establishment complaint management SOP. Though purportedly all complaints were triaged and, if necessary, investigated, unaudited Division data indicated this inconsistently occurred. Of 90 licensees listed in enforcement data as being subject to complaints, 56 (62.2 percent) were listed in Field Operations Bureau investigation case management logs.
- Follow-up investigations into noncompliance were inconsistently conducted, such as noncompliance with training requirements in settlement agreements, noncompliance with examination standards, and other regulatory noncompliance.

Inconsistent Compliance With Regulatory And Procedural Construct

The Division inconsistently complied with investigation-related requirements in statute, rules, and SOPs. Proper control was not effectively ensured, and profitability was not optimized. The Division allowed examiners to conduct investigations without statutory or rule-based authority, leading to noncompliance and inefficiency, and compromising effectiveness. While SOPs and SJDs accommodated examiner-conducted investigations and reporting, controls were inadequate to ensure examiner investigations were consistent with SOPs and the investigations conducted by investigators. Consequently, examiner investigations were often undocumented, lacked follow-up, and were underpinned by ad hoc rules and improvised practices. Furthermore, time spent by examiners on investigations potentially prevented them from engaging in other compliance monitoring activity, as we discuss throughout Chapters 3 and 4.

While Field Operations Bureau investigations were generally more mature, better documented, and more often resulted in formal reports when compared to the Administrative Bureau, neither bureau consistently followed SOPs. Investigations were to be memorialized in a written report, include evaluations of aggravating and mitigating factors, be filed within five working days, be reviewed and returned for corrections within an additional five working days, and remain open no longer than 30 days without supervisory approval. However, these requirements were inconsistently followed.

- Investigative reports were inconsistently documented. We reviewed 46 investigative files tied to licensees and permittees and derived from all relevant sections within the Division. We found eight (17.4 percent) did not have a report and nine (19.6 percent) were missing necessary forms. The Direct Shipper Program purportedly “investigated” dozens of permittees as part of an improvised strategy to prevent retailers from obtaining or renewing a direct shipper permit, but did not develop any reports on these investigations demonstrating permittees were noncompliant with *Alcoholic Beverages*. Examiners reportedly did not consistently document examinations—investigations conducted by examiners—and did not create reports after examination completion.
- Investigation records inconsistently included documented evaluations of aggravating and mitigating factors, preventing effective supervisory review. Aggravating and mitigating factors were also integral to Commission hearings and administrative sanction determinations. Eight of 46 investigative files (17.4 percent) we reviewed included evaluations of aggravating and mitigating factors, and all eight were Field Operations Bureau investigations. Division information systems, including hardcopy and electronic records, did not provide for documenting such evaluations.
- The Division did not measure, have means to measure, or report on the timeliness benchmarks contained in SOPs or rules. SOPs did not provide for measurement, reporting, and supervisory review or managerial oversight. Neither hardcopy nor electronic information management systems provided for documenting such evaluations. Supervisory approval required to exceed the 30-day timeline for investigations in SOPs was not documented. Personnel performance evaluations were not tied to SOP or rule requirements on timeliness of investigations.
- SOP requirements that investigative reports be filed within five working days and be reviewed and returned for corrections within an additional five working days were inconsistent with rules. Rules required administrative notices and notice and record of agency instruction be filed with the Division within five calendar days of identified actual or potential noncompliance and provided respondents five working days after notice to contact the Division to schedule a hearing or pre-hearing conference, or waive their right to a hearing and accept sanctions. SOP allowing more time to review investigations than rule allowed meant investigations could still be ongoing after the timeframe for licensee and permittee responses expired.

Inefficient And Ineffective Knowledge Management

Investigative practice and performance management was limited by inefficient and ineffective knowledge management. Investigation management depended upon effective information systems, efficient internal communications, and reliable data processed by analysts into useful information. However, knowledge management practices relied on disparate and disconnected information systems that contained inaccurate and unreliable data and lacked necessary data management and analytical procedures. Furthermore, the CIU was inoperative during the audit period.

- **Recordkeeping And Data Management** – Hardcopy and electronic records outside formal DBMS were used by both bureaus, creating multiple recordkeeping systems that were inconsistently used and maintained. No one database could be relied upon to demonstrate the lifecycle of each case or case results. We reviewed 46 hardcopy investigative files and found two cases (4.3 percent) were listed in all three recordkeeping systems of case management logs, the enforcement database, and hardcopy records. Additionally, information within both investigations' records was inconsistent, including the case opened and closed dates which did not match across any of the three recordkeeping systems, complicating performance management, such as analysis of timeliness.
- **Case Management Logs** – Each field enforcement section relied on its own case management log, rather than the Division's enforcement DBMS, to manage investigations. The use of case logs and the data recorded therein was inconsistent between sections and there was no SOP controlling system use or data management. The Administrative Bureau, with its less formal investigative processes, lacked a case management log or similar practices to monitor investigations, complicating supervisory oversight at the bureau level, managerial review at the Division level or above, and analysis.
- **Information System Access** – Investigators reported difficulty with connecting to the enforcement DBMS remotely. Though the Division reportedly made recent progress in expanding remote access to the enforcement DBMS through a virtual private network, connection reportedly remained inconsistent. Limitations on investigator access to the licensing DBMS and other data also inhibited effectiveness of investigations.

Recommendations:

We recommend Commission management comply with statute and develop comprehensive rules regulating the mode and manner of all investigations it finds the Division must conduct to achieve expected outcomes.

We recommend Division management improve investigative controls, and:

- **develop, implement, monitor, and refine SOPs that address all investigative-related activities and ensure SOPs conform to rules;**

- rationalize investigative activities among all bureaus, sections, and employees, sworn and unsworn;
- ensure noncompliance and conditions that could lead to noncompliance identified by other Division employees are referred to investigators, and ensure investigators timely issue notices and conduct investigations;
- include in strategy and plans elements an element on investigations and related processes;
- develop, implement, monitor, and refine goals, objectives, targets, and performance measures tied to timeliness, consistency, efficiency, and effectiveness of investigations; and
- consolidate disparate information systems, including case lists, to ensure effective oversight and recordkeeping and create a single, complete licensee and permittee record.

Agency Response:

We concur.

Inconsistent Sanctions

Sanctions should be levied consistently to help efficiently achieve compliance, equity, and proper control outcomes. Management should also evaluate the adequacy and consistency of enforcement actions, and their effectiveness in protecting citizens from harm. Rules, SOPs, and Division management were to control Division sanctioning practices to ensure sanctions were consistently levied. Unaudited Division enforcement data listed 2,343 sanctions, including 822 arrests (35.1 percent), 270 administrative notices (11.5 percent), 625 verbal warnings (26.7 percent), and 626 verbal counselings (26.7 percent). Overall, 526 sanctions (22.4 percent) were not tied to a licensee or permittee. Management's system of control to ensure consistency in levying sanctions against licensees and permittees was at an initial level of maturity.

Observation No. 47

Improve Consistency In Levying Sanctions

The Division inconsistently levied sanctions against licensees and permittees and improvised practices led to inefficiency. The regulatory construct for sanctions was fragmented and inconsistently implemented. An improvised approach towards sanctions management provided undue discretion in levying sanctions against licensees and permittees that led to inconsistent outputs between employees and organizational units. Outcomes were unmeasured. Sanctions-related knowledge management systems were disconnected and incomplete, and no strategies, plans, goals, objectives, targets, performance measures, or initiatives were created to systematically evaluate the effectiveness of improvised sanctions practice. There was no data-based, objective demonstration the Division's improvised approach achieved expected outcomes, and controls to ensure consistency between statute, rules, and SOPs did not exist.

Inconsistency Between Administrative And Field Operations Bureaus

The Division could not ensure sanctions levied against licensees and permittees were consistent between employees or between sections and bureaus. SOPs inadequately controlled practice, and enforcement practices varied by employee, with some applying stricter standards than others. Management lacked a monitoring system and adequate controls to control variability. Licensee and permittee compliance monitoring activities, including licensing, permitting, training, examinations, premises inspections, and compliance checks, were not risk-based and were conducted inconsistently, adding inconsistency to sanctions levied. As shown in Table 27, sworn and unsworn employees from both bureaus levied administrative sanctions against licensees and permittees, and the proportions of the types of administrative sanctions used differed between the bureaus. Field Operations Bureau investigators issued more verbal counseling and administrative notices, while Administrative Bureau investigators and examiners issued more “written verbal” warnings. Additionally, improvised sanctions, such as debit memos, illegal shipment letters, and cease and desist letters, were used by both bureaus but were inconsistently documented and are excluded from Table 27. While employees in the two bureaus had varying responsibilities, which may have affected which administrative sanctions were used, certain employees were more likely to engage in enforcement activity which resulted in more severe sanctions. Regardless, the more frequent use of verbal counseling by Field Operations Bureau investigators and verbal warnings by Administrative Bureau employees indicated there was inconsistency in how sanctions were levied.

For criminal sanctions, enforcement data listed 397 arrests tied to a licensee, all of which were executed by the Field Operations Bureau. However, inadequate Division data management procedures led to inconsistency with how sanctions were recorded, even allowing an examiner to erroneously record an arrest-related action in the enforcement database even though examiners lacked authority to conduct arrests and related investigations.

Table 27

**Administrative Sanctions Levied By The Administrative And Field Operations Bureaus,
SFYs 2018-2019^{1, 2, 3}**

Bureau	Verbal Counseling Issued		Verbal Warning Issued		Administrative Notice Issued		Total
	Count	Percent ⁴	Count	Percent ⁴	Count	Percent ⁴	
Administrative	99	24.6	251	62.4	52	12.9	402
Field Operations	499	49.0	306	30.1	213	20.9	1,018
Total	598	42.1	557	39.2	265	18.7	1,420

Notes:

1. Division data reliability was limited by inconsistency.
2. Actions listed were not always final because the Division sometimes submitted administrative sanctions to the Commission for approval.
3. Administrative sanctions levied were affected by employee responsibilities varying between the two bureaus.
4. Percentages are of total administrative sanctions levied by each bureau and may not add to 100.0 percent due to rounding.

Source: LBA analysis of unaudited Division data.

Administrative Bureau Internal Inconsistencies

Administrative sanctions levied by Administrative Bureau employees for noncompliance with licensing, examination, and direct shipper requirements were inconsistent. The Division did not create control systems to ensure bureau-issued sanctions were compliant with requirements and internally consistent. Consequently:

- licensees who untimely renewed their license on multiple occasions were inconsistently sanctioned;
- training requirements were inconsistently monitored and noncompliance inconsistently sanctioned;
- licensees with examination-related requirements were infrequently subjected to examinations, resulting in unmonitored requirements, untimely and unpaid fees, and other noncompliance that was inconsistently sanctioned; and
- direct shipping requirements were inconsistently monitored, resulting in excessive and illegal shipments and untimely-paid or unpaid fees that were inconsistently sanctioned.

Given that non-sworn staff lacked authority to levy sanctions, we did not analyze inconsistency in sanctions levied between Administrative Bureau employees.

Field Operations Bureau Internal Inconsistencies

Field investigators assigned geographic areas inconsistently levied sanctions and their workload was inefficiently distributed. Under the Division's improvised graduated sanctions approach, administrative sanctions should, depending upon underpinning requirements, typically start with counseling and education, elevate to a warning, then conclude with an administrative notice for severe or repeated noncompliance. There was no corresponding approach for criminal sanctions. However, certain investigators tended to apply more severe sanctions than others, indicating, based on output measures, the improvised graduated sanctions approach was inconsistently applied.

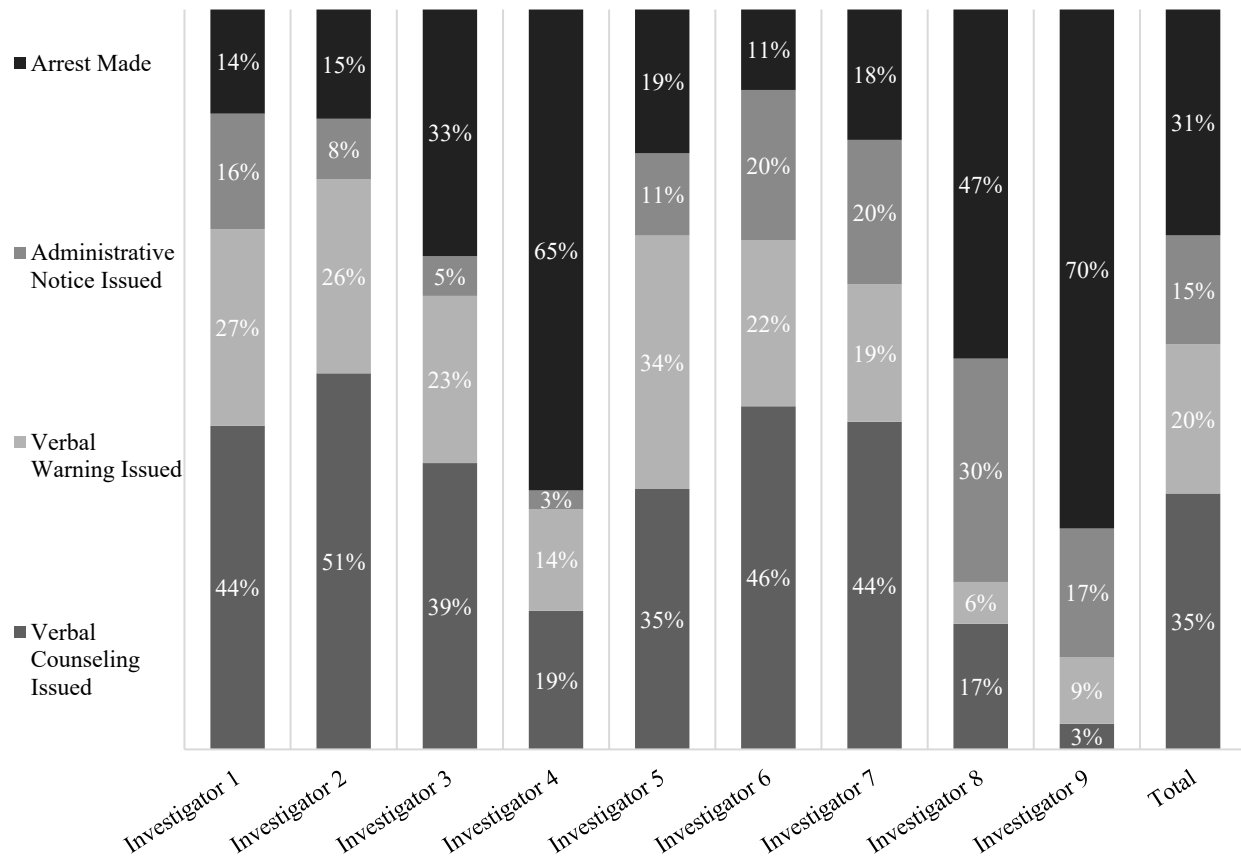
Improvised Graduated Sanctions Inconsistently Implemented

Excluding arrests, six of nine investigators (66.7 percent) shown in Figure 18 had fewer sanctions as the severity of sanctions increased from verbal counseling to issuing an administrative notice to an arrest, indicating consistency with the Division's improvised graduated sanctions approach. Three investigators (33.3 percent) had more severe sanctions than lesser sanctions, indicating inconsistency. Sanctions issued by Investigator 9 increased as the severity of sanctions increased, and Investigators 7 and 8 both issued more administrative notices than verbal warnings. The distribution of sanctions by type for most of the nine investigators depicted in Figure 18 deviated substantially from the overall averages for the nine investigators. Since the Division lacked performance measurement and targets, we used the average as a metric for individual comparisons to indicate deviation. Sanctioning practices, already noncompliant with rules, meant investigators potentially sanctioned certain licensees more harshly than other investigators would have in similar circumstances.

