STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT AND RELATED ENTITIES

Performance Audit Report

October 2018

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Division of State Audit

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TENNESSEE COMPTROLLER OF THE TREASURY

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October 31, 2018

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The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
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and
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and

The Honorable Burns Phillips, Commissioner
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and
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Board of Boiler Rules
235 Picadilly Lane
Gray, Tennessee 37615
and
Robbie Fox, Chairman
Elevator and Amusement Device Safety Board
2700 Dollywood Parks Boulevard
Pigeon Forge, Tennessee 37863

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the Department of Labor and Workforce Development, the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, the State Unemployment Compensation Advisory Council, and the Prevailing Wage Commission for the period July 1, 2014, through July 31, 2018. This audit was conducted pursuant to the requirements of the Tennessee Governmental Entity Review Law, Section 4-29-111, *Tennessee Code Annotated*.

Our audit disclosed certain findings, which are detailed in the Objectives, Methodologies, and Conclusions section of this report. Management of the Department of Labor and Workforce Development and the Prevailing Wage Commission have responded to the audit findings; we have included the responses following each finding. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Department of Labor and Workforce Development, the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, the State Unemployment Compensation Advisory Council, and the Prevailing Wage Commission should be continued, restructured, or terminated.

Sincerely,

Deborah V. Loveless

Deborah V. Loveless, CPA, Director
Division of State Audit

DVL/jcd
18/044

Division of State Audit

Department of Labor and Workforce Development and Related Entities

Performance Audit

October 2018

Our mission is to make government work better.

AUDIT HIGHLIGHTS

According to Section 4-3-1404, *Tennessee Code Annotated*, the purpose and goals of the Department of Labor and Workforce Development are to

- **"provide integrated, effective, efficient delivery of employment related services and training" and**
- **"meet the needs of employees, unemployed persons, and persons making the transition into the workplace . . . to enhance their employability, earnings and standard of living while ensuring that employees have a safe, healthy workplace."**

Pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*, we have audited the Department of Labor and Workforce Development, the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, the State Unemployment Compensation Advisory Council, and the Prevailing Wage Commission for the period July 1, 2014, through July 31, 2018. Our audit scope included a review of internal control and compliance with laws, regulations, policies, and procedures in the following areas:

For notes about the other program areas of the department that are not included within the scope of this audit, see the **Single Audit** and **Occupational Safety and Health Administration Reviews** sections on pages 7 and 9.

- amusement device permits and the department's actions in response to accidents that occurred while these devices were operating;
- boiler inspections;
- elevator inspections;
- the state's mine rescue teams;
- enforcement of state labor laws;
- revenues collected by the Workplace Regulations and Compliance Division;
- reporting by the Internal Audit Division; and
- membership, meetings, and conflict-of-interest disclosures for the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, the State Unemployment

Scheduled Termination Date for All Entities:

June 30, 2019

Compensation Advisory Council, and the Prevailing Wage Commission, as well as the commission's determination of the prevailing wage rate for highway construction projects.

KEY CONCLUSIONS

Our review resulted in 10 findings, 7 observations, and 2 matters for legislative consideration.

FINDINGS

- Amusement Device Unit staff did not document all communications with device owners and, therefore, could not explain late permit renewals (page 15).
- The Boiler Unit did not timely perform required inspections and follow-up inspections (page 22).
- The Elevator Unit did not ensure each elevator or related device was inspected timely (page 29).
- The Elevator Unit improperly issued operating permits, did not ensure owners timely reported correction of code violations, and did not require verification of code violation corrections (page 30).
- As noted in the prior audit, department management did not have mine rescue teams located within two hours of underground mines (page 39).
- Department management did not ensure that substitutes on the state's mine rescue teams received adequate training (page 42).
- Labor Standards Unit personnel did not complete Non-Smoker Protection Act inspections as required by statute and did not comply with case management requirements specified in the unit's standard operating procedures (page 46).
- The Administrator did not follow established law and policy to deposit collected funds promptly, nor did unit staff ensure these funds were secure until deposit (page 53).
- The Director of Internal Audit did not notify the Comptroller's Office when the Adult Education Division's management and staff inappropriately used a subrecipient's grant funds (page 59).
- The Prevailing Wage Commission once again did not set prevailing wages in accordance with statute (page 67).

OBSERVATIONS

The following topics are included in this report because of their effect on the department's operations and on the citizens of Tennessee:

- The Amusement Device Unit should ensure its vacant Safety Compliance Officer positions are filled to increase its efforts to identify amusement device owners operating without permits (page 17).
- Management should ensure that the Amusement Device Unit's *Standard Operating Procedures* are complete and up-to-date (page 19).
- The Chief Boiler Inspector should perform and document reviews of inspector performance consistently and should have written procedures in place detailing the review process (page 25).
- The Boiler Unit should take steps to ensure that the owners of boilers that have passed inspections pay applicable fees and obtain inspection certificates (page 26).
- The Elevator Unit should ensure elevator inspectors submit inspection reports and should improve controls over inspection data (page 35).
- The Elevator Unit should ensure all inspectors are certified timely after meeting the licensing and qualification requirements and should ensure all inspectors renew their state licenses annually (page 36).
- Management should ensure supporting documentation is created and maintained for the State Unemployment Compensation Advisory Council (page 69).

MATTERS FOR LEGISLATIVE CONSIDERATION

The General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Mine Safety Unit's mine rescue teams (page 41) and to clarify the Prevailing Wage Commission's responsibilities regarding certified payroll records (page 69).

