

Office of Inspector General

Review of the
Bureau of Enforcement's
Compliance Audit Program

OR12-01



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FEDERAL MARITIME COMMISSION



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Office of Inspector General
Washington DC 20573

March 2, 2012

Office of Inspector General

Mr. Chairman and Commissioners,

The Office of Inspector General (OIG) completed its review of the Bureau of Enforcement's (BOE) compliance audit program. The review objective was to assess the overall effectiveness of the program. Specifically, we evaluated controls in place to ensure the accuracy of responses from industry on questionnaires used by BOE in the audit process, reviewed program performance measures and workflow tracking mechanisms and documented program accomplishments. Finally, we assessed BOE's follow-up processes to validate corrective action. Our review followed Inspection Standards issued by the Council of the Inspectors General on Integrity and Efficiency, January 2011.

The compliance audit program enables agency staff to assess Ocean Transportation Intermediary compliance with Commission regulations. The program generally works well, meets program objectives, and produces results: 96 percent of the audits in the OIGs sample found at least one noncompliance issue. Many had multiple findings.

The BOE director exercises adequate supervision over the audit process, approving both audit notifications and closures. Staff indicated that the director is consulted routinely when unusual or difficult issues arise. Both the director and staff were very knowledgeable about the audit process and outcomes.

While the process works well, we observed areas where some improvement is possible. The office has not fully transitioned to an automated tracking system. Rather, it relies on a manual log to produce quarterly and annual quantitative-based reports. BOE does not capture qualitative information, such as a summation of the compliance issues found in the audits it performs. For example, 63 percent of the audits reviewed by the OIG found tariff compliance issues. Sharing this information with Federal Maritime Commission decision makers and with other licensees via our website would enable the Commission to broaden its outreach, address recurring issues and educate licensees. We believe such reports can be prepared without costly automated processes involved.

BOE, working with the Bureau of Certification and Licensing (BCL), should ensure all licensees are aware of the compliance audit program. While the regulations state that the licensee must turn over information at the FMC's request, no specific reference is made to the compliance audit. OTIs essentially learn of the program when they are selected for audit. We suggest that the BCL add language in its transmittal letter sent to new

licensees to specifically put them on notice that they are subject to audit. Knowing that they may be audited would likely enhance OTI compliance throughout their operations.

The OIG also suggested improvement in the area of notifications to auditees regarding audit closure and standard operating procedures. Details on these findings, and recommendations to address them, are provided in the attached report. Management has agreed with our recommendations and presented an action plan. Management's response, in its entirety, is appended to this report. We thank BOE managers and staff for their assistance to us throughout the audit.

Respectfully submitted,

/Adam R. Trzeciak/
Inspector General

**Office of Inspector General
Review of the Bureau of Enforcement's
Compliance Audit Program**

Introduction

Bureau of Enforcement (BOE) acts as the prosecutorial arm of the Commission to investigate potential violations of the Shipping Act and other statutes and regulations enforced by the Commission. In addition, BOE administers the compliance audit program. This program, conducted from headquarters primarily by mail, reviews the operations of licensed ocean transportation intermediaries (OTI) to assist them in complying with statutory requirements and the Commission's regulations.

In prior years, the agency relied on area representatives in its field offices to perform compliance audits. Due to the closing and downsizing of field offices, the responsibility to perform compliance audits was placed in BOE.

BOE performs approximately 100 compliance audits annually. The selection of OTIs to audit is based on random selection by geographical location or risk. The Registered Person Index (RPI), a Commission database containing OTI license and bond information and status, is the primary source document used by BOE to identify its audit universe. In addition, BOE receives requests from other offices within the Commission, such as the Bureau of Certification and Licensing (BCL), the Office of Consumer Affairs and Dispute Resolution Services (CADRS) and the Bureau of Trade Analysis (BTA), to select OTIs for audit based on concerns raised by these offices.

Once an OTI is selected for an audit, BOE staff performs preliminary fieldwork by accessing information on the OTI from internal databases, including SERVCON, Form FMC-1 and Form FMC-18, and outside database services, including PIERS, Datamyne and individual OTI tariff publishers.