Additionally, certain investigators conducted more arrests tied to licensees than others, indicating a tendency towards issuing the most severe sanctions for noncompliance. For instance, 101 of 144 sanctions (70.1 percent) levied by Investigator 9 were arrests tied to a licensee, a figure which was nearly double that of Investigator 4 who had the second highest number of arrests tied to a licensee during the audit period with 52 (65.0 percent of 80 sanctions levied). Furthermore, all nine investigators conducted extra-jurisdictional enforcement, which tended to make Division activities more like general law enforcement than that of the regulatory function of the Commission. Some investigators conducting more arrests tended to exacerbate scope creep and indicated some investigators likely did not apply the improvised graduated sanctions approach or were less focused on the regulatory mission of the Division.

Figure 18

Sanctions Recorded By Certain Investigators As A Percentage Of Total Sanctions Recorded, SFYs 2018-2019^{1, 2, 3, 4}



Notes:

1. Division data reliability was limited by inconsistency.
2. Investigators 1, 3, 6, and 8 were either employed for only part of the audit period or were a supervisor with investigative duties.
3. The total column is only for the nine investigators listed. Division-wide investigator sanction outputs differed, with 31.4 percent being verbal counseling, 29.1 percent being verbal warnings, 14.9 percent being administrative notices, and 24.6 percent being arrests.
4. Some totals in the figure may not add up to 100.0 percent due to rounding.

Source: LBA analysis of unaudited Division data.

Inefficient Workload Distribution Indicated By Arrest And Offense Reports

Imbalanced distribution of offense and arrest reports, combined with separate findings on the inefficient distribution of investigator areas which we discuss particularly in Observation No. 13, indicated an inefficient distribution of investigator workload. Arrest and offense reports were

written to summarize facts surrounding a case, and these reports were tied to specific records in the enforcement database. As shown in Table 28, 74.2 percent of the offense reports and 83.9 percent of the arrest reports listed in Division data were tied to licensees in geographic areas assigned to Sections B and C, even though these areas contained 31.8 and 18.1 percent of the total licensees and permittees, respectively.

Table 28

Offense And Arrest Reports By Geographic Area, SFYs 2018-2019¹

Section	Area	Licensees And Permittees		Offense Reports ²		Arrest Reports ³	
		Total	Percent Of Total	Total	Percent Of Total	Total	Percent Of Total
A	Rockingham 1	813	11.8	41	8.3	31	7.7
	Rockingham 2	348	5.1	36	7.3	34	8.4
	Strafford	353	5.1	16	3.2	0	0.0
	Subtotal	1,514	22.1	93	18.8	65	16.1
B	Cheshire And Sullivan	398	5.8	53	10.7	30	7.4
	Grafton	496	7.2	70	14.1	35	8.7
	Hillsborough 1	569	8.3	64	12.9	18	4.5
	Hillsborough 2	717	10.4	40	8.1	53	13.1
	Subtotal	2,180	31.8	227	45.8	136	33.7
C	Belknap And Carroll	583	8.5	52	10.5	19	4.7
	Coos	181	2.6	61	12.3	165	40.8
	Merrimack	476	6.9	28	5.6	19	4.7
	Subtotal	1,240	18.1	141	28.4	203	50.2
None	Out-Of-State	1,932	28.1	35	7.1	0	0.0
Total		6,866		496		404	

Notes:

1. Division data reliability was limited by inconsistency.
2. The average number of offense reports for all areas was 45.1.
3. The average number of arrest reports for all areas, excluding out-of-State entities, was 40.4.

Source: LBA analysis of unaudited Division data.

Inconsistent Monitoring Practices

Additional practice inconsistencies leading to unlevied sanctions, and inconsistent outcomes through uninvestigated or ineffectively investigated noncompliance, included:

- insufficient compliance monitoring, such as premises inspections, examinations, and compliance checks, particularly of higher risk licensees and municipalities;
- monitoring of adulteration, misbranding, labelling, and licensing requirements—tied to ensuring alcoholic beverage sold had been properly vetted and approved by the

Commission—that was either not conducted or inconsistently conducted and not risk-based;

- inconsistent monitoring of establishments manufacturing, transporting, selling, or transferring alcoholic beverage to ensure they were properly licensed and permitted;
- inadequate and inconsistently followed investigative practices and procedures provided in rule, leading to inconsistent investigative results and sanctions; and
- improperly and inefficiently levied sanctions for extra-jurisdictional motor vehicle violations, with Investigators 9, 2, and 3, for example, combining for more than half of the motor vehicle-related arrests recorded by the Division during the audit period.

Inadequate Performance Management

The Division’s improvised approach lacked objective measures to assess consistency in levying sanctions and whether expected outcomes were achieved. No consistency or other measures were included in rules, SOPs, or practice, and available data was not used to demonstrate outcomes, such as ensuring proper control, were achieved. Employee performance evaluation was not connected to sanctions consistency or outcomes.

The Division lacked timeliness standards for levying administrative sanctions. Rule required:

- investigators issue an administrative notice of agency action or a notice and record of agency instruction when violations or conditions that could lead to a violation were observed,
- investigators file the notice and a report on the violation or summary of conditions that could lead to noncompliance within five days, and
- licensees respond to a notice of agency action within five days of issuance to schedule a prehearing conference or hearing, or waive their rights and accept the administrative sanction.

However, SOP and practice did not follow rules and rule-based timelines were unmonitored. Timeliness of sanctions varied widely in practice, depending upon factors such as the violation, investigation duration, whether the Division and the licensee or permittee entered into settlement negotiations, or whether a hearing was held. Division sanctions data was limited but, overall, an average of 112.5 days and a median of 54.0 days passed between the date of a violation and a sanction being recorded during the audit period. Some sanctions were levied in a matter of days, while others took years to be levied, and without timeliness standards and adequate records, it was not possible to determine if the timeliness of levying sanctions was reasonable. However, both the average and median days between the violation occurring and the sanction being levied were well beyond the five-day rule-based limit.

Incomplete And Inadequate Knowledge Management

The Division’s information systems did not facilitate effective and efficient monitoring and management of sanctions, compromising effective knowledge management. Information systems were fragmented and incomplete and data was ineffectively managed and unreliable. We found:

- sanction-related information on fines, training requirements, points, and hours-of-service restrictions were not fully recorded in either the Division's enforcement or licensing databases and were not readily available;
- the Division inadequately controlled data entry and sanctions records were inconsistently reliable, with missing or mismatching information, such as violations, violation dates, license numbers, and investigative report documents;
- training requirements tied to settlement agreements were inconsistently monitored and other training requirements related to sanctions were unmonitored; and
- no information systems were created to comprehensively monitor points issued as part of sanctions to particular licensees, leading to inconsistent follow-up during the license renewal process.

Recommendations:

We recommend Commission management develop a control system to ensure sanctions are consistently issued.

We recommend Division management improve sanctions processes, and:

- **ensure investigators are the sanctioning agents for the Commission and other staff discontinue issuing sanctions;**
- **develop, implement, monitor, and refine comprehensive rule-compliant SOPs to ensure sanctions achieve the outcomes they are purportedly intended to accomplish and sanctions are consistently levied;**
- **develop, implement, monitor, and refine performance measures to evaluate whether sanctions levied achieve outcomes and are consistent;**
- **consolidate and streamline information systems to create a single licensee record and allow for effective monitoring and management of sanctions consistency; and**
- **develop, implement, monitor, and refine controls over data quality to ensure reliability.**

Agency Response:

We concur in part.

*The Division **does not concur** with recommendation one. Removing the ability and authority for non-sworn staff to issue sanctions would be both inefficient and ineffective. Examinations and the Direct Shipper Program are highly specialized fields, and the ability for an examiner to issue a pertinent sanction is paramount to the Division's effective and timely operations. It would be inefficient for an examiner to have to pause work and have to read an investigator into the aspects of an examination simply so that the investigator could issue a sanction. The Division is committed to clearly defining all employee roles in the sanction processes, however, and will do so through SOP and by ensuring all SJDs are updated accordingly.*

*The Division **concurrs in part** with recommendation two. While the Division concurs that a fixed schedule of sanctions should be developed, the specific sanctions levied must depend upon the*

particular factors at play in any case. As the primary regulatory body overseeing Alcoholic Beverages in licensed establishments throughout the State, the Division is charged with not only regulatory activity, but with providing good customer service as well. This often comes in the form of educational opportunities and rapport building with licensees and constituent groups. A formal and rigorous schedule of sanctions would tie the hands of the Division and take away the ability to exercise any discretion when sanctions are taken into account. Losing that discretionary ability is not an avenue the Division finds palatable, nor is it conducive to providing good customer service. A schedule of sanctions should most certainly be developed, but a mandated implementation of this schedule is not favorable to the Division and its partners.

*The Division **concur**s with recommendations three, four, and five.*

LBA Rejoinder:

Our recommendations align with Commission rules, which do not allow non-sworn staff to conduct investigations and levy sanctions. If the Commission wishes to allow non-sworn staff to conduct investigations and levy sanctions, it should seek statutory changes and amend rules accordingly. Until it does so, the Commission should comply with statute and rule.

Regardless of the approach taken, any actions taken by the Commission affecting licensees, permittees, or the general public must comply with rules. If the Commission wishes to alter its approach to licensees and permittees, with the purported aim to provide good customer service, it should revise rules, consistent with statute.

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**STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING**

**APPENDIX A
SCOPE, OBJECTIVE, AND METHODOLOGY**

Scope And Objective

In October 2018, the Legislative Performance Audit and Oversight Committee approved an audit of the Division of Enforcement and Licensing (Division) within the Liquor Commission (Commission) focused on the efficiency and effectiveness of Division operations, and interaction between the Division and State, county, and local law enforcement. The topic was approved by the Fiscal Committee of the General Court at its November 2018 meeting. In June 2019, we discussed the impetus behind the topic with its originator and clarified concerns to focus the audit's scope, and held an entrance conference with the Commission's Chairman, the Division Director, and other members of the Commission. The audit's scope was approved in September 2019.

We designed the audit to answer the following question:

Did the Division effectively and efficiently regulate alcoholic beverages during State fiscal years (SFYs) 2018 and 2019?

We focused on Division management control systems over the Commission's primary duties to:

- optimize profitability,
- maintain proper controls,
- operate effectively and efficiently, and
- provide customer service.

We also examined Commission management control systems affecting the Division.

Methodology

To gain an understanding of our objective, we conducted interviews and attended meetings; surveyed and interviewed internal and external stakeholders; developed a maturity model to assess management controls; and reviewed and analyzed relevant records.

Management Controls

Our audit work focused on five key management control systems—strategic management, risk management, compliance management, performance management, and knowledge management—and the four Division functions—licensing, the Direct Shipper Program, examinations, and enforcement. Given the interconnectedness of control systems and subsystems with Division functions, the effective operation of each was necessary for the Division to achieve expected outcomes. Deficiencies with a single control system or subsystem could contribute to deficiencies with many others, and inhibit the achievement of expected outcomes.

Maturity Assessment

To assess the maturity of the Division's control systems and subsystems related to the audit's objectives, we developed a maturity model suitable for application to the Division. Maturity models establish a systematic basis of measurement for describing the developmental state of an organization or process. The use of a maturity model can enable continuous improvement of performance and help management understand how effectively the processes leading to outcomes were designed and functioning. Optimizing processes is essential to efficient and effective operation. Relevant components of the maturity model were strategic and risk management, performance management, resource and knowledge management, and compliance management. The maturity model we applied consisted of six levels, from least to most mature:

- **Undeveloped** – controls were absent or the need for controls was not recognized;
- **Initial** – the need for controls was recognized but the system was improvised, informal, incomplete, and unmonitored;
- **Repeatable** – formal controls were developed, but were inconsistently implemented and reliant upon specific high-performing individuals to successfully operate;
- **Established** – comprehensive and consistently implemented controls were in place, and were more reliant on operating processes than high-performing individuals;
- **Managed** – data-informed controls were implemented, monitored, and evaluated; and
- **Optimized** – holistic, continuously monitored, evaluated, and improved controls were tied to outcomes.

We discussed the suitability of using a maturity model to characterize Division controls with the Director and applied the model to each system or subsystem we reviewed in detail.

Review Of Records

We obtained, reviewed, and analyzed relevant third-party records, including:

- relevant State laws, rules, orders, policies, procedures, plans, studies, audits, guidelines, class specifications, and similar materials;
- financial interest statements filed by Commission and Division employees;
- data collected by other agencies related to expected Division outcomes;
- third-party accreditation standards for law enforcement agencies; and
- relevant studies, plans, audits, guidelines, and related materials from academia, interest groups, other states, and other entities.

We obtained, reviewed, and analyzed relevant public and nonpublic Commission and Division records, including:

- standard operating procedures (SOP), orders, industry circulars, policies, procedures, forms, plans, reports, financial data, budget requests, supplemental job descriptions, guidelines, informational publications, organizational charts, and similar materials;
- Division of Enforcement and Licensing Meeting minutes; and

- extracts from the Division’s licensing and enforcement databases, and data from various Division spreadsheets.

The Division maintained an indeterminate number of stand-alone, improvised databases. As we identified these databases, we reviewed them if they impinged upon an audit objective. In some cases, we examined a single month or year of data to inform findings. However, Division databases were inadequately controlled to permit reliance upon their content to draw definitive conclusions.

File Reviews

We conducted five file reviews supporting the audit’s objectives.

Personnel File Review

To understand personnel management practices and effectiveness and evaluate the effectiveness of the Division’s performance management and compliance with statute, rules, and SOPs during SFYs 2018 and 2019, we reviewed the performance-related elements of Commission-redacted personnel files for 30 Division employees employed during the audit period. Because of resistance to provide direct access, we were provided redacted documents purportedly derived from personnel files, and those were provided only after the Department of Justice advised the Commission to do so. Approximately five months passed between the time we initially requested access to the time we were provided redacted records. To assure personnel information provided by the Commission met audit standards, management was asked to sign an attestation addressing procedures used and basic information, such as the requested number of personnel actually employed during the audit period. The Commission provided an attestation letter, but relevant assurances were not included nor was the letter signed by management. Consequently, we cannot provide assurances related to Division personnel performance management practices.

Licensing And Permitting File Review

To understand licensing and permitting processes, we judgmentally sampled and reviewed 85 files, including 56 licensing files and 29 direct shipper files. Licensing files represented multiple different license types. Some files included applicants who did not obtain a license or permit during the audit period. Other files included licensees or permittees who obtained an initial license or permit, obtained a renewal license or permit, did not renew a license or permit, or who had their license or permit denied during the audit period. Files were analyzed for compliance with statute and rule, timeliness, consistency, efficiency, and effectiveness of Division processing and decision-making.

