



OFFICE OF THE STATE AUDITOR



September 15, 2016

DIANNE E. RAY, CPA
STATE AUDITOR

CONVEYANCE PROGRAM (NOVEMBER 2015) – STATUS REPORT

Members of the Legislative Audit Committee:

Attached is the status report from the Department of Labor (Department) on the implementation of recommendations contained in the Office of the State Auditor's (OSA) *Conveyance Program* performance audit.

OSA REVIEW OF DOCUMENTATION

As part of the status report process, we requested and received supporting documentation for each recommendation that the Department reported as having been implemented. Specifically, we reviewed the following documentation:

- Revised Notice of Violation form indicating that continued non-compliance may result in the shut-down of the conveyance.
- Revised standard operating procedures for conveyance license processing.
- Supporting documentation relating to 12 licensees for whom the Department lacked evidence of qualification at the time of our audit.
- Supporting documentation related to workers' compensation policies for contractors, including a copy of a letter of revocation the Department sent to one contractor.
- Mechanic application and affidavit on the Department's website as of September 2016.

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- Legal guidance from the Office of the Attorney General provided to the Department on November 24, 2015, about whether the Division can determine that local conveyance regulation is appropriate based exclusively on a signed attestation from a local jurisdiction.
- The Department's procedure document for reviewing the standards of delegated local jurisdictions.
- Documentation related to the Department's review of two delegated local jurisdictions.

Based on our review, the supporting documentation substantiates the Department's reported implementation status.

JOHN HICKENLOOPER
Governor

ELLEN GOLOMBEK
Executive Director

MAHESH ALBUQUERQUE
Division Director



DEPARTMENT OF LABOR AND EMPLOYMENT

DIVISION OF OIL AND PUBLIC SAFETY – CONVEYANCE PROGRAM

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September 9, 2016

Dianne E. Ray, CPA
State Auditor
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Dear Auditor Ray:

In response to your request, we have prepared an updated status report regarding the implementation of audit recommendations contained in the Conveyance Program Performance Audit. The attached report provides a brief explanation of the actions taken by the Colorado Department of Labor and Employment, Division of Oil and Public Safety to implement each recommendation.

The Division has implemented 7 of the 14 State Audit team recommendations by the original implementation dates. The implementation of remaining 7 recommendations will be complete following revision of the Conveyance Regulations. Regulation revision stakeholder meetings are scheduled for the Fall of 2016 and effective date of the regulations is estimated to be early 2017.

The implementation date for Recommendation 2E was revised from January 2016 to July 2017 because proposed regulation revision language is necessary to clarify an exclusion scenario regarding the specific type of inspector license and to substantiate the licensee as qualified. The remaining 11 licensees referred to in this recommendation were substantiated prior to the original implementation date.

If you have any questions, please do not hesitate to contact me at (303) 318-8502 or by email at Mahesh.albuquerque@state.co.us.

Sincerely,

 Gregory Johnson

for Mahesh Albuquerque
Division Director

cc: Greg Johnson, Conveyance Program Manager
Ellen Golombek, CDLE Director
Mike Widener, CDLE Auditor

AUDIT RECOMMENDATION STATUS REPORT

AUDIT NAME: Conveyance Program

AUDIT NUMBER: 1502P

DEPARTMENT: Labor and Employment

DATE OF STATUS REPORT: Revised 9-9-2016

SUMMARY INFORMATION

Rec. Number	Agency's Response	Original Implementation Date	Implementation Status	Revised Implementation Date (If applicable)
1a	Agree	July 2017	Not Implemented	
1b	Agree	July 2017	Not Implemented	
1c	Agree	July 2017	Not Implemented	
2a	Agree	July 2017	Partially Implemented	
2b	Agree	July 2017	Implemented	
2c	Agree	July 2017	Not Implemented	
2d	Agree	July 2017	Implemented	
2e	Agree	January 2016	Partially Implemented	July 2017
2f	Agree	January 2016	Implemented	
2g	Agree	June 2016	Implemented	
3a	Agree	January 2016	Implemented	
3b	Agree	July 2016	Implemented	
4a	Agree	July 2017	Implemented	
4b	Agree	July 2017	Not Implemented	

DETAIL OF IMPLEMENTATION STATUS

Note: The Department agreed with all of the audit recommendations.

Recommendation No. 1:

The Department of Labor and Employment should improve its system for ensuring that conveyances in its territory are operating in accordance with minimum safety standards by:

- A. Aligning the issuance of notices of violation with the grace period allowed in rule to submit passing inspection reports, as well as with the expiration of temporary certificates of operation.