Commission's Databases

Identification of the internal and external sources used in the compliance audit and how BOE staff uses the information is provided below:

SERVCON (Service Contract) is the Commission's electronic service contract filing system. SERVCON enables Commission staff to review and process service contracts, non-vessel operating common-carrier (NVOCC) Service Arrangements (NSA) and amendments filed by ocean carriers and NVOCCs.

SERVCON is used in the compliance audit process to obtain information on the effective date of the service contract, the OTI's address and officers, and the number of current contracts into which the entity has entered.

Form FMC-1, *Automated Tariff Registration System*, facilitates the registration of tariff publication locations by NVOCCs and vessel-operating common carriers (VOCC), as required by Section 8 of the Shipping Act of 1984. Tariff publication provides the shipping public with information on price and service options to move particular commodities from point to point.

Form FMC-1 is used during compliance audits to obtain information on the legal name of the OTI, its address and tariff location. Information collected on tariff rates and rules is a focal point of the compliance audit.

Form FMC-18 *Application for a License as an Ocean Transportation Intermediary*, is filed by entities applying for an FMC license. Each licensed entity is required to have an individual identified as the Qualifying Individual (QI), who is an active officer of the entity and meets character and minimum experience requirements. Licenses issued include ocean freight forwarder (FF), NVOCC or NVOCC/FF. Summary information from Form FMC-18 is maintained in the RPI.

Compliance staff relies on the RPI to identify the universe of OTIs and, for each OTI, the address, president and QI, financial responsibility (bond) coverage, and OTI status and type, e.g., FF, NVOCC, NVOCC/FF including foreign-registered Non-Vessel Operators (NVO).

Other Information Sources Used

PIERS, the Port Import Export Reporting Service, collects import and export waterborne data from the U.S. Customs and Border Protection Automated Manifest System and other trading partners. PIERS provides up-to-date OTI addresses to the compliance staff and detailed information on departure date, commodity, destination country and U.S. origin port. Such information helps the compliance staff to assess tariff compliance and identify shipments involving the subject OTI.

Datamyne is a subscriber database that provides international trade data from the bill of lading and other shipping records. Information downloaded is used for purposes similar to PIERS, although the information focuses on import shipments.

Tariff Publisher is an entity that publishes the NVOCC / OTI rules and rates to move various commodities. The tariff must be published on or before transportation service can commence. (46 CFR Part 520)

The tariff provides the compliance staff with information on whether the OTI is shipping commodities under published rules and rates.

After the compliance staff reviews the information sources and databases, an opening memo is prepared for the BOE director's approval. The opening memo contains staff's recommendation to open an audit and includes potential audit concerns and issues staff may have from its preliminary review. Potential areas of concern could involve bond information, tariff

rate filings, PIERS shipment manifests, service contracts and/or the qualifying individual. The director reviews and approves the opening memo and signs the letter to the OTI requesting a response to the appropriate questionnaire (NVOCC, FF or NVOCC/FF) within 30 days of the date of the letter.

When questionnaires are returned, BOE staff reviews the responses for actual or potential areas of non-compliance and for consistency with information already gathered during staff's preliminary review. When necessary, compliance audit staff requests additional information or clarification to enable staff to determine compliance with Commission regulations.

After the compliance staff determines that the OTI is complying with shipping regulations, the staff prepares a closing memo for the BOE director's signature. Information related to the compliance audit is entered into BOE's HEAR database and manual tracking log. The HEAR database provides information on enforcement cases and compliance audits and is used by BOE and other select FMC staff.

Objectives, Scope and Methodology

The objective of this program inspection was to assess the overall effectiveness of the compliance audit program. Specifically, we (i) reviewed the controls in place to ensure the accuracy of responses from industry on questionnaires used by BOE in the audit process, (ii) assessed program performance measures and reporting processes, (iii) documented program accomplishments, and (iv) reviewed BOE's follow-up processes to validate corrective actions.