Examinations File Review

To understand the examination function, we judgmentally sampled and reviewed nine examination files for three wholesale distributors, three beverage manufacturers, and three nanobreweries. Files were analyzed for examination compliance with statute and rule, consistency, efficiency, and effectiveness.

Product, Package, And Container Approval File Review

To understand the product, package, and container approval process, we judgmentally sampled and reviewed ten files. We analyzed files for processing compliance with statute and rule, timeliness, consistency, efficiency, and effectiveness.

Enforcement File Review

To understand the enforcement investigative and sanctioning processes, we judgmentally sampled and reviewed 63 investigative files. We analyzed files for investigative and sanctioning compliance with statute, rule, and SOP; timeliness; consistency; efficiency; and effectiveness.

Interviews And Meetings

To understand management's views and staff perspectives on operations, we:

- interviewed select Division managers, supervisors, and staff;
- attended one Division command staff meeting and met with Division and Commission management multiple times;
- interviewed external stakeholders representing related industries, including restaurants, retailers, manufacturers, distributors, and similar establishments; and
- interviewed external stakeholders representing other certain State agencies and public health interest groups.

Surveys

We conducted five surveys supporting the audit's objectives.

State Law Enforcement Community

To obtain feedback from State and local law enforcement regarding Division operations, we sent surveys to an indeterminable number of State and local law enforcement stakeholders. An email was sent to and disseminated by various groups and individuals, and we received complete responses from 95 individuals. The results reflect the opinions of the 95 respondents and the survey's results were not a statistically reliable, representative sample of the opinions of law enforcement personnel statewide.

The results of this survey are in Appendix D.

New Licensees

To obtain feedback from licensees who obtained a new license during the audit period, we sent surveys to 239 licensees and received 54 complete responses for a 22.6 percent response rate. However, since survey participants were identified using unaudited Division data, the results reflect the opinions of respondents and were not a statistically reliable, representative sample of new licensees.

The results of this survey are in Appendix E.

Renewing Licensees

To obtain feedback from licensees who renewed licenses during the audit period, we sent surveys to 2,531 licensees and received 567 complete responses for a 22.4 percent response rate. However, since survey participants were identified using unaudited Division data, the results reflect the opinions of respondents and were not a statistically reliable, representative sample of renewing licensees.

The results of this survey are in Appendix F.

Applicants Not Receiving A License

To obtain feedback from applicants who encountered difficulty obtaining a license, we surveyed 254 individuals who applied for initial licenses during the audit period but were recorded as not receiving one. We received 17 complete responses for a 6.7 percent response rate. Due to the low response rate, this survey is not included as an appendix.

Field Investigator Survey

To obtain feedback from field investigators, we sent surveys to 14 field investigators employed by the Division during the audit period and received four responses for a 28.6 percent response rate. Attempting to supplement the survey, we queried four field investigators for interviews, but were able to interview two. Due to the low response rate, and to help ensure respondent anonymity, this survey is not included as an appendix.

Prior Audits

To understand Commission and Division control deficiencies, we reviewed the Commission's remediation of conditions leading to prior audits' findings.

The results of this analysis are in Appendix G.

We also undertook a financial audit during the performance audit period. The scopes and methods of both audits were harmonized to avoid potential duplication of effort and eliminate gaps between the audits. The financial audit focused on fiscal management at a set level of materiality, while this audit focused on effectiveness and efficiency of systems and subsystems. However, several similar recommendations are made in both audits, and it would be useful for readers to consult both audits to obtain a broader view of Commission and Division management controls.

Exclusions

To constrain the scope and duration of the audit, we excluded certain components of potential audit work related to Division operations. We did not:

- holistically review every element of statute for consistency, simplicity, or efficacy;
- holistically review every element of rule and form used for consistency or compliance, instead focusing on key processes and subprocesses;
- demonstrate actual historic or project potential future programmatic outcomes;
- examine tobacco-related enforcement, licensing, or other functions;
- examine Division compliance with grants or contracts;
- review general or application controls over Commission information technology systems;
- audit Division finances, including grant compliance and structural solvency; or
- examine elements of the Commission's or Division's management control systems subject to the cooccurring LBA financial audit.

The Legislature, the Commission and Division, and other stakeholders should be able to use our work to make informed decisions to improve Division operations.

Audit Work Outside The Audit Period And Outside The Division

The audit period included SFYs 2018 and 2019. However, audit work was not limited to the audit period where management control weaknesses outside the audit period affected Division operations during the audit period. Neither was audit work limited to the Division, as we examined Commission management control systems when they affected Division operations.

Limitations And Qualifications

The scope of our work was limited and we qualify our results.

- Division data were incomplete and insufficiently reliable to form definitive assessments and we cannot be certain we identified each relevant database in use during the audit period. Other agency data reviewed was not audited to determine reliability. Consequently, we qualify our use of, and conclusions that rest upon, Division and other agency data.
- Many management controls within the Administrative Bureau and other elements of the Division were undeveloped. Administrative processes were generally undocumented. Descriptions of administrative processes by supervisors and managers were incomplete, leading to iterations of investigation into administrative processes to uncover actual practices. Consequently, we may not have uncovered all informal practices bearing on our objective.
- Cooperation was generally, but not universally, encountered. Our sworn employee survey obtained an insufficient response rate. We followed the survey with requests for interviews and employees inconsistently agreed to meet with us to discuss their perspective and describe actual operations. Consequently, we may not have uncovered all informal practices bearing on our objective.

STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING

APPENDIX B
LIQUOR COMMISSION RESPONSE



Christopher T. Sununu
Governor

**New Hampshire Liquor
Commission**

50 Storrs Street
Concord, NH 03301
(603) 230-7015

Joseph W. Mollica
Chairman

Nicole Brassard Jordan
Deputy Commissioner

December 21, 2020

Stephen C. Smith, MS, CPA
Director of Audits
Legislative Budget Assistant
107 North Main Street
State House, Room 102
Concord NH 03301

*Re: Performance Audit
NH Liquor Commission – Division of Enforcement and Licensing*

Dear Director Smith:

We appreciate the opportunity to respond to the recommendations set forth in audit report for the NH Liquor Commission – Division of Enforcement and Licensing (Division). We note that many of the recommendations extend beyond the Division to the Commission's responsibility to provide management control and oversight. Accordingly, the majority of our responses are from the perspective of the Commission, with responses specific to the Division where instructive.

The Commission seeks to continuously improve its operations and, therefore, appreciates the insights afforded by the audit staff. Since the last performance audit in 2009, the Commission has grown dramatically. Working strategically to build sales and increase revenues for the State and its citizens, the Commission's gross sales for FY 2020 were \$765.5 million, a 54% increase over FY 2009 gross sales of \$496.1 million. Likewise, revenue brought in by the Division through licenses and fees has grown substantially, from \$12.7 million in FY 2009 to \$18.2 million in FY2020, a growth rate of 43%. In light of this unprecedented growth, the Commission acknowledges that its internal controls and procedures need to be strategically assessed and refined to appropriately manage the risks associated with the Commission's operations.

Toward that end, the Commission will create a formal Internal Audit and Compliance

TTY 1-800-735-2964

Unit to provide independent and objective evaluation of internal processes and compliance-related matters. The Unit will be responsible for addressing the findings in this report as well as ensuring ongoing review and monitoring of performance, efficiency and compliance with relevant laws and regulations across all Commission programs and processes. The Commission will establish a new position for an Internal Audit and Compliance Officer, or similar position, to administer the program under the direction of the Chief Operations Officer and will hire the additional staff necessary to build a fully functioning unit. In light of the comprehensiveness of the Commission's approach, it expects that it will require three to five years to systematically identify and implement suitable measures.

At the same time, please recognize that the audit report contains 47 observations but makes over 370 recommendations, many of which impose extremely specific requirements. As the Commission completes its review and analysis of each functional area, it will determine the best course of action to address each observation, which might not in every circumstance, agree with the very precise recommendation made in the audit report.

As always, the Commission is committed to following its statutory obligations for the benefit of the citizens of our state.

Sincerely,



Joseph W. Mollica
Chairman

STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING

APPENDIX C

LIQUOR COMMISSION AND OFFICE OF LEGISLATIVE BUDGET ASSISTANT-AUDIT DIVISION
COMMENTS ON OBSERVATION NO. 38

This appendix contains two sections: 1) Division comments related to Observation No. 38 and 2) Division comments with associated LBA comments. Commission comments are *italicized* and LBA comments are **bolded**. Where the Commission is quoting, it will be italicized and in quotes.

Section 1. Division Comments

We concur in part.

Prior to responding to the recommendations in Observation 38, the Division wishes to state that it does not agree with many of the audit team’s interpretations of statute, rule, and policy. As the report did not highlight how an interpretation was reached by the audit team, it was left to the Division to glean a perceived interpretation from the wording and data presented within this (and other) Observation. The Division also states that it does not agree with many of the interpretations of the data in this section, nor the conclusions the audit team arrived at as a result.

*The auditor’s statement and characterization that “neither statute nor rules provided the Division or its investigators a secondary function, such as general law enforcement, or provided any mode of manner to conduct investigations into any entity other than a licensee or permittee” is contrary to relevant statutes. See NH RSA 179:6, I and 179:59. As RSA 179:59 states in part, all Division Investigators “**shall have all the powers of the sheriff in any county, with reference to enforcement of all laws either in cooperation with, or independently of, the officers of any county or town** (emphasis added).” Investigators are sworn law enforcement officers, having completed the requisite training via the New Hampshire Police Standards & Training requirements. Assertions that the Division is not a law enforcement agency, even one with a highly specified regulatory function, are erroneous.*

*Thus, the Division **does not concur** with recommendation 1. First, we do not agree with the assertion that the Division is not a law enforcement agency (the implication arising from recommendation 1, where a suggestion was made to transfer “responsibilities to a law enforcement agency.”) A bifurcation of law enforcement responsibilities away from the Division would be inefficient and ineffective. Having multiple agencies responsible for the enforcement of different aspects of Title XIII would negatively impact the overall regulatory environment throughout the State of New Hampshire.*

This migration would also affect the Division and its current capacity of involvement in a number of diverse public health commissions. This list includes, but is not limited to:

- *The Raymond Coalition for Youth,*
- *Dover Youth 2 Youth;*
- *Community Alliance for Teen Safety;*

- *Communities for Alcohol and Drug-Free Youth;*
- *Newmarket Youth-to-Youth;*
- *Makin' It Happen Coalition for Resilient Youth;*
- *Strafford County Public Health;*
- *NH Regional Public Health Network;*
- *Drug Free NH;*
- *Bureau of Drug and Alcohol Services, and;*
- *Substance Abuse and Mental Health Services Administration*

The loss of law enforcement responsibilities would impede a meaningful participation in these coalitions.

We do not agree that the drug task force (DTF) and drug recognition expert (DRE) responsibilities be “migrated to another” law enforcement agency (emphasis added), because it runs contrary to statutes, rules, and effective law enforcement practices. First, it is known that licensed establishments may be used as primary and secondary sites used for the sale, distribution, and trafficking of illegal drugs. Per Title XIII’s RSA 179:50, which focuses on Unlawful Purpose, “no licensee shall use, or allow to be used, his or her premises for any purpose contrary to law.”

For more than a decade, the Division has assigned an investigator to the DTF as a liaison between the two law enforcement entities. The investigator assists the task force by acting as a subject matter expert in identifying violations of Title XIII while embedded as an active task force member. This relationship also provides a vital feedback loop that the Division utilizes to better refine its presentation and conduction of the DRE program. Having an embedded association with the DTF allows real world, drug-related information to be relayed back to the Division, which is then utilized in its DRE course offerings.

The Division also disagrees with the assertion that DRE responsibilities be migrated to another law enforcement agency. As stated in the audit report, the DRE program is designed to “train general law enforcement professionals to recognize impairment in motor vehicle drivers.” While making this assessment, the report does not indicate that any attempt was made to speak with the Commander of the New Hampshire Office of Highway Safety, any of its Grant Managers, nor the DECP State Coordinator. This would have provided a better understanding of the parameters of the Drug Evaluation Classification Program in New Hampshire, the programs history, programs administration or the relevance of this program in our State.

The Division further contends that as the sole regulatory body assigned with enforcing Title XIII laws, it is better situated than most other law enforcement agencies to provide real-world experience on education related to impaired driving. Recent research from the US Department of Transportation provides “research indicating alcohol is a greater contributor to crash risk than drugs.”¹ Further research in this same report indicates a significantly higher risk of crash occurring for those “drivers with both alcohol and other drugs” in their systems.² This information supports the Division in its assertion that DRE programming does strongly align with its

¹ USDOT. NHTSA. *Drugs and Alcohol Crash Risk: A Case Controlled Study.* 2016, p. 5.

² USDOT. NHTSA. *Drugs and Alcohol Crash Risk: A Case Controlled Study.* 2016, p. 9.

regulatory function. Therefore, it is imperative that the Division be heavily involved in DTF and DRE programs.

The Division **does not concur** with the recommendation that it develop, implement, monitor, and refine a comprehensive control framework properly **constrained to reflect the Division's role as a regulatory agency** (emphasis added). Throughout this section of the audit report, it is contended that "Division employees engaged in investigations and enforcement activity related to Alcoholic Beverages, but unrelated to a licensee or permittee...", and that "[r]ule did not allow for... investigations or sanctions of non-licensed or non-permitted entities." Further, the report alleges that "the Division engaged extensively in investigations without connection to a licensee or permittee."

Based on the Division's enforcement authority as defined in RSA 179:59, investigators have the authority to conduct investigations statewide. Their investigative authority is not confined to a licensed establishment. Since Title XIII violations can take place in any location, having this broad investigative authority is imperative. As part of the Division's mission of reducing underage access to alcohol, being able to provide a timely intervention when violations of Title XIII or other public safety issues occur (such as illegal drug possession, driving under the influence, or minors transporting alcoholic beverages) is critical. The authority to intervene provided by RSA 179:59 helps the Division in this mission and is a valuable public safety tool. The points illustrated below show just how important this authority is in mitigating many issues that may originate at a licensed establishment and continue once an individual leaves a licensed premise.

The report asserts that "investigators engage in an unknown number of extra-jurisdictional motor vehicle investigations. Yet, the report also acknowledges that the 155 motor vehicle stops³ "were typically the **result of surveillance activity at license premises or State liquor stores....**" (Emphasis added).

The Division's enforcement of motor vehicle violations is also supported by New Hampshire case law. The first case, *Weldy v. Kingston*, 128 N.H. 325 (1986) stated that when police officers encounter minors transporting alcohol in a motor vehicle, they have a common law duty to take the minors into custody, seize their vehicle and the alcoholic beverages, and notify the parents of the minors. Further, *Weldy* finds that, under RSA 179:2, when an officer discovers any person in the act of transporting intoxicating liquor in violation of any law of the state, it shall be the officer's duty to seize all intoxicating liquors, take possession of any vehicle engaged in such illegal transportation, and the officer **shall arrest** any person or persons in charge of the vehicle. Both *Weldy* and NH RSA 179:2 provide a framework of enforceable activity under Title XIII.

Moreover, the data provided as evidence of extra-jurisdictional activity is inaccurate or incomplete. The data, which the report's Executive Summary states "were inconsistently reliable to a degree that we qualify every conclusion," inaccurately depicts the enforcement efforts of Division employees. Contrary to the report's conclusions, the Division's activities are directly tied to its Title XIII responsibilities.