Current Implementation Status for Rec. 1, part a: Not Implemented

Agency's Update:

To address this recommendation the Division proposes deleting the statement "...within 30 days of the date of inspection." from Section 2-3-1-1(4) of the conveyance regulations. This approach was

presented to the Conveyance Advisory Board on May 12, 2016, and will be discussed at stakeholder meetings for proposed regulation revisions in the Fall of 2016. The Division expects to have revised conveyance regulations incorporating this proposed change by July 2017.

- B. Considering an increase in fines assessed for operating a conveyance without a current certificate of operation to help motivate owner compliance with inspection requirements.

Current Implementation Status for Rec. 1, part b: Not Implemented

Agency's Update:

This issue was brought before the Conveyance Advisory Board on May 12, 2016 and will be further discussed at stakeholder meetings in the Fall of 2016. The Division expects to have revised conveyance regulations by July 2017. The Division has added language to the Notice of Violation indicating that continued non-compliance may result in the shut-down of the conveyance.

- C. Changing rules to align the timing of safety tests so that they occur within a short amount of time (e.g., 30 days) before inspections.

Current Implementation Status for Rec. 1, part c: Not Implemented

Agency's Update:

To address this recommendation the Division proposes adding a requirement in Section 2-3-2 of regulations requiring the safety tests, not witnessed by the inspector, to be completed within 30 days prior to the inspection. This approach was presented to the Conveyance Advisory Board on May 12, 2016, and will be discussed at stakeholder meetings for proposed regulation revisions in the Fall of 2016. The Division expects to have revised conveyance regulations incorporating this proposed change by July 2017.

Recommendation No. 2:

The Department of Labor and Employment should strengthen its process for issuing occupational licenses by:

- A. Verifying that applicants for licensure meet all qualifications specified in statute and rule before issuing them licenses.

Current Implementation Status for Rec. 2, part a: Partially Implemented

Agency's Update:

During the audit, the Division developed Standard Operating Procedures (SOP) for Licensing in April 2015 and proposes adding language to regulation to allow flexibility for the Division to employ practical approaches in obtaining qualifications from applicants. The proposed regulation change was presented to the Conveyance Advisory Board on May 12, 2016, and will be discussed

at stakeholder meetings for proposed regulation revisions in the Fall of 2016. The Division expects to have revised conveyance regulations incorporating this proposed change by July 2017.

- B. Updating the Division of Oil and Public Safety's (Division's) Standard Operating Procedure for Conveyance License Processing to clarify program requirements.

Current Implementation Status for Rec. 2, part b: Implemented

Agency's Update:

The Division has enhanced the Conveyance Licensing SOP to include procedures to determine the status of compliance with Workers Compensation rules for contractors, procedures for maintaining mechanic license reciprocity with other specified states, and general clarification.

- C. Changing rules to either (1) make requirements for the Division's inspector exams more precise, or (2) specify that Division staff have discretion to grant exceptions to rules under certain circumstances.

Current Implementation Status for Rec. 2, part c: Not Implemented

Agency's Update:

To address this recommendation the Division proposes to revise inspector licensing requirements in Section 4-1-4(4) to include clarification that the Conveyance License Type 2 and division audit inspectors are exempt from the requirement to take the Division rules exam. This approach was presented to the Conveyance Advisory Board on May 12, 2016, and will be discussed at stakeholder meetings for proposed regulation revisions in the Fall of 2016. The Division expects to have revised conveyance regulations incorporating this proposed change by July 2017.

- D. Implementing procedures to maintain complete documentation to support licensing decisions, including the rationale for any approved waivers of licensing requirements.

Current Implementation Status for Rec. 2, part d: Implemented

Agency's Update:

The Division has added language to the Conveyance Program Licensing SOP which requires the program personnel to obtain and maintain any documentation supporting deviation from the SOP.

- E. Following up with the 12 current licensees identified through our audit for whom the Division lacked evidence of qualification for licensure and either (1) obtaining documentation to substantiate that those individuals are qualified for the licenses, or (2) revoking their licenses.

Current Implementation Status for Rec. 2, part e: Partially Implemented

Agency's Update:

To address 11 of the 12 licensees in this recommendation, the Division obtained documentation to substantiate that 2 mechanics and 8 contractors are qualified for the licenses effective July 2015 through June 2016, and on December 1, 2015, OPS revoked one contractor license that could not provide qualifying workers compensation coverage. The remaining licensee (Type 2 inspector) will be substantiated by adding a proposed rule revision in Section 4-1-4(4) to exclude a Type 2 licensee from the requirement of taking the OPS rules exam; therefore the Division has updated the implementation date to July 2017.

- F. Reviewing workers' compensation insurance policies for all contractors who hold current licenses to verify whether their policies are valid in Colorado. If the Division's documentation does not provide sufficient evidence that contractors have valid workers' compensation insurance, the Division should follow up to either (1) obtain additional evidence that they hold valid insurance policies, or (2) revoke their licenses until they provide evidence that they meet workers' compensation insurance requirements.