The Office of Inspector General (OIG) began the review by identifying the universe of compliance audits opened in fiscal year (FY) 2011 from BOE's manual tracking log.¹ Based on this review, we documented 100 audits opened in FY 2011; ninety one (91) audits were closed in FY 2011. We selected 46 closed audits for detailed review, stratified by OTI category (i.e., NVOCC, FF or NVOCC/FF). For our sample, we tested the dates on which BOE opened the audit and notified the OTI of the audit, the timing of the OTI response to BOE and the date on which BOE closed the audit. We also documented and identified the audit selection process, the data sources used by BOE to perform the audit, the compliance issues identified in the audit process and the audits referred to field operations for further investigation.

We interviewed BOE management and staff to supplement our understanding of the audit selection process, audit methodology, response verification, management oversight and audit closing. We also participated in a "walk-through" of the bureau's HEAR database to better understand how it is used to manage the compliance audit program and reviewed companion manual logs maintained by compliance audit program staff.

The review followed Inspection Standards issued by the Council of the Inspectors General on Integrity and Efficiency, January 2011.

¹ We relied on BOE's database and did not perform an independent verification of the number of audits opened in FY 2011.

Introduction to Findings

The compliance audit program is used to assess whether OTIs are complying with agency regulations and maritime statutes. We found this program generally works well and meets the program objective of assisting OTIs to comply with statutory requirements and Commission regulations. The process used to select OTIs for audit ensures geographical representation and relies on FMC bureaus and offices to identify at-risk entities. The proportion of OTIs selected for audit mirrored the OTI population. There are controls in place to ensure adequate supervision by the BOE director and the validity of the OTI's responses to the compliance audit questionnaire. The audits have produced results: 96 percent of the audits we reviewed identified one or more findings of non-compliance with Commission regulations, which were resolved before the audit was closed. Audits remain open until all findings are addressed. This follow up process works well.

The OIG also identified areas where some improvements are possible. For example, the office lacks written procedures that would help to ensure a smooth transition should current staff leave the agency or become incapacitated. While the director's involvement would undoubtedly mitigate potential "learning curve" challenges for new staff, Government Accountability Office standards on internal controls strongly favor written Standard Operating Procedures (SOP). Within BOE, we envision a step-by-step process identifying, at a minimum, how OTIs are selected, which databases are used to collect information and how the information is used.

BOE is currently using two databases to house compliance audit information and outcomes. The HEAR database is an automated database that is used to store information (start and end date, company audited, audit summaries, etc) about each audit. But the database was designed for enforcement case tracking; thus compliance audit results do not fit easily or logically into the data fields. Further, information retrieval for the purpose of report summaries is cumbersome. For reporting purposes, BOE relies on a manual log maintained by staff to prepare its quarterly reports to the Office of the Managing Director (OMD). These reports focus on the number of audits opened and closed each quarter. Importantly, there is no summary report prepared identifying compliance issues or findings, a report the OIG believes would be especially useful to OMD and the Commission. Without the need to design a system around the audit program, BOE could develop a simple checklist of compliance issues that staff could use to identify and later summarize for reporting to OMD and the Commission.

Details on these and other audit findings are provided below.

Finding 1. Management Exercises Oversight of the Compliance Audit Program

BOE has controls in place to identify, conduct and close compliance audits. The primary control observed was supervisory review. The director is actively involved in all stages of the audit, and staff indicated to us that it routinely seeks guidance without hesitation when challenging audit issues arise. The BOE director approves all audits to be performed and decides when the audit can be closed.

Auditees (i.e., OTIs) are provided adequate notice of the audit and given sufficient time to respond. Each auditee receives a letter from the BOE director stating the audit objectives, a due date for completing the enclosed questionnaire and regulations identifying BOE's authority to request information. If the OTI has not responded to the questionnaire within 30 days as requested, BOE staff follows up with another letter, either by facsimile or through e-mail, requesting immediate attention with a response due within two weeks. This letter reminds the OTI that the 30-day deadline has passed, and, if needed, the Commission's area representative may contact and/or visit the OTI to assist the OTI to complete the questionnaire.