³ These calls comprise .006% of total calls for service (25,974) recorded during the audit period.

Below are the Division's clarifications or corrections to the audit report's assertions of "investigations without connection to a licensee or permittee":

- **65 arrests by investigators for possession of alcohol**
 - During the auditing period there were 181 detainments made for Unlawful Possession & Intoxication (RSA 179:10), an RSA that falls within Title XIII. The vast majority of these detainments were not taken into full custody, were issued a summons, and subsequently released
 - 94 charges were made directly on the premises of a licensed establishment and were directly tied to a licensee
 - 86 charges were made off the premises of a licensed establishment
 - 32 of these charges were made as a result of direct surveillance on a licensed premise and were directly tied to a licensee
 - 48 charges were made on/ around the vicinity of major university campuses as a result of under-age drinking enforcement initiatives
 - Four (4) charges were made as a result of other law enforcement agencies requesting liquor investigators to assist them with alcohol related offenses
 - Two (2) charges were made on the premises of NH Liquor and Wine Outlets
 - One (1) charge was expunged and is not used for data
- **17 arrests by investigators for using a fraudulent identification card to obtain alcohol**
 - During the auditing period there were 35 charges made for Manufacture, Sale, and Possession of False Identification (RSA 179:62) within Title XIII
 - All 35 charges were directly tied to a licensed premise
- **16 sobriety checkpoints and saturation patrols by investigators**
 - Division involvement in sobriety checkpoints are for the purpose of conducting the "Last Drink Surveys" in order to determine if the defendant had become intoxicated on a licensed premises. There were no DWI arrests
 - Funding for this initiative is provided by National Highway Traffic Safety Administration (NHTSA)
- **14 summonses were issued by investigators for violations of municipal open container of alcohol beverage ordinances**
 - The vast majority of these detainees were not taken into custody, and instead, were issued a summons
 - There were 15 charges of Open Container- Town Ordinances during the audit period
 - Nine (9) summons were in Hampton and were a result of an initiative in partnership with the Hampton Police Department to reduce the incidents of under- age drinking in the beach community
 - Three (3) charges were a result of other detainments with subsequent open container charges filed
 - One (1) summons was issued on the premise of a licensed establishment

- *Two (2) summons were issued while conducting enforcement in university communities on initiatives to reduce the incidents of under-age drinking on college campuses*
- ***Five investigations by examiners to determine whether unlicensed establishments sold alcoholic beverages***
 - *There were 11 investigations for RSA 178:1 License Required; Enforceability of Contracts (within Title XIII)*
 - *All 11 investigations were conducted by sworn investigators*
 - *Failure to conduct these investigations would have direct impact on the optimization of profit and would have found the Division negligent in effective regulation of Title XII*
- ***Three investigations by examiners to determine whether alcoholic beverages were advertised on roadside signs***
 - *The investigations were conducted to determine if licensees were in compliance with the provisions of RSA 179:31 Advertising Restrictions (within Title XIII) and Liq. 405.06 Advertising and were directly tied to a licensee*
 - *Liq. 601.04 Statutory Violations Subject to Administrative Action. Administrative action shall be imposed on licensees for violation of statutes contained in RSA 175-180 or RSA 126-K.*
 - *Liq. 601.03 Definition of Terms. “Administrative notice of agency action” means written notice by the commission or commission employee of any violation of RSA Title XIII, administrative rule, or RSA 126-K which is reported to the commission for administrative action.*
- ***Two investigations by an investigator into alcoholic beverages sales and manufacturing at private residences***
 - *The investigations were conducted pursuant to RSA 178:1 License required; Enforceability of Contracts (within Title XIII)*
 - *Failure to conduct these investigations would have direct impact on the optimization of profit and would have found the Division negligent in effective regulation of Title XII*
- ***Two investigations by investigators into individuals seeking to obtain fraudulent identification cards***
 - *These investigations were conducted pursuant to RSA 179:62 Manufacturing, Sale, and Possession of Fraudulent Identification (within Title XIII)*
- ***One investigation by an investigator into an unlicensed carrier and unpermitted direct shipper***
 - *This investigation was conducted pursuant to RSA 178:1 License Required; Enforceability of Contracts (within Title XIII)*
 - *Failure to conduct this investigation would have direct impact on the optimization of profit and would have found the Division negligent in effective regulation of Title XII*
- ***One arrest by an investigator for sales of alcoholic beverage to an underage or intoxicated individual***

- *There were 33 arrests made for RSA 179:5 Prohibited Sales (within Title XIII) during the audit period*
- *Only two (2) of these arrests occurred off the licensed premise and both of them were a result of surveillance that were directly tied to a licensee*

*The Division **concur**s with the recommendation that it refine SOPs covering all enforcement activity to ensure compliance with rule.*

*The Division **concur**s with the recommendation that it refine performance measures to ensure compliance with rule.*

*The Division **does not concur** with the final recommendation of Observation #38. The Division disagrees with the “extra-jurisdictional” aspect of this recommendation. As discussed above, the Division does not engage in extra-jurisdictional law enforcement activity.*

*The Commission **does not concur** that increased legislative oversight is warranted. The Commission will develop a formal internal audit and compliance program to regularly evaluate internal processes and compliance-related matters, which will address the concerns outlined in the audit findings. The Commission will create a new position for a Compliance Officer to administer the program through the guidance and leadership of the Chief Operating Officer.*

Section 2. Division And LBA Comments

We concur in part.

Prior to responding to the recommendations in Observation 38, the Division wishes to state that it does not agree with many of the audit team’s interpretations of statute, rule, and policy. As the report did not highlight how an interpretation was reached by the audit team, it was left to the Division to glean a perceived interpretation from the wording and data presented within this (and other) Observation. The Division also states that it does not agree with many of the interpretations of the data in this section, nor the conclusions the audit team arrived at as a result.

LBA Comment: Our conclusions resulted from an objective review of relevant statutes, rules, and other authoritative documents in the context of what the Division reportedly did to self-design an improvised scope of operations. We requested Attorney General opinions, interpretations, and other authoritative guidance regulating Division operations. The Division represented it provided all relevant materials, and no relevant authoritative guidance was included. Among the other materials provided was an unimplemented 2011 strategy that described how the Division expanded its scope of operation, actively moving away from regulation of the licensee and permittee population and moving towards the general policing of broader segments of society. There was no underpinning opinion or authoritative interpretation, change in statute, or other objective cause compelling the adoption of the changed scope, but instead through “the convictions of senior” Division staff at the time, the Division’s “primary mission...evolved [over] five years from a regulatory [scope] to an agency primarily focused on public safety and law enforcement” leading to “the

refocusing of the [Division's] mission and resources.” The associated trends in identified noncompliance were reportedly a “dramatic rise in criminal statistics...and...fewer administrative violations.” The record further demonstrated the Division harmonized a narrative to rationalize this change in its scope of operation to accommodate extra-jurisdictional activities during subsequent years.

The altered and expanded scope nonetheless resulted in legislative inquiries, with the Legislature recommending the Commission constrain the Division's enforcement operation and prevent extra-jurisdictional activity and required quarterly reporting on extra-jurisdictional activities beginning in January 2018. The Commission asserted it would restrict Division extra-jurisdictional enforcement, focus enforcement on internal security so investigators would not have time to conduct general law enforcement activities, and report quarterly on extra-jurisdictional enforcement activity. These agreed-to constraints and reporting never took effect.

We have noted the Commission has long struggled with its “status as a State agency.” That the Division does not concur with our recommendation to develop, implement, monitor, and refine a comprehensive control framework properly *constrained to reflect the Division's role as a regulatory agency* follows in-line. Our findings indicate undoing the decision to self-assign an improvised Division mission, dating to the early 2000s, and refocusing operations on statutory obligations and rule-assigned tasks could help achieve expected outcomes. Otherwise, the Commission should seek specific statutory authority to support an expanded scope of Division operations.

The auditor's statement and characterization that “neither statute nor rules provided the Division or its investigators a secondary function, such as general law enforcement, or provided any mode of manner to conduct investigations into any entity other than a licensee or permittee” [sic.] is contrary to relevant statutes. See NH RSA 179:6, I and 179:59. As RSA 179:59 states in part, all Division Investigators “shall have all the powers of the sheriff in any county, with reference to enforcement of all laws either in cooperation with, or independently of, the officers of any county or town (emphasis added).” Investigators are sworn law enforcement officers, having completed the requisite training via the New Hampshire Police Standards & Training requirements. Assertions that the Division is not a law enforcement agency, even one with a highly specified regulatory function, are erroneous.

LBA Comment: The Commission had limited and specified authorities delegated to it by the Legislature. It could not operate outside that framework. The scope of the Commission's authority was within *Alcoholic Beverages*. Activities outside *Alcoholic Beverages* were inherently extra-jurisdictional.

The Division selectively presented parts of relevant statutes and provided them in isolation, allowing only a cursory understanding of the statutory framework around the Commission's operations and ignoring fundamentals. Statutes must be read together to arrive at their contextual meaning and understand their intent. The single, isolated statutory quote lacked that context and important limitations. The Commission, and consequently the Division, was

not a law enforcement agency. They were a regulatory agency that happened to be allowed to employ sworn agents with certain authorities delegated to achieve an expected outcome.

That the Commission was allowed to employ sworn staff was not disputed. That statute provided sworn staff authority commensurate with that of a sheriff to ensure liquor laws and rules were properly prosecuted was not questioned either. The Legislature allowing such authority was not the same; however, as providing for the reverse engineering of a law enforcement agency: because staff can be sworn did not change the Commission's role and make it a police agency. Further, all authority, including the sheriff-like authority, delegated by statute was delegated to the Commission's Chairman and was neither self-executing nor operable in isolation by the Division alone. Investigators could not operate like a sheriff when the Chairman provided otherwise. Investigators could not operate like a sheriff when other statutes provided limitations. The Chairman was obligated to promulgate an enforcement policy and delegate authority to Commission employees. The Chairman did so via rulemaking and since rules had the force and effect of law, sworn employees were obligated to conform not only to statute, but also to rules. This is ignored by the Division's narrative.

- The Commission was allowed, but not required, to “employ...liquor investigators” that were required to “complete a preparatory police training program....”
- Investigators were required to investigate any or all matters arising under *Alcoholic Beverage* under the direction of the Commission as codified in rules. This is perhaps the most crucial limitation.
- In the context of prosecutions, an investigator's “primary function shall be the proper prosecution of...[*Alcoholic Beverages*].” To carry out their primary function, as limited by statute and rule, liquor investigators had “all the powers of the sheriff in any county, with reference to enforcement of all [liquor] laws either in cooperation with, or independently of, the officers of any county or town” consistent with, and limited by, Commission rules. That sheriff-like authority was provided in the context of ensuring proper prosecutions of noncompliance with *Alcoholic Beverages* was perhaps the second most important limitation.
- No secondary function was assigned to investigators under any statutory context. The Commission was obligated to promulgate an enforcement policy in rules and did so. It is this enforcement policy which must be consulted to understand what, and how much of, the Commission's authority was delegated to investigators. Rule-assigned investigator tasks included: prosecuting cases before the Commission; returning licenses held in safekeeping; suspending one-day licenses due to safety concerns; suspending beer, wine, and liquor festival licenses operating contrary to the public interest; supervising compliance checks; “enforcing” statutes and rules; recommending issuance of a license; soliciting preliminary information needed to initiate an application and providing checklists for licensee pre-applications; conducting licensing inspections; meeting with applicants, reviewing application documentation, and recommending licensure;

and making additional site approvals for off-site caterers. All these activities were integral to ensuring compliance with *Alcoholic Beverages*. None provided for creating a police agency or conducting the extra-jurisdictional activities we describe in Observation No. 38 and elsewhere in this report.

Thus, the Division does not concur with recommendation 1. First, we do not agree with the assertion that the Division is not a law enforcement agency (the implication arising from recommendation 1, where a suggestion was made to transfer “responsibilities to a law enforcement agency.”) A bifurcation of law enforcement responsibilities away from the Division would be inefficient and ineffective. Having multiple agencies responsible for the enforcement of different aspects of Title XIII would negatively impact the overall regulatory environment throughout the State of New Hampshire.

LBA Comment: The Commission was a regulatory agency primarily responsible for retail sales of wine and liquor and distributing wine and liquor to licensees. As part of its regulatory function, the Legislature delegated to the Commission authority for its investigators to act like a sheriff to ensure proper prosecution of licensee noncompliance with *Alcoholic Beverages*. However, there was no general law enforcement mission assigned to the Commission. While the Commission had a role in public safety and could employ sworn staff to accomplish proper control of alcoholic beverages outcomes, this did not allow for the reverse engineering of the Division into a law enforcement agency. The Commission could not delegate to investigators authority it did not have. Sheriff-like authority was limited to prosecutions, and further limited by the Commission’s enforcement policy codified in rules. The over-focus on sworn employee operations undermined the Division’s ability to comply with its statutory mandates, such as conducting frequent premises inspections and examining licensees. As we have discussed throughout this report, 41.3 percent of licensees did not receive a regulatory visit during the two-year audit period. Moreover, the over-focus on sworn employee operations lacked objective analysis of effect. As we extensively discussed in Chapter 1, there was no system of control in place to examine whether any Division activity produced expected outcomes.

Statute contemplated more than bifurcation of licensee compliance monitoring and enforcement, it broadly distributed responsibilities across agencies and levels of government. Statute provided “[a]ny person violating the provisions of any [liquor] law may be prosecuted by the commission or any of its investigators as provided in this section, or by county or city attorneys, or by sheriffs or their deputies, or by police officials of towns.” [emphasis added] The governing body of a city or town could petition the Commission to revoke a license. There was no singularized enforcement scheme in statute, except when it came to administrative actions against a license, administrative adjudications being the Commission’s domain.

Importantly, we did not suggest repeal of the Commission’s authority to employ sworn staff or the delegation of sheriff-like authority to the Commission to ensure violations of *Alcoholic Beverages* and Commission rules were properly prosecuted. The Division’s suggestion otherwise was mistaken. Further, the Division’s purported effects on the regulatory

environment were suspect as the Division never objectively demonstrated its operations positively contributed to achieving expected outcomes, and lacked objective analysis of how the Division would operate were it to focus on its statutory duties and divest itself of extra-jurisdictional activities that lacked an objective demonstration they contributed to achieving expected outcomes.

This migration would also affect the Division and its current capacity of involvement in a number of diverse public health commissions. This list includes, but is not limited to:

- *The Raymond Coalition for Youth,*
- *Dover Youth 2 Youth;*
- *Community Alliance for Teen Safety;*
- *Communities for Alcohol and Drug-Free Youth;*
- *Newmarket Youth-to-Youth;*
- *Makin' It Happen Coalition for Resilient Youth;*
- *Strafford County Public Health;*
- *NH Regional Public Health Network;*
- *Drug Free NH;*
- *Bureau of Drug and Alcohol Services, and;*
- *Substance Abuse and Mental Health Services Administration*

The loss of law enforcement responsibilities would impede a meaningful participation in these coalitions.

LBA Comment: The Division did not have general “law enforcement responsibilities” to lose.