Current Implementation Status for Rec. 2, part f: Implemented

Agency's Update:

To address this recommendation the Division reviewed the contractor Liability Insurance policies and Workers' Compensation policies for all of the 33 contractors licensed as of October 2015 and verified that all contractors with the exception of one licensee had current and acceptable policies or had approved confirmations of coverage rejection from the CDLE Division of Workers Compensation. On December 1, 2015, the Division revoked the license of the one exception.

- G. Modifying the mechanic license application form to clearly indicate when a completed mechanic training and work experience affidavit must be submitted with the application and making the affidavit form readily available to applicants.

Current Implementation Status for Rec. 2, part g: Implemented

Agency's Update:

The Division modified the Mechanic License Application to clarify the work experience requirement and which also provides a link to the work experience affidavit forms on OPS' website. The new application and the work experience affidavits are viewable at www.colorado.gov/ops under the Conveyances tab then the Forms tab.

Recommendation No. 3:

The Department of Labor and Employment should ensure that it effectively delegates its regulatory authority to local Authorities Having Jurisdiction (AHJs) by:

- A. Obtaining legal guidance from the Attorney General about whether an attestation from a local jurisdiction is sufficient in place of the Department determining "whether a local jurisdiction's standards are equal to or greater than those of [the Elevator and Escalator Certification Act]" as

a basis for delegating regulatory authority over conveyances and whether the Department's determination must be made before the Department delegates regulatory authority.

Current Implementation Status for Rec. 3, part a: Implemented

Agency's Update:

The Division asked the Attorney General's Office to determine whether, under Section 9-5.5-112(2)(a), C.R.S., the Division can determine that local conveyance regulation is appropriate based exclusively on a signed attestation from a local jurisdiction that its conveyance regulations meet or exceed the Division's own standards. On November 24, 2015, Christopher Boeckx, Assistant Attorney General, issued an informal opinion to the Division regarding this issue. The AG's legal advice to the Division was that the Division likely can determine that local conveyance regulation meets or exceeds those of the Division, but that the Division's position could be improved through the implementation of additional process before executing a Memorandum of Agreement.

- B. Implementing a process to review local standards as a basis for delegating regulatory authority, if the legal guidance obtained in PART A indicates that the Division of Oil and Public Safety (Division) should conduct such reviews, and expediting them for all currently Approved AHJs. The Division should only execute or continue MOAs with AHJs it finds to have adequate standards.

Current Implementation Status for Rec. 3, part b: Implemented

Agency's Update:

Based on the AG's determination in Response 3A, the Division will address this recommendation by continuing to utilize the Authority Having Jurisdiction (AHJ) Program Review Checklist, although the Division will also conduct this review prior to the execution of MOAs with newly approved AHJs. In addition, the Division developed a written procedure to supplement the checklist as described in the response to Recommendation 4A. The Division conducted program reviews of all delegated local jurisdiction programs and has determined that all jurisdiction standards are equal to or greater than those of the Division.

Recommendation No. 4:

The Department of Labor and Employment should ensure that Approved Authorities Having Jurisdiction (Approved AHJs) have adequate regulatory programs by:

- A. Developing a written policy that outlines the Division of Oil and Public Safety's (Division's) process for conducting audits or other outreach to Approved AHJs, including (1) how the Division will determine that the Approved AHJs have developed programs that can adequately regulate conveyances; (2) how the Division will ensure that Approved AHJs understand their responsibilities and are meeting Division requirements; (3) actions the Division will take once it identifies deficiencies, including when follow-up audits will be triggered; and (4)

requirements for Approved AHJs to submit corrective action plans outlining how they plan to address deficiencies.

Current Implementation Status for Rec. 4, part a: Implemented

Agency's Update:

To address this recommendation the Division developed a written procedure for the AHJ review process which addresses items (1) through (4) above. This procedure is a companion document to the AHJ Program Review Checklist described in the response to Recommendation 3B.

- B. Describing all expectations for Approved AHJs in rule, written policy, or the MOA. This should include specifying what types of problems will cause termination of the MOA or suspension of delegated authority to regulate certain functions until the problems are resolved.

Current Implementation Status for Rec. 4, part b: Not Implemented

Agency's Update:

To address this recommendation the Division will include a high-level summary of expectations for AHJs in Section 3-1 of regulation and will clarify the expectations in more detail within the MOA document. The proposed regulation change will be discussed at stakeholder meetings for proposed regulation revisions in the Fall of 2016. The Division expects to have revised conveyance regulations and MOA document incorporating this proposed change by July 2017.