The response rate of our sample of 46 FY 2011 audits indicates that compliance with audit requirements among the industry is good. We found that 27 OTIs (59 percent) responded to BOE within the 30-day requirement identified in the letter, and another 13 OTIs (28 percent) responded with 45 days. Six OTIs (13 percent) responded within 46 - 128 days. BOE explained that of the six late responses, two resulted from the OTI's need to meet with a tariff publisher for clarification or assistance, and one auditee had a medical condition which delayed his response. Three auditees did not provide a reason for their late responses.² The BOE director told the OIG that these six OTIs never left the bureau's "radar screen." According to the BOE director, additional steps, to include the threat of possible license revocation, would be used if the time period became excessive.

Once BOE has received responses from the OTI, the information is reviewed and verified with preliminary information from the Commission's databases and third-party sources. BOE has adequate verification procedures in place to ensure that OTI responses are independently supportable. These procedures include reconciliation with FMC and third party maritime databases. Any information provided on the questionnaire that does not agree with information obtained from an independent source document requires further inquiry by BOE to assess compliance with the Commission's regulations and statutes.

BOE has not set targets for audit completion. The audit process is influenced by responsiveness of OTIs and deadlines would not be in the control of BOE. Importantly, no audits are closed until all matters have been verified resolved. Table 1 provides information on the lapsed times between audit commencement (receipt of questionnaire from the OTI) and completion (closing memo):

² BOE does not ask the OTI to provide reasons for late responses, although many will provide this information voluntarily when responding.

**Table 1. FY 2011 Compliance Audit Fieldwork – Lapsed Days
(n = 46)**

Day Range	Occurrences
0 - 25	33
26 - 50	8
51 - 75	3
76+	2

The table indicates that 33, or 72 percent of the compliance audits in our sample, were completed in 25 days or less. Lapsed days include the time BOE waits for a response from the auditee to clarify an answer or to provide documentation to support a response. Exchanges between BOE and the auditee are natural parts of the audit and necessary steps to ensure that BOE can make an informed decision on compliance, based on what BOE needs to see, and not necessarily what was initially provided to BOE with the questionnaire. We did not view the time lapsed to be excessive given the nature of the audit process.

The OIG believes that the BOE director’s practice to approve audit selection, commencement and closure is a good management control and is in keeping with the Standards for Internal Control in the Federal Government, issued by the Government Accountability Office, which states, in part, that control activities should occur at all levels and functions, and include activities such as approvals, authorizations, and verification. The BOE director told the OIG that, currently, BOE does not send out a closing memo to the OTI unless it is requested by the OTI. The director suspects that most OTIs would conclude that once requested information is provided, the audit process is over. Notwithstanding, the OIG believes that a form letter or some acknowledgment that all information has been accepted and, as a result, the findings closed, would provide closure for the OTI without ambiguity.

Recommendation 1. The Bureau of Enforcement should develop a pro forma notice to send to OTIs announcing the completion of the compliance audit.

Finding 2. Standard Operating Procedures are Needed for the Compliance Audit Program

The objective of FMC’s system of management accountability and internal control is to provide reasonable assurance that:

- Programs achieve their intended results;
- Resources are used consistent with the agency’s mission;
- Programs and resources are protected from waste, fraud, and mismanagement; and
- Laws and regulations are followed, and reliable and timely information is obtained, maintained, reported and used for decision-making.

FMC office directors are required to complete an internal control self assessment annually. The assessment asks managers to identify internal control weaknesses within their programs and to become familiar with Office of Management and Budget Circular A-123, Management's Responsibility for Internal Control. The intent is to help managers improve the accountability and effectiveness of Commission programs and operations by establishing, assessing, correcting and reporting on management controls. Commission Order 103, Management (Internal) Controls, provides policy direction to be followed to improve the accountability and effectiveness of Commission programs and operations.

We found that BOE lacks SOPs for its compliance audit program. The director acknowledged that the program is operating without documented procedures but believes that adequate guidance is provided on the questionnaire and notification letter (i.e., how the audit will be conducted based on what will be reviewed). However, the OIG noted that these documents do not provide information on how an OTI is selected for audit, how referrals are addressed and processed, preliminary fieldwork (which independent databases to use and what to look for), etc. The benefit of documented procedures is especially important when a function is performed by one person. Should that person leave or become incapacitated, there would be delays in transitioning this function to new staff. We have no doubt that the director or other senior bureau staff would provide adequate training and supervision to new staff, but this would pull senior staff away from its duties.