We do not agree that the drug task force (DTF) and drug recognition expert (DRE) responsibilities be “migrated to another” law enforcement agency (emphasis added), because it runs contrary to statutes, rules, and effective law enforcement practices. First, it is known that licensed establishments may be used as primary and secondary sites used for the sale, distribution, and trafficking of illegal drugs. Per Title XIII’s RSA 179:50, which focuses on Unlawful Purpose, “no licensee shall use, or allow to be used, his or her premises for any purpose contrary to law.”

LBA Comment: The Division’s narrative was flawed.

- **Migrating extra-jurisdictional DTF and DRE involvement was not counter to statute or rule: no statute or rule placed this obligation upon the Division nor did statute delegate to the Commission such authority.**
- **Migrating extra-jurisdictional DTF and DRE involvement was not counter to effective law enforcement practices. The Division never demonstrated what “effective law enforcement practices” were in the abstract, nor did it demonstrate any of its specific practices were effective and contributed to achieving expected outcomes. Reliance upon a false logic that it was subjectively “well known,”**

without objectively demonstrating that in fact, has potentially led to the waste of resources for over a decade. As we extensively illustrated throughout this report, there was no system in place to demonstrate effectiveness and achievement of expected outcomes. Notably, the Commission concurred with our recommendations to build such systems to enable future demonstration of outcomes.

- **Monitoring compliance with *Unlawful Purpose* provisions of statute was not central to the Division’s enforcement activities. During the audit period, 21 of 25,974 calls for service (0.08 percent) were related to *Unlawful Purpose*, and these 21 calls represented 14 events at ten licensees. Two of the 14 events (14.3 percent) resulted in an offense and one (7.1 percent) was referred to the Commission.**

For more than a decade, the Division has assigned an investigator to the DTF as a liaison between the two law enforcement entities. The investigator assists the task force by acting as a subject matter expert in identifying violations of Title XIII while embedded as an active task force member. This relationship also provides a vital feedback loop that the Division utilizes to better refine its presentation and conduction of the DRE program. Having an embedded association with the DTF allows real world, drug-related information to be relayed back to the Division, which is then utilized in its DRE course offerings.

LBA Comment: For more than a decade, the Division placed a full-time investigator on DTF assignment without conducting personnel performance evaluations, exerting operational oversight of the individual assigned, understanding costs and benefits, and demonstrating expected outcomes were produced. Concurrently, claims of inadequate investigator staffing levels were proffered by management, despite the fact it had assigned one of 27 investigators (3.7 percent) to extra-jurisdictional tasks, and while 41.3 percent of licensees were not subjected to required regulatory visits and other statutory obligations were unmet. So called “real world drug-related information” can be conveyed to the Division in any number of ways not involving the dedication of a full-time employee to the DTF on a permanent basis.

The Division also disagrees with the assertion that DRE responsibilities be migrated to another law enforcement agency. As stated in the audit report, the DRE program is designed to “train general law enforcement professionals to recognize impairment in motor vehicle drivers.” While making this assessment, the report does not indicate that any attempt was made to speak with the Commander of the New Hampshire Office of Highway Safety, any of its Grant Managers, nor the DECP State Coordinator. This would have provided a better understanding of the parameters of the Drug Evaluation Classification Program in New Hampshire, the programs history, programs administration or the relevance of this program in our State.

LBA Comment: The Division’s narrative related to the DRE program’s history and administration was irrelevant. The undertaking was not within the Commission’s jurisdiction.

The Division further contends that as the sole regulatory body assigned with enforcing Title XIII laws, it is better situated than most other law enforcement agencies to provide real-world experience on education related to impaired driving. Recent research from the US Department of Transportation provides “research indicating alcohol is a greater contributor to crash risk than drugs.”⁴ Further research in this same report indicates a significantly higher risk of crash occurring for those “drivers with both alcohol and other drugs” in their systems.⁵ This information supports the Division in its assertion that DRE programming does strongly align with its regulatory function. Therefore, it is imperative that the Division be heavily involved in DTF and DRE programs.

LBA Comment: Nothing demonstrated the Division possessed the quality claimed nor that a Division role in the DTF or DRE program was necessary or contributed to producing expected outcomes. Further, conflating the DTF with the DRE program was erroneous, and conflating these programs’ purported benefits to public health and safety with the Commission’s purpose of proper control of alcoholic beverages and its relationship with public health and safety, was incongruous. The Commission’s scope of authority rested in controlling how an accused obtained alcohol, and how to address that with licensees that were found to have engaged in noncompliance. Because alcohol can be associated both with the DTF or DRE and the Commission’s responsibilities does not mean the Division can reverse engineer these programs into its mission and scope of authority.

The Division **does not concur** with the recommendation that it “develop, implement, monitor, and refine a comprehensive control framework properly **constrained to reflect the Division’s role as a regulatory agency**” (emphasis added). Throughout this section of the audit report, it is contended that “Division employees engaged in investigations and enforcement activity related to Alcoholic Beverages, but unrelated to a licensee or permittee...,” and that “[r]ule did not allow for... investigations or sanctions of non- licensed or non- permitted entities.” Further, the report alleges that “the Division engaged extensively in investigations without connection to a licensee or permittee.”

LBA Comment: The report makes no allegations. The report demonstrates these events occurred, frames the rule-based authorities delegated to Division investigators, and illustrates where activities were outside delegated authority.

Statute required the Commission “adopt and publish rules...to regulate the mode and manner of all investigations....” The Commission promulgated rules specifying how investigators would comply with the statutory requirement they make complaints for violations of *Alcoholic Beverages*. Rules required one of two investigative courses of action be followed and required investigations produce one of two corresponding outputs.

1. “Upon detecting a violation under Liq 601.04 [statutory violation] or Liq 601.05 [rule violation], an investigator shall issue an administrative notice of agency action specifying the violation and penalty.” [emphasis added]

⁴ USDOT. NHTSA. *Drugs and Alcohol Crash Risk: A Case Controlled Study*. 2016, p. 5.

⁵ USDOT. NHTSA. *Drugs and Alcohol Crash Risk: A Case Controlled Study*. 2016, p. 9.

2. “Upon detecting conditions which could cause or otherwise lead to violations, the investigator shall discuss the problem and corrective action with the person in charge at the licensed business; and issue a notice and record of [verbal] instruction.” [emphasis added]

“[W]ithin 5 calendar days,” depending upon the nature of the noncompliance, investigators had to either:

1. “file the division copy of the [administrative] notice of agency action...at the office of division of enforcement and licensing, and...[a] full report of violation;” or
2. “file the division copy of the...notice and record of verbal instruction at the office of division of enforcement and licensing, and...[a] short narrative detailing the conditions and circumstances for which the notice and record of [verbal] instruction was issued....”

No other procedures or result from the investigative procedures was provided. Investigators were the only Commission employee authorized to engage in these procedures and issue notices.

*The Division does not concur with the recommendation that it develop, implement, monitor, and refine a comprehensive control framework properly **constrained to reflect the Division’s role as a regulatory agency** (emphasis added). Throughout this section of the audit report, it is contended that “Division employees engaged in investigations and enforcement activity related to Alcoholic Beverages, but unrelated to a licensee or permittee...,” and that “[r]ule did not allow for... investigations or sanctions of non- licensed or non- permitted entities.” Further, the report alleges that “the Division engaged extensively in investigations without connection to a licensee or permittee.”*

Based on the Division’s enforcement authority as defined in RSA 179:59, investigators have the authority to conduct investigations statewide. Their investigative authority is not confined to a licensed establishment. Since Title XIII violations can take place in any location, having this broad investigative authority is imperative. As part of the Division’s mission of reducing underage access to alcohol, being able to provide a timely intervention when violations of Title XIII or other public safety issues occur (such as illegal drug possession, driving under the influence, or minors transporting alcoholic beverages) is critical. The authority to intervene provided by RSA 179:59 helps the Division in this mission and is a valuable public safety tool. The points illustrated below show just how important this authority is in mitigating many issues that may originate at a licensed establishment and continue once an individual leaves a licensed premise.

LBA Comment: Enforcement authority was not defined in the statute cited. The statute cited does not mention investigations, and instead was focused on ensuring proper prosecutions. Other statutes required investigative practices and enforcement policy be codified in rules. Enforcement, investigative, and prosecutorial authority was delegated by the Commission to the Division and its employees via rules as described above. Authority was limited to licensed

establishments. The narrative selectively applies statutory language to support a preferred narrative, when numerous statutes and rules instead applied. The Division could claim no more authority than the Commission possessed. The Division could exercise no more of the Commission's authority than the Commission delegated to it.

No authority to intervene was provided by the statute cited. To accept the Division's narrative as authoritative would create another Division of State Police within the Liquor Commission, something rejected by the Legislature in 2010.

The report asserts that "investigators engage in an unknown number of extra-jurisdictional motor vehicle investigations. Yet, the report also acknowledges that the 155 motor vehicle stops⁶ "were typically the result of surveillance activity at license premises or State liquor stores...." (Emphasis added).

LBA Comment: Given the lack of reliability of Division data, categorizing these 155 instances was inherently limited. We note rules did not delegate to investigators authority to treat State liquor stores like licensees, and we have recommended if the Commission finds this to be the most efficient means to achieve expected outcomes, it should amend rules to accommodate this practice.

The Division's enforcement of motor vehicle violations is also supported by New Hampshire case law. The first case, Weldy v. Kingston, 128 N.H. 325 (1986) stated that when police officers encounter minors transporting alcohol in a motor vehicle, they have a common law duty to take the minors into custody, seize their vehicle and the alcoholic beverages, and notify the parents of the minors. Further, Weldy finds that, under RSA 179:2, when an officer discovers any person in the act of transporting intoxicating liquor in violation of any law of the state, it shall be the officer's duty to seize all intoxicating liquors, take possession of any vehicle engaged in such illegal transportation, and the officer shall arrest any person or persons in charge of the vehicle. Both Weldy and NH RSA 179:2 provide a framework of enforceable activity under Title XIII.

LBA Comment: We do not state such arrests are outside the scope of *Alcoholic Beverages*, it is the proximate cause of the encounter that is questionable, and some were outside the jurisdiction of the Commission. Investigators were not intended to be Division of State Police uniform patrol Troopers stopping motorists for defective equipment, un-signalized turns, or

⁶ These calls comprise .006% of total calls for service (25,974) recorded during the audit period. **LBA Comment:** This analysis is in error: 155 of 25,974 rounds to 0.006, or 0.6 percent, not 0.006 percent. Further, the 25,974 calls for service contain a multitude of events, many of which have nothing to do with field enforcement activity, such as vehicle maintenance and paperwork delivery. Consequently, while the 0.6 percent fraction illustrates some context, its value is limited to context within the enforcement database and provides no context on how many of the 155 events were of the actual field enforcement activity that was recorded in the enforcement database. Further, the database was incomplete and unreliable and, consequently, there is no practical way to actually understand how many of the 155 events were of total, actual field enforcement activity because the true quantification of such activity is lost to history through inadequate controls over data.

other violations of Title XXI, *Motor Vehicles*, and using such stops to provide a pretense to discover a nexus to Title XIII, *Alcoholic Beverages*.

The Division was obligated to conform to its authority. Instead of extra-jurisdictional activities, it should focus on its statutory obligations, such as premises inspections, compliance checks, and responding to complaints against licensees.

Moreover, the data provided as evidence of extra-jurisdictional activity is inaccurate or incomplete. The data, which the report's Executive Summary states "were inconsistently reliable to a degree that we qualify every conclusion," inaccurately depicts the enforcement efforts of Division employees. Contrary to the report's conclusions, the Division's activities are directly tied to its Title XIII responsibilities.

LBA Comment: We agreed throughout this report that the Division's data were inaccurate and incomplete. Inadequate control over data compelled us to disclaim the reliability of all analyses resting upon Division data. Until the Division controls its data and can produce reliable data, any analysis resting thereon will be compromised, including the after-the-fact analyses by the Division that follow. Had the Division operated a system of control that produced reliable data and a system whereby those data were analyzed to provide useful knowledge, we would have examined it. However, there was no control system in operation during the audit period and that the Division could after-the-fact view data differently does not bear on the lack of a system of control.

Regardless, even the Division's representations below demonstrate sizeable numbers of extra-jurisdictional enforcement activities occurred.

Below are the Division's clarifications or corrections to the audit report's assertions of "investigations without connection to a licensee or permittee":

- *"65 arrests by investigators for possession of alcohol"*
 - *During the auditing period there were 181 detainments made for Unlawful Possession & Intoxication (RSA 179:10), an RSA that falls within Title XIII. The vast majority of these detainments were not taken into full custody, were issued a summons, and subsequently released*
 - *94 charges were made directly on the premises of a licensed establishment and were directly tied to a licensee*

LBA Comment: 94, or 51.9 percent were on a licensed establishment's premises, 48.1 percent were not.

- *86 charges were made off the premises of a licensed establishment*

LBA Comment: 86, or 47.5 percent were not on a licensed establishment's premises.

- *32 of these charges were made as a result of direct surveillance on a licensed premise and were directly tied to a licensee*

LBA Comment: 32 of 86 (37.2 percent) were associated with surveillance of a licensed establishment's premises, 54 (62.8 percent) were not.

- *48 charges were made on/ around the vicinity of major university campuses as a result of under-age drinking enforcement initiatives*

LBA Comment: 48 of 86 (55.8 percent) were purportedly on a campus and not tied to a licensee.

- *Four (4) charges were made as a result of other law enforcement agencies requesting liquor investigators to assist them with alcohol related offenses*

LBA Comment: four of 86 cases (4.7 percent) arose from an interagency request, but not tied to a licensed establishment's premises.

- *Two (2) charges were made on the premises of NH Liquor and Wine Outlets*

LBA Comment: two of 86 cases (2.3 percent) were at a liquor store, not a licensed establishment's premises.

- *One (1) charge was expunged and is not used for data*
- *"17 arrests by investigators for using a fraudulent identification card to obtain alcohol"*
 - *During the auditing period there were 35 charges made for Manufacture, Sale, and Possession of False Identification (RSA 179:62) within Title XIII*
 - *All 35 charges were directly tied to a licensed premise*

LBA Comment: The 17 cases we cited illustrated the deficiencies with the Division's data. That the Division could, after-the-fact, presumably identify a licensee to associate with these arrests, and identify an additional 18 cases demonstrates the limits of uncontrolled databases.

- *"16 sobriety checkpoints and saturation patrols by investigators"*
 - *Division involvement in sobriety checkpoints are for the purpose of conducting the "Last Drink Surveys" in order to determine if the defendant had become intoxicated on a licensed premises. There were no DWI arrests*

- *Funding for this initiative is provided by National Highway Traffic Safety Administration (NHTSA)*

LBA Comment: These 16 investigations were pursuant to the terms and conditions of a grant. Investigators have only the authority delegated, and investigative authority was limited to licensees. These 16 investigations were, in addition to not being tied to a licensee, also extra-legal, or outside legally delegated authority.

Notably, the last drink survey process was discontinued by the Division. Results from this effort showed 24 of 45 individuals (53.3 percent) who took the survey obtained their most recent alcoholic beverage from a licensee in CY 2017 and 11 of 31 individuals (35.5 percent) who took the survey reported similarly in CY 2018. However, the Division did not incorporate follow-up into strategy and SOPs and enforcement data did not indicate noncompliant licensees received follow-up inspections or enforcement action. Further, this effort was discontinued during the audit period when the grant ended, curtailing an activity tied to a statewide strategy that, if effectively done, could have potentially helped the Division ensure proper control and actually accommodated tracing the source of DUI offenders last alcoholic beverage to its source, including licensed establishments.

- *“14 summonses were issued by investigators for violations of municipal open container of alcohol beverage ordinances”*
 - *The vast majority of these detainees were not taken into custody, and instead, were issued a summons*
 - *There were 15 charges of Open Container- Town Ordinances during the audit period*
 - *Nine (9) summons were in Hampton and were a result of an initiative in partnership with the Hampton Police Department to reduce the incidents of under- age drinking in the beach community*
 - *Three (3) charges were a result of other detainments with subsequent open container charges filed*
 - *One (1) summons was issued on the premises of a licensed establishment*
 - *Two (2) summons were issued while conducting enforcement in university communities on initiatives to reduce the incidents of under-age drinking on college campuses*

LBA Comment: One of 15 of these violations (6.7 percent) was tied to a licensee, 14 (93.3 percent) were not. Further, investigators had only the authority delegated, and investigative authority was limited to licensees. Fourteen of the 15 investigations (93.3 percent) were extra-legal, or outside legally delegated authority.

- *“Five investigations by examiners to determine whether unlicensed establishments sold alcoholic beverages”*

- *There were 11 investigations for RSA 178:1 License Required; Enforceability of Contracts (within Title XIII)*
- *All 11 investigations were conducted by sworn investigators*
- *Failure to conduct these investigations would have direct impact on the optimization of profit and would have found the Division negligent in effective regulation of Title XII [sic.]*

LBA Comment: Examiners had only the authority delegated, and investigation authority was limited to investigators. These five “investigations” were, in addition to not being tied to a licensee, extra-legal, or outside legally delegated authority.

Further, the suggestion that the 11 investigator-conducted other investigations that were to ensure optimization of Commission profitability was specious—there were no controls to understand optimization of profitability. That unlicensed *commercial sales could* plausibly affect Commission revenue had to be balanced with optimization of profitability and the Division lacked any meaningful measurement of costs and benefits of its investigative practices, so a determination as to whether these investigations were cost-beneficial and consequently optimized profitability was wholly lacking.

These five cases also illustrate the deficiencies with the Division’s data. That the Division could not identify these five cases demonstrates the limits of uncontrolled databases.

- *“Three investigations by examiners to determine whether alcoholic beverages were advertised on roadside signs”*
 - *The investigations were conducted to determine if licensees were in compliance with the provisions of RSA 179:31 Advertising Restrictions (within Title XIII) and Liq. 405.06 Advertising and were directly tied to a licensee*
 - *Liq. 601.04 Statutory Violations Subject to Administrative Action. Administrative action shall be imposed on licensees for violation of statutes contained in RSA 175-180 or RSA 126-K.*
 - *Liq. 601.03 Definition of Terms. “Administrative notice of agency action” means written notice by the commission or commission employee of any violation of Title XIII, administrative rule, or RSA 126-K which is reported to the commission for administrative action.*

LBA Comment: Examiners had only the authority delegated, and investigation authority was limited to investigators. These “investigations” were extra-legal, or outside legally delegated authority.

Further, a definition was not substantive authority. That the definition of an administrative notice of agency action accommodated non-sworn employees was immaterial; rules specifying the procedure to investigate potential noncompliance and issue these notices did not accommodate non-sworn staff.

- “Two investigations by an investigator into alcoholic beverages sales and manufacturing at private residences”
 - The investigations were conducted pursuant to RSA 178:1 License required; Enforceability of Contracts (within Title XIII)
 - Failure to conduct these investigations would have direct impact on the optimization of profit and would have found the Division negligent in effective regulation of Title XII [sic.]

LBA Comment: Investigators had only the authority delegated, and investigative authority was limited to licensees. These investigations were, in addition to not being tied to a licensee, also extra-legal, or outside legally delegated authority. Further, the suggestion that these investigations were to ensure optimization of Commission profitability was specious—there were no controls to understand optimization of profitability. That unlicensed *private* sales or manufacturing *could* plausibly affect Commission revenue had to be balanced with optimization of profitability and the Division lacked any meaningful measurement of costs and benefits of its investigative practices, so a determination as to whether these investigations were cost-beneficial and consequently optimized profitability was wholly lacking.

- “Two investigations by investigators into individuals seeking to obtain fraudulent identification cards”
 - These investigations were conducted pursuant to RSA 179:62 Manufacturing, Sale, and Possession of Fraudulent Identification (within Title XIII)

LBA Comment: Investigators have only the authority delegated, and investigative authority was limited to licensees. This investigation was, in addition to not being tied to a licensee, extra-legal, or outside legally delegated authority.

- “One investigation by an investigator into an unlicensed carrier and unpermitted direct shipper”
 - This investigation was conducted pursuant to RSA 178:1 License Required; Enforceability of Contracts (within Title XIII)
 - Failure to conduct this investigation would have direct impact on the optimization of profit and would have found the Division negligent in effective regulation of Title XII [sic.]

LBA Comment: Investigators had only the authority delegated, and investigative authority was limited to licensees. This investigation was, in addition to not being tied to a licensee, extra-legal, or outside legally delegated authority.

- “One arrest by an investigator for sales of alcoholic beverage to an underage or intoxicated individual”

- *There were 33 arrests made for RSA 179:5 Prohibited Sales (within Title XIII) during the audit period*
- *Only two (2) of these arrests occurred off the licensed premise and both of them were a result of surveillance that were directly tied to a licensee*

LBA Comment: Two of 33 (6.1 percent) were off a licensed premises but purportedly resulted from surveillance of a licensed establishment. If the Division’s data were reliable, these investigations might have been properly predicated and authorized.

*The Division **concur**s with the recommendation that it refine SOPs covering all enforcement activity to ensure compliance with rule.*

*The Division **concur**s with the recommendation that it refine performance measures to ensure compliance with rule.*

*The Division **does not concur** with the final recommendation of Observation #38. The Division disagrees with the “extra-jurisdictional” aspect of this recommendation. As discussed above, the Division does not engage in extra-jurisdictional law enforcement activity.*

*The Commission **does not concur** that increased legislative oversight is warranted. The Commission will develop a formal internal audit and compliance program to regularly evaluate internal processes and compliance-related matters, which will address the concerns outlined in the audit findings. The Commission will create a new position for a Compliance Officer to administer the program through the guidance and leadership of the Chief Operating Officer.*

**STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING**

**APPENDIX D
SURVEY OF THE STATE LAW ENFORCEMENT COMMUNITY**

We surveyed an indeterminable number of State and local law enforcement stakeholders using an online survey platform accessed through a link we sent by email to various groups and individuals, and received complete responses from 95 individuals. The results were not a statistically reliable, representative sample of the opinions of law enforcement personnel statewide. We combined and simplified similar answers to open-ended questions and presented them in topical categories; multipart responses were counted in multiple categories where applicable. Some totals in the following tables may not add up to 100 percent due to rounding, respondents being able to respond multiple times to the same question, or aggregation of responses into categories.

Question 1. Do you currently work for the Division of Enforcement and Licensing in the New Hampshire Liquor Commission?		
Answer Options	Count	Percent
Yes	2	2.1
No	93	97.9
	<i>respondent answered question</i>	95
	<i>respondent skipped question</i>	0

Question 2. Are you a current or former member of a law enforcement agency in New Hampshire as of July 1, 2017?		
Answer Options	Count	Percent
Yes, sworn member	92	98.9
Yes, unsworn member	0	0.0
No	1	1.1
	<i>respondent answered question</i>	93
	<i>respondent skipped question</i>	2

Question 3. Which level of government is associated with your most recent law enforcement agency of employment?		
Answer Options	Count	Percent
State	25	27.2
County	4	4.3
Municipal	63	68.5
	<i>respondent answered question</i>	92
	<i>respondent skipped question</i>	3

Question 4. Please specify your State agency of employment.		
Answer Options	Count	Percent
Department of Safety-Division of State Police	25	100.0
Other (please specify)	0	0.0

respondent answered question **25**

respondent skipped question **70**

Question 5. Please specify your county of employment.		
Answer Options	Count	Percent
Belknap	0	0.0
Carroll	1	25.0
Cheshire	1	25.0
Coos	0	0.0
Grafton	1	25.0
Hillsborough	0	0.0
Merrimack	0	0.0
Rockingham	1	25.0
Strafford	0	0.0
Sullivan	0	0.0

respondent answered question **4**

respondent skipped question **91**

Question 6. Please specify your municipality of employment.	
Comments	Count
<i>Redacted*</i>	63

**Respondents represented local law enforcement agencies in 58 municipalities.*

provided comment **63**

respondent skipped question **32**

Question 7. Which of the following best describes your level of familiarity with the Division's responsibilities for enforcing State liquor laws and rules?		
Answer Options	Count	Percent
Familiar	51	55.4
Somewhat familiar	37	40.2
Unfamiliar	4	4.3

respondent answered question **92**

respondent skipped question **3**

Question 8. How effectively did the Division fulfill its responsibilities related to enforcing State liquor laws and rules?		
Answer Options	Count	Percent
Effectively	41	46.6
Somewhat effectively	13	14.8
Somewhat ineffectively	3	3.4
Ineffectively	2	2.3
Unsure	19	21.6
No opinion	10	11.4

respondent answered question **88**
respondent skipped question **7**

Question 9. How can the Division more effectively fulfill its responsibilities to enforce State liquor laws and rules?	
Comments	Count
Need more officers	20
More compliance checks are needed	14
Improve coordination or outreach	12
Better or more communication	9
They are doing a good job now	5
More funding	4
Be stricter	3
Better control overserving	2
Other	9

provided comment **88**
respondent skipped question **7**

Question 10. How often did you interact with personnel from the Division in your official capacity?		
Answer Options	Count	Percent
One or more times a week.	4	4.5
One to three times a month.	11	12.5
One to eleven times a year.	40	45.5
Less than one time a year.	27	30.7
I have never interacted with Division personnel.	6	6.8

respondent answered question **88**
respondent skipped question **7**

Question 11. Do you believe this level of interaction was adequate given the nature and number of establishments licensed by the Liquor Commission to distribute alcohol in your jurisdiction?		
Answer Options	Count	Percent
Yes	43	48.9
No	32	36.4
Unsure	13	14.8
<i>respondent answered question</i>		88
<i>respondent skipped question</i>		7

Question 12. How consistently did the Division operate within the scope of its primary duties to enforce State liquor laws and rules?		
Answer Options	Count	Percent
Consistently	34	37.0
Somewhat consistently	11	12.0
Somewhat inconsistently	2	2.2
Inconsistently	2	2.2
Unsure	32	34.8
No opinion	11	12.0
<i>respondent answered question</i>		92
<i>respondent skipped question</i>		3

If needed, please use the space provided to explain your answer.		
Comments	Count	
Do not regularly interact with the Division	8	
Few or no licensed establishments in my jurisdiction	3	
Other	7	
<i>provided comment</i>		14
<i>respondent skipped question</i>		81

Question 13. How effectively did the Division communicate with your agency?		
Answer Options	Count	Percent
Effectively	32	34.8
Somewhat effectively	17	18.5
Somewhat ineffectively	6	6.5
Ineffectively	9	9.8
Unsure	17	18.5
No opinion	11	12.0
<i>respondent answered question</i>		92
<i>respondent skipped question</i>		3

If needed, please use the space provided to explain your answer.	
Comments	Count
Never been contacted	5
Communication is limited	4
Communicate as needed	2
Communication must be initiated by my agency	2
Not sure/No opinion	2
Other	3
<i>provided comment</i>	15
<i>respondent skipped question</i>	80

Question 14. How consistently did the Division transfer enforcement responsibilities to your jurisdiction when appropriate?		
Answer Options	Count	Percent
Consistently	23	25.0
Somewhat consistently	5	5.4
Somewhat inconsistently	4	4.3
Inconsistently	5	5.4
Unsure	25	27.2
No opinion	30	32.6
<i>respondent answered question</i>	92	
<i>respondent skipped question</i>	3	

If needed, please use the space provided to explain your answer.	
Comments	Count
No incidents	2
Unaware of opportunities to transfer enforcement responsibilities	2
Other	4
<i>provided comment</i>	8
<i>respondent skipped question</i>	87

Question 15. Did your agency conduct compliance checks of liquor laws and regulations?		
Answer Options	Count	Percent
Yes	20	21.7
No	60	65.2
Unsure	12	13.0
<i>respondent answered question</i>	92	
<i>respondent skipped question</i>	3	

Question 16. Did the Division ensure your agency was familiar with its standards and requirements for compliance checks to ensure administrative action could be taken by the Division in addition to legal action carried out by your agency?		
Answer Options	Count	Percent
Yes	18	56.3
No	3	9.4
Unsure	11	34.4
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		63

Question 17. How can the Division improve communication on compliance check standards and requirements?		
Comments	Count	
Better communication	14	
Visit local police departments	11	
Provide training	8	
Inform local law enforcement when they occur and the results	7	
Good or excellent job as is	6	
Combine efforts with local law enforcement	4	
More compliance checks	3	
Send out emails/flyers	3	
Add more officers	2	
Don't know/Unsure	9	
No response	7	
Other	15	
<i>provided comment</i>		84
<i>respondent skipped question</i>		11

Question 18. Which of the following options best describes your agency's relationship with the Division?		
Answer Options	Count	Percent
Collaborative	36	39.1
Somewhat collaborative	24	26.1
Somewhat uncollaborative	5	5.4
Uncollaborative	3	3.3
Unsure	14	15.2
No opinion	10	10.9
<i>respondent answered question</i>		92
<i>respondent skipped question</i>		3

If needed, please use the space provided to explain your answer.	
Comments	Count
No relationship with the Division	4
Excellent relationship	2
Other	7
<i>provided comment</i>	11
<i>respondent skipped question</i>	84

Question 19. How effective was the Division’s training provided to law enforcement agencies?		
Answer Options	Count	Percent
Effective	21	22.8
Somewhat effective	9	9.8
Somewhat ineffective	4	4.3
Ineffective	6	6.5
No opinion	30	32.6
Unsure	22	23.9
<i>respondent answered question</i>	92	
<i>respondent skipped question</i>	3	

Question 20. How effective was the Division’s education programming provided to the general public, including youth educational programs?		
Answer Options	Count	Percent
Effective	15	16.3
Somewhat effective	13	14.1
Somewhat ineffective	3	3.3
Ineffective	2	2.2
No opinion	26	28.3
Unsure	33	35.9
<i>respondent answered question</i>	92	
<i>respondent skipped question</i>	3	

Question 21. How can the Division improve its training and education programs?	
Comments	Count
Reach out to local law enforcement	9
Need better advertising	6
Offer more training	5
No opinion	4
Continue public service announcements	3
Provide regional or department training	2
Continue with partnerships	2
Get into schools	2
Need someone to teach	2
Unsure	17
No response	8
Other	17

provided comment **74**
respondent skipped question **21**

Question 22. Is there anything else you would like to share with us regarding the Division? If so, please use the space provided.	
Comments	Count
No	13
Excellent organization /doing a good job	7
Staffing needs to be increased	6
Interactions have been great	4
Improve communication	2
Joint enforcement would be helpful	2
More contact desired	2
No response	6
Other	5

provided comment **42**
respondent skipped question **53**

**STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING**

**APPENDIX E
SURVEY OF NEW LICENSEES**

We surveyed 239 licensees using an online survey platform accessed through an email we sent, and received 54 complete responses for a 22.6 percent response rate. However, since survey participants were identified using unaudited Division data, the results were not statistically reliable. We combined and simplified similar answers to many open-ended questions and presented them in topical categories; multipart responses were counted in multiple categories where applicable. Some totals in the following tables may not add up to 100 percent due to rounding or where respondents could respond multiple times to the same question.