An effective internal control over transactions and other significant events in the compliance audit program begins with a clear, documented process. To enhance efficiency and effectiveness of the compliance audit program, BOE should document its procedures and update them when needed.

Recommendation 2. The Bureau of Enforcement develops and maintains standard operating procedures for the compliance audit program.

Finding 3. Selection of OTIs for Review

The selection of OTIs for a compliance audit is best categorized as a "modified random selection." OTIs are grouped by geographic location and selections are made from this universe. The intent is to ensure geographic representation. In addition to this process, BOE receives audit requests from bureaus and offices within the agency, e.g., BCL, CADRS and BTA, to perform audits on OTIs that have raised programmatic concerns. For example, BTA may refer licensees who did not post a tariff; CADRS may refer an OTI who has been the subject of frequent consumer complaints about its practices. BCL may refer new licensees when information on the application, although compliant, raises concerns with BCL's experienced staff regarding operations, such as Qualifying Individual concerns. Eleven (11) percent of our sample audits originated from referrals to BOE.

The Commission issues approximately 400 – 500 licenses each year. In the late 1990's, Commission investigative staff performed post-license compliance checks of FFs two years after

the license was issued and compliance checks on all other licensees every 5 – 10 years. As of December 2011, there were 4,482 active FF, NVOCC and NVOCC/FF licenses. In addition, there were 1196 registered unlicensed foreign-based NVOs and 135 Vessel Operators (VO), giving BOE an audit universe of about 5,800 NVOs/VOs. Due to staffing constraints, BOE can audit only about 100 OTIs a year; about 1.7 percent of the population. BOE staff believes that more resources devoted to the function would have a corresponding positive impact on the office’s ability to monitor and correct non-compliance and has requested additional staff in the budget process to meet this need. We agree with BOE management that the program produces positive outcomes and additional resources would have an immediate impact.

In addition to the number of audits performed, we also looked at how representative existing audits are compared to the general population. The OIG analysis revealed that BOE generally selects NVOCCs and VOCCs for audit in the same proportion as each appears in the population. For example, 29 percent of the OTIs had a joint NVOCC/FF license; 37 percent of audits performed by BOE were of NVOCC/FF licensees. With the exception of freight forwarders, OTIs are proportionally represented in the audits. Table 2 provides a snapshot of the ratio of licenses issued to compliance audits opened by BOE.

**Table 2. OTI Audit Ratio
(as of December 2011)**

OTIs	Licensed or Foreign Registrant	Percentage of OTI Population	FY 2011 Audits Opened by BOE	Percentage of BOE Audits Opened
Freight Forwarders (FF)	1048	18%	5	5%
NVOCC ^{Note A}	2926	51%	56	56%
NVOCC/FF	1698	29%	37	37%
Vessel-operating CC	135	2%	2	2%
TOTAL	5807	100%	100	100%

Note A. The OIG includes both domestically licensed and foreign registered NVOs here.

Finding 4. Functionality of the HEAR Database

BOE’s HEAR database hosts information on both its enforcement cases and the compliance audit program. As it relates to the compliance audit program, data in the system provides information on various stages of the audit, such as when an audit was opened and closed. HEAR also houses auditee name, audit status and a synopsis of the audit findings; all very useful information.

Although the HEAR database is a repository of information, it is not optimally used to manage the audit function or to produce reports. This is due to HEAR's functionality, not management's inattention. The BOE director explained that HEAR was developed with enforcement cases in mind. As a result, information produced in the compliance audit is not compatible with HEAR's functionality. For example, HEAR cannot generate summary reports by time period or audit results, such as number of audits opened and closed for a given period of time. HEAR is capable of retrieving information individually by case and type of entity but only if the user knows the compliance number or the entity's business name. Even printing case information is cumbersome. The fields cannot be adjusted; consequently, case summaries appear in narrow fields, requiring several pages of mostly wasted paper (blank columns) to capture all text.