Question 1. Did you complete the initial licensing process for one or more licenses during April 2018 through June 2019?		
Answer Options	Count	Percent
Yes	45	83.3
No	9	16.7
	<i>respondent answered question</i>	54
	<i>respondent skipped question</i>	0

Question 2. Please provide your license number. (If you completed the initial licensing process for more than one license, please provide only ONE license number.)		
<i>Redacted</i>	46	100.0
	<i>respondent answered question*</i>	46
	<i>respondent skipped question</i>	8

*Note: Technical issues allowed one respondent who answered “No” in Question 1 to provide a response to Question 2.

Question 3. How did you begin the initial licensing process?		
Answer Options	Count	Percent
Used the Commission's website	24	52.2
Called the Licensing Help Desk to obtain guidance and forms	22	47.8
Obtained guidance and forms by visiting the Licensing Help Desk in Concord	1	2.2
Don't know	1	2.2
Other (please specify)	6	13.0
	<i>respondent answered question</i>	46
	<i>(respondents could provide more than one response)</i>	46
	<i>respondent skipped question</i>	8

Question 3. Text Responses, Other:	Count
Local liquor counsel	1
Got the application off the website and mailed it in	1
Contacted local enforcement agent	1
Took the MTS class as a first step	1
Previously opened a restaurant	1
Combination of website and telephone support	1
<i>provided comment</i>	6

Question 4. Did you have to contact the Licensing Help Desk to ask questions about the Request for Application form (also referred to as the “mini app” or "Form L-001")?		
Answer Options	Count	Percent
Yes	26	56.5
No	20	43.5
	<i>respondent answered question</i>	46
	<i>respondent skipped question</i>	8

Question 5. Did licensing staff answer your question(s) on the Request for Application (also referred to as the “mini app” or "Form L-001")?		
Answer Options	Count	Percent
Yes-on the first call	17	65.4
Yes-after more than one call	9	34.6
No	0	0.0
	<i>respondent answered question</i>	26
	<i>respondent skipped question</i>	28

Question 6. Did you get your question(s) answered?		
Answer Options	Count	Percent
Yes	0	0.0
No	0	0.0
	<i>respondent answered question</i>	0
	<i>respondent skipped question</i>	54

Question 7. How did you get your question answered?		
Answer Options	Count	Percent
I visited the Licensing Help Desk in Concord	0	0.0
Staff visited my location	0	0.0
Other (please specify)	0	0.0
	<i>respondent answered question</i>	0
	<i>respondent skipped question</i>	54

Question 8. Did completing the Request for Application (also referred to as the “mini app” or "Form L-001") make it clear what license type you needed to apply for?

Answer Options	Count	Percent
Yes	38	82.6
No	8	17.4

respondent answered question **46**
respondent skipped question **8**

Question 9. Why was the type of license you required unclear?

Comments	Count
Requirements were unclear	6
Statutes were unclear	1
Other	1

provided comment **8**
respondent skipped question **46**

Question 10. How clear were the 1) checklist for documents needed and 2) the document explaining the checklist?

Answer Options	Count	Percent
Clear	16	34.8
Somewhat clear	22	47.8
Somewhat unclear	6	13.0
Unclear	1	2.2
Unsure	1	2.2
No opinion	0	0.0

respondent answered question **46**
respondent skipped question **8**

Question 11. What aspects of the 1) checklists for documents needed and 2) the document explaining the checklist were unclear?

Comments	Count
How licensing worked	2
Some documents were on the checklists but were not needed	4
Some requirements were unclear	2

provided comment **8**
respondent skipped question **46**

Question 12. Approximately how many hours did it take you to complete the Request for Application (also referred to as the “mini app” or "Form L-001") and obtain required supporting documents?

Answer Options	Count	Percent
1 hour	6	13.0
2 hours	11	23.9
3 hours	7	15.2
4 hours	3	6.5

5 hours	0	0.0
More than 5 hours	9	19.6
Don't Know	10	21.7

respondent answered question **46**
respondent skipped question **8**

Question 13. Approximately how many days did it take for you to receive an inspection from the time you contacted the Licensing Help Desk to request one?

Answer Options	Count	Percent
1-5 days	18	39.1
6-10 days	10	21.7
11-15 days	4	8.7
16-20 days	0	0.0
More than 20 days	0	0.0
Don't Know	14	30.4

respondent answered question **46**
respondent skipped question **8**

Question 14. Did the investigator or licensing specialist conducting the inspection of your premises go through a preliminary review of documents required with you?

Answer Options	Count	Percent
Yes	29	64.4
No	4	8.9
Don't Know	12	26.7

respondent answered question **45**
respondent skipped question **9**

Question 15. How satisfied were you with the inspection of your premises and the preliminary review of required documents?

Answer Options	Count	Percent
Satisfied	34	75.6
Somewhat satisfied	2	4.4
Neither satisfied nor dissatisfied	2	4.4
Somewhat dissatisfied	0	0.0
Dissatisfied	0	0.0
Unsure	7	15.6

respondent answered question **45**
respondent skipped question **9**

Question 16. Why were you dissatisfied with the inspection of your premises and preliminary review of required documents?

Comments	Count
	0

provided comment **0**

Question 17. How clear was the process required to schedule your final appointment and receive your license?		
Answer Options	Count	Percent
Clear	31	68.9
Somewhat clear	5	11.1
Somewhat unclear	3	6.7
Unclear	2	4.4
Unsure	1	2.2
No opinion	3	6.7

respondent answered question **45**
respondent skipped question **9**

Question 18. What aspects of the process to schedule your final appointment and receive your license were unclear?	
Comments	Count
Timing	2
Not all requirements to finalize my license were clear	3

provided comment **5**
respondent skipped question **49**

Question 19. How clear was the cost to obtain your license upon submitting your paperwork at the final appointment?		
Answer Options	Count	Percent
Clear	34	75.6
Somewhat clear	4	8.9
Somewhat unclear	4	8.9
Unclear	1	2.2
Unsure	1	2.2
No opinion	1	2.2

respondent answered question **45**
respondent skipped question **9**

Question 20. At your final appointment, how long did you wait to speak to a licensing specialist about your application?		
Answer Options	Count	Percent
Zero to ten minutes	27	60.0
11 to 20 minutes	7	15.6
21 to 30 minutes	1	2.2
31 to 40 minutes	1	2.2
More than 40 minutes	1	2.2
Don't Know	8	17.8

respondent answered question **45**
respondent skipped question **9**

Question 21. At your final appointment, how long did it take to complete the final review of your application and documents with the licensing specialist?		
Answer Options	Count	Percent
Zero to ten minutes	11	24.4
11 to 20 minutes	17	37.8
21 to 30 minutes	5	11.1
31 to 40 minutes	1	2.2
More than 40 minutes	4	8.9
Don't Know	7	15.6

respondent answered question **45**
respondent skipped question **9**

Question 22. Did you receive a temporary license at your final appointment?		
Answer Options	Count	Percent
Yes	35	77.8
No, I received my permanent license	5	11.1
No, I did not receive a license at my final appointment	5	11.1

respondent answered question **45**
respondent skipped question **9**

Question 22. Text Comments:	Count
Some questions were not applicable	3
Unsure whether it was received at appointment	2
Did not receive an inspection	1

provided comment **6**

Question 23. If you received a temporary license, did you receive your permanent license before the temporary license expired?		
Answer Options	Count	Percent
Yes	36	90.0
No	4	10.0

respondent answered question **40**
respondent skipped question **14**

Question 24. How long did it take from the time you first submitted a complete Request for Application form (also known as a "mini app" or "Form L-001") to finally receive your permanent license?		
Answer Options	Count	Percent
0-30 days	20	44.4
31-60 days	18	40.0
61-90 days	1	2.2
91-120 days	0	0.0
Over 120 days	0	0.0
Don't Know	6	13.3
	respondent answered question	45
	respondent skipped question	9

Question 25. How many calls to the Licensing Help Desk did you make to obtain your permanent license?		
Answer Options	Count	Percent
0 calls	0	0.0
1 call	20	44.4
2 calls	9	20.0
3 calls	4	8.9
4 calls	1	2.2
5 calls	0	0.0
More than 5 calls	2	4.4
Don't Know	9	20.0
	respondent answered question	45
	respondent skipped question	9

Question 26. How many visits to the Licensing Help Desk did you make in order to obtain your permanent license?		
Answer Options	Count	Percent
0 visits	0	0.0
1 visit	30	66.7
2 visits	5	11.1
3 visits	1	2.2
4 visits	1	2.2
5 visits	1	2.2
More than 5 visits	0	0.0
Don't Know	7	15.6
	respondent answered question	45
	respondent skipped question	9

Question 27. Did you attend any training offered by the Division?		
Answer Options	Count	Percent
Yes	34	75.6
No	11	24.4
<i>respondent answered question</i>		45
<i>respondent skipped question</i>		9

Question 28. Did you participate in any of the following training events offered by the Division? (Check all that apply)		
Answer Options	Count	Percent
Management Training Seminar (MTS)	33	97.1
Alcohol Consultant Training (ACT)	1	2.9
Grocer Education Training Seminar (GETS)	0	0.0
Liquor Establishment Security Training (LEST)	1	2.9
Total Education in Alcohol Management (TEAM)	4	11.8
Other	0	0.0
I have not taken any of the above trainings	0	0.0
Other (please specify)	0	0.0
<i>respondent answered question</i>		34
<i>respondent skipped question</i>		20

Question 29. How satisfied were you with the quality of the training provided by the Division?		
Answer Options	Count	Percent
Satisfied	30	88.2
Somewhat satisfied	2	5.9
Neither satisfied nor dissatisfied	1	2.9
Somewhat dissatisfied	0	0.0
Dissatisfied	1	2.9
Unsure	0	0.0
<i>respondent answered question</i>		34
<i>respondent skipped question</i>		20

Question 30. Which training were you dissatisfied with?		
Answer Options	Count	Percent
Management Training Seminar (MTS)	1	100.0
Alcohol Consultant Training (ACT)	0	0.0
Grocer Education Training Seminar (GETS)	0	0.0
Liquor Establishment Security Training (LEST)	0	0.0
Total Education in Alcohol Management (TEAM)	0	0.0
Other (please specify)	0	0.0
<i>respondent answered question</i>		1
<i>respondent skipped question</i>		53

Question 31. Why were you dissatisfied with the training?	
Comments	Count
Too much info irrelevant to my license	1
<i>provided comment</i>	1
<i>respondent skipped question</i>	53

Question 32. Did the training you attended help ensure your establishment complied with liquor laws and rules?		
Answer Options	Count	Percent
Yes	0	0.0
No	1	100.0
Don't Know	0	0.0
<i>respondent answered question</i>	1	
<i>respondent skipped question</i>	53	

Question 33. Overall, how complex was the process to obtain a liquor license?		
Answer Options	Count	Percent
Complex	5	11.1
Somewhat complex	22	48.9
Somewhat simple	13	28.9
Simple	2	4.4
Unsure	0	0.0
No opinion	3	6.7
<i>respondent answered question</i>	45	
<i>respondent skipped question</i>	9	

Question 34. Why was the process to obtain a liquor license complex?	
Comments	Count
Lots of paperwork	13
Some paperwork was unrelated to the need for the license	4
Too many requirements	3
Unclear requirements	2
Wording was difficult to understand	2
Other	3
Required to take other actions such as other inspections before completing process	3
Process should be complex	1
Some information was unnecessary	1
<i>comments provided (respondents could provide more than one comment)</i>	27
<i>respondent skipped question</i>	27

Question 35. Overall, from your initial contact with the Division until you received your license, how timely was Division’s licensing process?		
Answer Options	Count	Percent
Timely	31	68.9
Somewhat timely	10	22.2
Somewhat untimely	1	2.2
Untimely	2	4.4
Unsure	0	0.0
No opinion	1	2.2
<i>respondent answered question</i>		45
<i>respondent skipped question</i>		9

Question 36. Why was the licensing process untimely?		
Comments	Count	
Because the requirements were not easy to follow	1	
Because it took a long time	1	
Procuring documents from state, federal, local government, and corporate offices proved inefficient and ultimately not completely necessary	1	
<i>provided comment</i>		3
<i>respondent skipped question</i>		51

Question 37. Overall, how satisfied were you with the professionalism of Division employees you contacted during the licensing process?		
Answer Options	Count	Percent
Satisfied	39	86.7
Somewhat satisfied	4	8.9
Neither satisfied nor dissatisfied	0	0.0
Somewhat dissatisfied	2	4.4
Dissatisfied	0	0.0
Unsure	0	0.0
<i>respondent answered question</i>		45
<i>respondent skipped question</i>		9

Question 38. Why were you dissatisfied with the professionalism of Division employees when processing your license?		
Comments	Count	
I anticipated getting training on what I needed to do	1	
Help desk people can be rude and expect you to know everything	1	
<i>provided comment</i>		2
<i>respondent skipped question</i>		52

Question 39. Overall, how satisfied were you with your initial licensing experience?		
Answer Options	Count	Percent
Satisfied	34	75.6
Somewhat satisfied	7	15.6
Neither satisfied nor dissatisfied	2	4.4
Somewhat dissatisfied	1	2.2
Dissatisfied	1	2.2
Unsure	0	0.0
<i>respondent answered question</i>		45
<i>respondent skipped question</i>		9

Question 40. Why were you dissatisfied with your initial licensing experience overall?	
Comments	Count
Help desk people were rude	1
Misinformed of what was actually needed	1
<i>provided comment</i>	
2	
<i>respondent skipped question</i>	
52	

Question 41. Is there anything else you would like to share with us regarding the Division? If so, please use the space provided.	
Comments	Count
Everyone was professional/courteous/helpful	5
Improve customer service	3
Improve online forms and submission process	2
Lots of requirements	2
Would like training before and after license issued	1
Provide more payment options i.e. ACH/EFT/Credit card	1
Not sure how much money to bring as cost of license was vague	1
Division easier to work with than in previous years	1
Not consistent in enforcing laws	1
Some requirements were vague and new people may need more assistance	4
Other	1
<i>comments provided (respondents could provide more than one comment)</i>	
16	
<i>respondent skipped question</i>	
38	

Question 42. Would you like to receive email notification when we release our final report on the Division?		
Answer Options	Count	Percent
No	28	62.2
Yes (please provide email address)	17	37.8
<i>respondent answered question</i>		45
<i>respondent skipped question</i>		9

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**STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING**

**APPENDIX F
SURVEY OF RENEWING LICENSEES**

We surveyed 2,531 licensees using an online survey platform accessed through an email we sent, and received 567 complete responses for a 22.4 percent response rate. However, since survey participants were identified using unaudited Division data, the results were not statistically reliable. We combined and simplified similar answers to many open-ended questions and presented them in topical categories; multipart responses were counted in multiple categories where applicable. Some totals in the following tables may not add up to 100 percent due to rounding or where respondents could respond multiple times to the same question.

Question 1. Did you complete the renewal licensing process for one or more licenses between July 2017 and June 2019?		
Answer Options	Count	Percent
Yes	545	96.1
No	22	3.9
<i>respondent answered question</i>		567
<i>respondent skipped question</i>		0

Question 2. Please provide your license number. (If you completed the renewal licensing process for more than one license, please provide only ONE license number.)		
Answer Options	Count	Percent
<i>Redacted</i>	545	100.0
<i>respondent answered question</i>		545
<i>respondent skipped question</i>		22

Question 3. Did you receive a notice to renew your license before the expiration of your previous license?		
Answer Options	Count	Percent
Yes	506	92.8
No	17	3.1
Don't know	22	4.0
<i>respondent answered question</i>		545
<i>respondent skipped question</i>		22

Question 8. Did you have to contact the Licensing Help Desk to ask questions about the renewal process?		
Answer Options	Count	Percent
Yes	96	17.6
No	449	82.4
<i>respondent answered question</i>		545
<i>respondent skipped question</i>		22

Question 9. Did licensing staff answer your questions on the requirements of the renewal process?		
Answer Options	Count	Percent
Yes-on my first call	87	89.7
Yes-after more than one call	7	7.2
No	3	3.1
<i>respondent answered question*</i>		97
<i>respondent skipped question</i>		470

*Note: Technical issues allowed one respondent who answered “No” in Question 8 to provide a response to Question 9.

Question 10. Did you get your question(s) answered?		
Answer Options	Count	Percent
Yes	2	66.7
No	1	33.3
<i>respondent answered question</i>		3
<i>respondent skipped question</i>		564

Question 11. How did you get your question answered?		
Answer Options	Count	Percent
I visited the Licensing Help Desk in Concord	1	50.0
Division staff visited my location	0	0.0
Other (please explain)	1	50.0
<i>respondent answered question</i>		2
<i>respondent skipped question</i>		565

Question 11. Text Responses, Other:	Count
Called and was told to wait until the system was open	1
<i>provided comment</i>	1

Question 12. How many calls to the Licensing Help Desk did you make to renew your license?		
Answer Options	Count	Percent
1 call	1	12.5
2 calls	2	25.0
3 calls	4	50.0
4 calls	1	12.5
5 calls	0	0.0
More than 5 calls	0	0.0
Don't know	0	0.0

respondent answered question **8**
respondent skipped question **559**

Question 13. How many visits to the Licensing Help Desk did you make to renew your license?		
Answer Options	Count	Percent
0 visits	26	27.7
1 visit	47	50.0
2 visits	14	14.9
3 visits	5	5.3
4 visits	1	1.1
5 visits	0	0.0
More than 5 visits	0	0.0
Don't know	1	1.1

respondent answered question **94**
respondent skipped question **473**

Question 14. Did you submit your renewal application at least 30 days from the date of its expiration?		
Answer Options	Count	Percent
Yes	465	85.3
No	49	9.0
Don't know	31	5.7

respondent answered question **545**
respondent skipped question **22**

Question 15. How long did it take for you to receive your renewed license from the date you applied?		
Answer Options	Count	Percent
0-30 days	376	80.9
31-60 days	22	4.7
61-90 days	1	0.2
91-120 days	1	0.2
Over 120 days	1	0.2
Don't know	64	13.8

respondent answered question **465**
respondent skipped question **102**

Question 16. Did you attend any training offered by the Division?		
Answer Options	Count	Percent
Yes	210	38.5
No	335	61.5

respondent answered question **545**
respondent skipped question **22**

Question 17. Did you participate in any of the following training events offered by the Division? (Check all that apply)		
Answer Options	Count	Percent
Management Training Seminar (MTS)	158	74.2
Alcohol Consultant Training (ACT)	15	7.0
Grocer Education Training Seminar (GETS)	11	5.2
Liquor Establishment Security Training (LEST)	8	3.8
Total Education in Alcohol Management (TEAM)	68	31.9
Other	0	0.0
Other (please specify)	7	3.3

respondent answered question **213**
respondent skipped question **354**

Question 17. Text Responses, Other:	Count
Unsure	5
Other	2

provided comment **7**

Question 18. How satisfied were you with the quality of the training provided by the Division?		
Answer Options	Count	Percent
Satisfied	189	89.2
Somewhat satisfied	11	5.2
Neither satisfied nor dissatisfied	7	3.3
Somewhat dissatisfied	2	0.9
Dissatisfied	3	1.4
Unsure	0	0

respondent answered question **212**

respondent skipped question **355**

Question 19. Which training were you dissatisfied with? (Check all that apply)		
Answer Options	Count	Percent
Management Training Seminar (MTS)	4	80.0
Alcohol Consultant Training (ACT)	0	0.0
Grocer Education Training Seminar (GETS)	0	0.0
Liquor Establishment Security Training (LEST)	0	0.0
Total Education in Alcohol Management (TEAM)	1	20.0
Other (please specify)	0	0.0

respondent answered question **5**

respondent skipped question **562**

Question 20. Why were you dissatisfied with the training?	
Comments	Count
Irrelevant to my license type	2
Unprofessional staff	2
Class was taken too far in advance and had to retake it	1
Different instructors provided different information	1
Instructor was unable to answer questions related to my license type	1

comments provided (respondents could provide more than one comment) **5**

Question 21. Did the training you attended help ensure your establishment complied with liquor laws and rules?		
Answer Options	Count	Percent
Yes	207	98.1
No	0	0.0
Don't know	4	1.9

respondent answered question **211**

respondent skipped question **356**

Question 22. Have you received any visits at your establishment by Division personnel for an audit, premises inspection, or compliance check after your license was renewed?		
Answer Options	Count	Percent
Yes	227	41.7
No	194	35.6
Don't know	124	22.8
<i>respondent answered question</i>		545
<i>respondent skipped question</i>		22

Question 23. How satisfied were you with the audit, premises inspection, or compliance check?		
Answer Options	Count	Percent
Satisfied	201	87.8
Somewhat satisfied	8	3.5
Neither satisfied nor dissatisfied	12	5.2
Somewhat dissatisfied	4	1.7
Dissatisfied	1	0.4
Unsure	3	1.3
<i>respondent answered question*</i>		229
<i>respondent skipped question</i>		338

*Note: Technical issues allowed two respondents who answered “No” in Question 22 to provide a response to Question 23.

Question 24. Why were you dissatisfied with the audit, premises inspection, or compliance check?	
Comments	Count
Unprofessional staff	2
Monthly submissions appeared to have not been reviewed before our audit	1
Audit occurred later than specified	1
Other	1
<i>comments provided (respondents could provide more than one comment)</i>	
	4

Question 25. Was the Licensing Help Desk helpful in answering questions if they arose after your license was renewed?		
Answer Options	Count	Percent
Yes	142	26.1
No	8	1.5
Did not ask any questions	386	70.8
Don't know	9	1.7
<i>respondent answered question</i>		545
<i>respondent skipped question</i>		22

Question 26. Overall, how satisfied were you with your license renewal process?		
Answer Options	Count	Percent
Satisfied	492	90.3
Somewhat satisfied	28	5.1
Neither satisfied nor dissatisfied	13	2.4
Somewhat dissatisfied	5	0.9
Dissatisfied	5	0.9
Unsure	2	0.4

respondent answered question **545**
respondent skipped question **22**

Question 27. Why were you dissatisfied with the license renewal process?	
Comments	Count
Bureaucratic process	4
Online did not work	2
Website too complicated	2
Had to pay for two separate licenses even though we have a combination conditional license	1
Other	3

comments provided (respondents could provide more than one response) **10**

Question 28. Overall, how complex was the license renewal process?		
Answer Options	Count	Percent
Complex	10	1.8
Somewhat complex	18	3.3
Somewhat simple	156	28.6
Simple	335	61.5
Unsure	3	0.6
No opinion	23	4.2

respondent answered question **545**
respondent skipped question **22**

Question 29. Why was the license renewal process complex?	
Comments	Count
Wording of questions was confusing	6
Bureaucratic process	4
Difficult to access the website	3
Directions were unclear	3
Had to resubmit documents	2
It was easy/simple	3
Different information provided by different people	1
Direct Shipper permitting was unclear	1
The fee structure for licenses was unclear	1
Improve website	2
Did not get our license right away	1
Other	5

comments provided (respondents could provide more than one response) **30**

Question 30. Overall, from the time you began the renewal process to when you received your renewal license, how timely was Division's license renewal process?		
Answer Options	Count	Percent
Timely	460	84.4
Somewhat timely	42	7.7
Somewhat untimely	3	0.6
Untimely	6	1.1
Unsure	14	2.6
No opinion	20	3.7

respondent answered question **545**
respondent skipped question **22**

Question 31. Why was the license renewal process untimely?	
Comments	Count
It was quick/easy	4
Poor communication	2
Slow response	2
Other	2

comments provided (respondents could provide more than one response) **9**

Question 32. Overall, how satisfied were you with the professionalism of Division employees?		
Answer Options	Count	Percent
Satisfied	454	83.3
Somewhat satisfied	26	4.8
Neither satisfied nor dissatisfied	37	6.8
Somewhat dissatisfied	4	0.7
Dissatisfied	1	0.2
Unsure	23	4.2

respondent answered question **545**
respondent skipped question **22**

Question 33. Why were you dissatisfied with the professionalism of Division employees when processing your license?	
Comments	Count
Different people give different answers	2
Unprofessional staff	1
Other	2

comments provided **5**

Question 34. Is there anything else you would like to share with us regarding the Division? If so, please use the provided space.	
Comments	Count
Positive experience	54
No	16
Need to offer more services online	14
It is fast/efficient	11
Good online experience	6
Allow electronic funds or automated clearing house transfers	5
Allow multiple licenses to be renewed at same time	3
Email reminders are helpful	3
Need more training available	3
Negative experience	3
Improve online renewals	2
More enforcement needed	2
Seasonal licensing is slow	2
License is too expensive	1
Website would not allow online renewal after receiving first renewal notice	1
Unsure where to locate upcoming training information	1
The Commission should have a forum for licensees to express issues in need of change	1
Streamline the renewal process	1
Other	20

comments provided (respondents could provide more than one comment) **133**

Question 35. Would you like to receive email notification when we release our final report on the Division?		
Answer Options	Count	Percent
No	283	51.9
Yes (please provide email address)	262	48.1
	respondent answered question	545
	respondent skipped question	22

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**STATE OF NEW HAMPSHIRE
LIQUOR COMMISSION
DIVISION OF ENFORCEMENT AND LICENSING**

**APPENDIX G
STATUS OF PRIOR AUDIT OBSERVATIONS**

We previously reviewed Liquor Commission (Commission) processes and management controls relevant to the current audit in the:

- *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2018 (2018 Management Letter);*
- *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2016 (2016 Management Letter);*
- *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2015 (2015 Management Letter);*
- *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2014 (2014 Management Letter);*
- *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2013 (2013 Management Letter);*
- *State Of New Hampshire Liquor Commission Performance Audit (2009 Performance Audit);* and
- *State Of New Hampshire Liquor Commission Management Letter For The Fiscal Year Ended June 30, 2006 (2006 Management Letter).*

We evaluated the Commission’s status towards resolving the recommendations from 21 relevant observations, shown in Table 29.

Table 29

Status Of Prior Audit Observations And Status Key

Status	Key	Total
Resolved	● ●	1
Resolution in process (action beyond meetings and discussion)	● ○	7
Unresolved	○ ○	13
	Total	21

Source: LBA analysis of demonstrated prior audit statuses.

A copy of all prior audits can be accessed at our website, <http://www.gencourt.state.nh.us/LBA/>.

2018 Management Letter

The following is the status of the applicable observation contained in our *2018 Management Letter*.

<u>No.</u>	<u>Title</u>	<u>Status</u>
6.	Adopt Administrative Rules Required By Statute (<i>See current Observation No. 7</i>)	● ○

2016 Management Letter

The following is the status of the applicable observation contained in our *2016 Management Letter*.

<u>No.</u>	<u>Title</u>	<u>Status</u>
12.	Develop And Provide An Electronic Beer Tax Filing System (<i>See current Observation No. 36</i>)	○ ○

2015 Management Letter

The following is the status of three applicable observations contained in our *2015 Management Letter*.

<u>No.</u>	<u>Title</u>	<u>Status</u>
4.	Establish Risk Assessment Process And Related Planning (<i>See current Observation No. 3</i>)	○ ○
13.	Review Beer Tax Reporting Processes (<i>See current Observation No. 36</i>)	○ ○
17.	Adopt And Maintain Administrative Rules Required By Statute (<i>See current Observation No. 7</i>)	● ○

2014 Management Letter

The following is the status of two applicable observations contained in our *2014 Management Letter*.

<u>No.</u>	<u>Title</u>	<u>Status</u>
2.	Establish Risk Assessment And Disaster Recovery And Business Continuity Plans (<i>See current Observation No. 3</i>)	○ ○
11.	Adopt Required Administrative Rules (<i>See current Observation No. 7</i>)	● ○

2013 Management Letter

The following is the status of three applicable observations contained in our *2013 Management Letter*.

<u>No.</u>	<u>Title</u>	<u>Status</u>
2.	Develop And Implement Comprehensive Risk Assessment Process And Business Continuity And Disaster Recovery Plans (<i>See current Observation No. 3</i>)	○ ○
8.	Improve Accountability Controls Over License And Permit Revenues (<i>See current Observation No. 5</i>)	● ○
12.	Adopt Required Rules (<i>See current Observation No. 7</i>)	● ○

2009 Performance Audit

The following is the status of five applicable observations contained in our *2009 Performance Audit*.

<u>No.</u>	<u>Title</u>	<u>Status</u>
4.	Renew Expired Administrative Rules (<i>See current Observation No. 7</i>)	● ○
11.	Consider A Permit Fee To Control The Number Of Direct Shippers And Increase Revenue	● ●
12.	Develop Software To Support Direct Shipping Program (<i>See current Observation Nos. 28 and 32</i>)	○ ○
13.	Improve Direct Shipper Compliance (<i>See current Observation No. 28</i>)	○ ○
14.	Maximize Profits On Products Available Both In State Liquor Stores And Through The Direct Shipper Program (<i>See current Observation No. 28</i>)	○ ○

2006 Management Letter

The following is the status of six applicable observations contained in our *2006 Management Letter*.

<u>No.</u>	<u>Title</u>	<u>Status</u>
1.	Formal Risk Assessment Policies And Procedures Should Be Established (<i>See current Observation No. 3</i>)	○ ○
3.	Comprehensive Administrative Policies And Procedures Should Be Developed For The Bureau Of Enforcement Support Staff (<i>See current Observation Nos. 18, 22, 27, and 33</i>)	○ ○
4.	Segregation Of Duties Controls Should Be Implemented Over Processing Of Beer Tax Revenues (<i>See current Observation No. 36</i>)	○ ○
5.	Controls Over Direct Shipment Sales Should Be Improved (<i>See current Observation No. 32</i>)	○ ○

- 13. Policies And Procedures Should Be Established Describing The Commission's Inspection Program For License Renewals (*See current Observation No. 42*) ○ ○
- 16. Expired Rules Should Be Readopted If Still Considered Operational (*See current Observation No. 7*) ● ○