The changes needed to address the HEAR shortcomings lie outside the BOE and within the Office of Information Technology. The BOE director told us that with larger concerns facing the agency's information technology (IT) capabilities, he has not sought to enhance the functionality of the HEAR database.

To extract what data elements it needs for external reporting purposes, BOE has relied on a manual log to prepare quarterly reports identifying the number of audits opened and closed during the reporting period. The manual log contains a tracking number for each audit and identifies the date the compliance audit was opened, entity name and the audit closing date. The information is reported to senior management in quarterly reports and in the agency's annual report.

We found the maintenance of the audit tracking function to be cumbersome, involving three different databases or logs. For example, compliance staff record select information about each audit in the manual log which is then used to prepare quarterly and annual reports. Identical information is recorded in the HEAR database, along with an audit finding synopsis. Finally, a manual index system is used to identify whether the subjects of the compliance audit had been looked at in prior audits or enforcement actions. The index system contains only the names of the parties to the audit (or investigation) and its primary purpose is to identify repeat audit (or investigative) subjects, e.g., prior instances in which the same subject was the target.

The OIG believes that one automated database that collects all compliance audit information and produces management reports would be more efficient than the systems currently used in BOE. We also agree, however, with the BOE director that IT needs are greater in other areas of the Commission. To enhance the utility of the audit, BOE does not require expensive IT enhancements. BOE simply needs a process to summarize its audit findings for senior management and the Commission.

Information obtained during the audit process can be used to provide insight into potential and actual problems and trends. This information can then be fed back into the programs as a management tool to proactively address compliance issues.

BOE reports on its compliance activity quarterly in memorandums to the Managing Director and annually in the Commission's Annual Report. In these reports, BOE identifies the

number of compliance audits opened, completed and pending. The quarterly (internal) report also identifies auditees. However, the report does not provide a summary of the audit findings resulting from the audits. We envision a semiannual report identifying the top three or five compliance findings to Commissioners, senior managers and bureau directors. In our detailed review of 46 files, we identified the following compliance issues³:

**Table 3. Findings of Noncompliance
(n=46)**

Compliance Issues	TOTAL
Tariff	37
Address Change	8
Branch Office	3
Voluntary Surrender of License	1
Improper Fee Scheming	2
No Issues	2
Qualifying Individual	1
Trade Name	1
Bond Cancelled	1
Doing Business As	1
License	1
Negotiable Rate Agreement	1

A sample report could include tariff, address correction and branch office omissions as areas to monitor, and for which regulatory changes could be considered if compliance issues persist. To assist BOE, we recommend that a simple checklist be developed and included in the audit file. Audit staff could recognize the issue(s) identified in the audit, make a notation on the checklist, and, on a semiannual basis, provide a summary list of the most frequently occurring compliance issues to the chairman, commissioners and senior management, and posted to the web for review by agency customers.

Recommendation 3. BOE should develop a checklist of possible compliance-related findings for inclusion in each compliance folder with the intent of preparing semiannual summary reports for the Commission, senior management, and the agency’s website, identifying the top compliance-related findings during the prior six month period.

³ Audits often produce multiple findings. Consequently, the total findings exceed the 46 compliance audit files we reviewed.

Finding 5. License Award Letter should Serve Notice of Potential for Audit

The OIG noted that the license letter sent to new OTIs with the license document does not put new licensees on notice that the FMC may be auditing their operations at some future date. Licensees may conclude that, once they have the license, their dealings with the FMC are finished. The OIG believes that, much like the Internal Revenue Service, the threat of an audit helps to encourage compliance with tax laws. Similarly, the threat of an audit, albeit with significantly less potential consequences for most licensees, could encourage compliance with regulations. Currently, letters sent to auditees include the following regulation:

Upon the request of any authorized representative of the Commission, a licensee shall make available promptly for inspection or reproduction all records and books of account in connection with its ocean transportation intermediary business, and shall respond promptly to any lawful inquiries by such representatives. (46 CFR 515.31(g))

While the regulation is meant to provide guidance on the FMC's authority, it is provided after the OTI is selected for audit. We believe providing information on the compliance audit program before the auditee is selected, for all new licensees, would improve compliance.

A simple paragraph stating that the FMC performs routine audits on its licensees and providing a brief explanation of the audit would serve notice that the FMC will ensure that OTIs follow its regulations.

Recommendation 4. BOE should work with the Bureau of Certification and Licensing to add language to the license notification letter advising of the compliance audit program.

Summary

The OIG found that the compliance audit program works well and accomplishes the program objective of ensuring compliance with Commission regulations. Controls exist in the program to ensure that resources are used efficiently and effectively. Performance measures, to include lapsed time and OTI responsiveness, indicate that the program is efficiently managed. One measure of results - that 96 percent of the auditees are out of compliance with at least one rule or regulation - indicates that devoting more resources to this program would increase performance; more audits would be performed and compliance rates would improve. But adding resources here would, by necessity, reduce resources elsewhere.

One step that BOE should consider is to post the compliance results on the FMC website. Currently, compliance is enhanced one OTI at a time through the audits. Results are poorly publicized outside of a few offices within the Commission. By letting other OTIs know what the FMC is finding by posting the top non-compliance findings on the web, we suspect that some non-compliant OTIs may make changes to get into compliance. Clearly, OTIs who are indifferent to the regulations will not benefit from this change, but we believe that many others

may not know they have fallen out of compliance. They could benefit from the audits of other OTIs, thus increasing coverage of the program without expending more resources.

Before results can be posted, BOE must develop a procedure to capture audit compliance findings. More than just numbers of audits, the outcome of audits is critical to an understanding of where the agency may need to increase its compliance and enforcement efforts. Currently the databases used by BOE cannot capture this information and report it easily. Because so few audits are performed (about eight per month) a manual checklist can be used to identify noncompliance issues arising from each audit, with a master checklist to summarize results from individual checklists on a semiannual basis. An automated system would be nice to have, but we believe that a manual checklist would work fine in this environment.

Audits help OTIs to identify and change noncompliant practices. The OIG feels that, for some, just the “threat” of an audit may keep some OTIs in compliance with Commission regulations. Currently, new licensees are not told about the compliance audit program directly; they are told only that they must comply with agency information requests. We believe that alerting new licensees to the compliance audit program at the time the license is received will serve, for many, as an inducement to monitor their own compliance.

Memorandum

TO : Inspector General

DATE: February 29, 2012

FROM : Director, BOE

THROUGH: /Managing Director/

SUBJECT : Review of the Bureau of Enforcement Compliance Audit Program

I have reviewed the recommendations contained in the instant review. Immediately below are responses to your recommendations.

Recommendation 1. The OIG recommends that the BOE develop a pro forma notice to send to OTIs announcing the completion of the compliance audit.

Management Response: BOE will develop and implement a process of sending a pro forma notice to all OTIs who complete the compliance audit process, beginning no later than April 2, 2012.

Recommendation 2. The OIG recommends that the BOE develop and maintain standard operating procedures for the compliance audit program.

Management Response: BOE will develop and maintain standard operating procedures governing the compliance audit program, beginning no later than April 2, 2012.

Recommendation 3. The OIG recommends that BOE develop a checklist of possible compliance-related findings for inclusion in each compliance folder with the intent of preparing semiannual summary reports for the Commission, senior management and the agency's website, identifying the top compliance-related findings during the prior six month period.

Management Response: BOE will create a checklist of audit findings for use and inclusion in each compliance audit file by April 2, 2012. Information on the most frequent audit findings will be transmitted semi-annually to the Managing Director for the consideration of the Commission, beginning with the BOE's quarterly reports to OMD due in July 2012. A description of the compliance audit program, together with a summary list of the most frequent audit findings, also will be included on the Commission's website on BOE's page, with updates made as necessary, beginning no later than July 2, 2012.

Recommendation 4. The OIG recommends that BOE work with the BCL to add language to the license notification letter advising of the compliance audit program.

Management Response: BOE will coordinate with BCL upon the inclusion of language in the appropriate license notification letter advising that OTIs are subject to the compliance audit program. Such text will be incorporated into BCL's letters beginning no later than April 2, 2012.

/Peter J. King/