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INTRODUCTION

AUDIT AUTHORITY

This performance audit of the Department of Labor and Workforce Development was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated.* Under Section 4-29-240, the department is scheduled to terminate June 30, 2019. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. This audit is intended to aid the committee in determining whether the department should be continued, restructured, or terminated.

BACKGROUND

The Department of Labor and Workforce Development was created through the Tennessee Workforce Development Act of 1999. The legislation combined the departments of Labor and Employment Security, the Adult Education program from the Department of Education, and the Food Stamp – Employment component previously managed by the Department of Human Services. The Department of Labor and Workforce Development was designed to meet the workplace services, regulations, and safety needs of Tennesseans. As of February 8, 2018, the department was staffed by 1,079 employees.

The department's nine major divisions are described as follows.

The **Adult Education Division** administers the federal Adult Education – Basic Grants to States program, which provides adult education and literacy services. The program helps adults obtain the knowledge and skills necessary for employment; obtain the educational skills necessary to become full partners in the educational development of their children; and complete a secondary school education.

The **Employment Security Division** maintains Tennessee's Employment Security Fund for the Unemployment Insurance program (UI). This fund contains employer premiums and pays UI benefits to workers who have lost their jobs through no fault of their own.

The **Tennessee Occupational Safety and Health Administration** (TOSHA) assures the safety and health of Tennessee's workers by setting and enforcing standards; providing training, outreach, and education; and encouraging continuous improvement in workplace safety and health.

- The Consultative Services Section offers free consults to smaller employers who seek safe and healthful working conditions for their employees, providing technical advice and assistance, hazard abatement recommendations, and employee training.

- The Compliance Section is responsible for enforcing the Tennessee Occupational Safety and Health Act of 1972 with emphasis on employee exposures to chemical and physical hazards through on-site monitoring and inspections.
- The Training and Education Section conducts training seminars and classes across the state to reduce safety and health hazards in workplaces and to assist employers and employees in complying with TOSHA standards and regulations.

The **Workforce Services Division** administers the federal Workforce Innovation and Opportunity Act grant funds, which are used to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy.

The **Workplace Regulations and Compliance Division** is composed of the following units:

- The Amusement Device Unit issues annual permits to companies operating over 3,329 fixed and portable amusement devices in Tennessee including zip lines, dark houses, carousels, bumper cars, fairs, carnival rides, and inflatables.
- The Boiler Unit reviews and inspects more than 32,000 boilers and pressure vessels in Tennessee through biannual and biennial inspections.
- The Elevator Unit annually performs over 22,500 inspections of elevators, aerial tramways, chairlifts, escalators, dumbwaiters, and moving walkways in Tennessee.
- The Labor Standards Unit enforces the Non-Smoker Protection Act, the Employment of Illegal Aliens Act, the Child Labor Act of 1976, the Prevailing Wage Act for State Highway Construction Projects, the Wage Regulations Act, and the Tennessee Lawful Employment Act through inspections and investigations.
- The Mine Safety Unit issues mine licenses to underground mines and surface coal/metal mines; administers mine foreman exams and issues certifications to foremen who meet state, federal, and industry requirements; and provides health and safety training for underground and surface miners, as well as contractors who work on mine properties.

The **Internal Audit Division** improves the department's operations by evaluating and improving the organization's risk management, control, and governance processes.

- The Internal Audit Unit performs audits and investigations, follows up on hotline notifications, and conducts internal inspections for federal tax information required by the Internal Revenue Service.

- The Program Accountability Review Unit performs program and fiscal monitoring of the Workforce Services Division's subrecipients[1] and fiscal monitoring of the Adult Education Division's subrecipients.

The **Workforce Insights, Research and Reporting Engine Division** uses data collected from various sources to determine strategy and drive evidence-based decisions for the department.

- The Labor Market Information Section produces comprehensive analyses of the economic and demographic characteristics of Tennessee's citizens, businesses, and industries through surveys, collecting data on nonfatal workplace incidents for the U.S. Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses and the Occupational Safety and Health Administration Log Data Collection Initiative Survey.
- The OneTouch Customer Success Unit manages the Workforce OneTouch system, which streamlines communications throughout the department by allowing the department to store all support questions and requests in one place for staff assistance and reference.

The **Human Resources Division** oversees the department's personnel function including recruitment, staffing, policies, regulations, resources, employee relations, and learning and development for the department.

The **Administration and Fiscal Services Division** manages the accounting, budgeting, procurement, and sub-grantee contracting needs for the department.

RELATED ENTITIES

The Bureau of Workers' Compensation,[2] the Occupational Safety and Health Review Commission,[3] the Workforce Development Board,[4] the Board of Boiler Rules, the Elevator and Amusement Safety Board, the Unemployment Compensation Advisory Council, and the Prevailing Wage Commission are related to the mission and function of the department.

The **Bureau of Workers' Compensation** administers multiple programs to help Tennesseans resolve workplace-injury disputes. The bureau educates the public on workers' compensation requirements and ensures the provision of timely benefits in appropriate cases. Tennessee law charges the bureau with the responsibility for adjudication, recordkeeping, administration, and enforcement. The bureau is an autonomous agency that is attached to the department for administrative matters only.

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[1] Subrecipients are third-party entities that receive federal program funds from the department to carry out program functions.

[2] An audit of the Bureau of Workers' Compensation was published in October 2017. The bureau is not scheduled to terminate until June 30, 2024.

[3] The Occupational Safety and Health Review Commission is not scheduled to terminate until June 30, 2021, and was not included in our audit work.

[4] The Workforce Development Board was established by executive order and, therefore, is not subject to the Tennessee Governmental Entity Review Law. We did not include the board in our audit work.

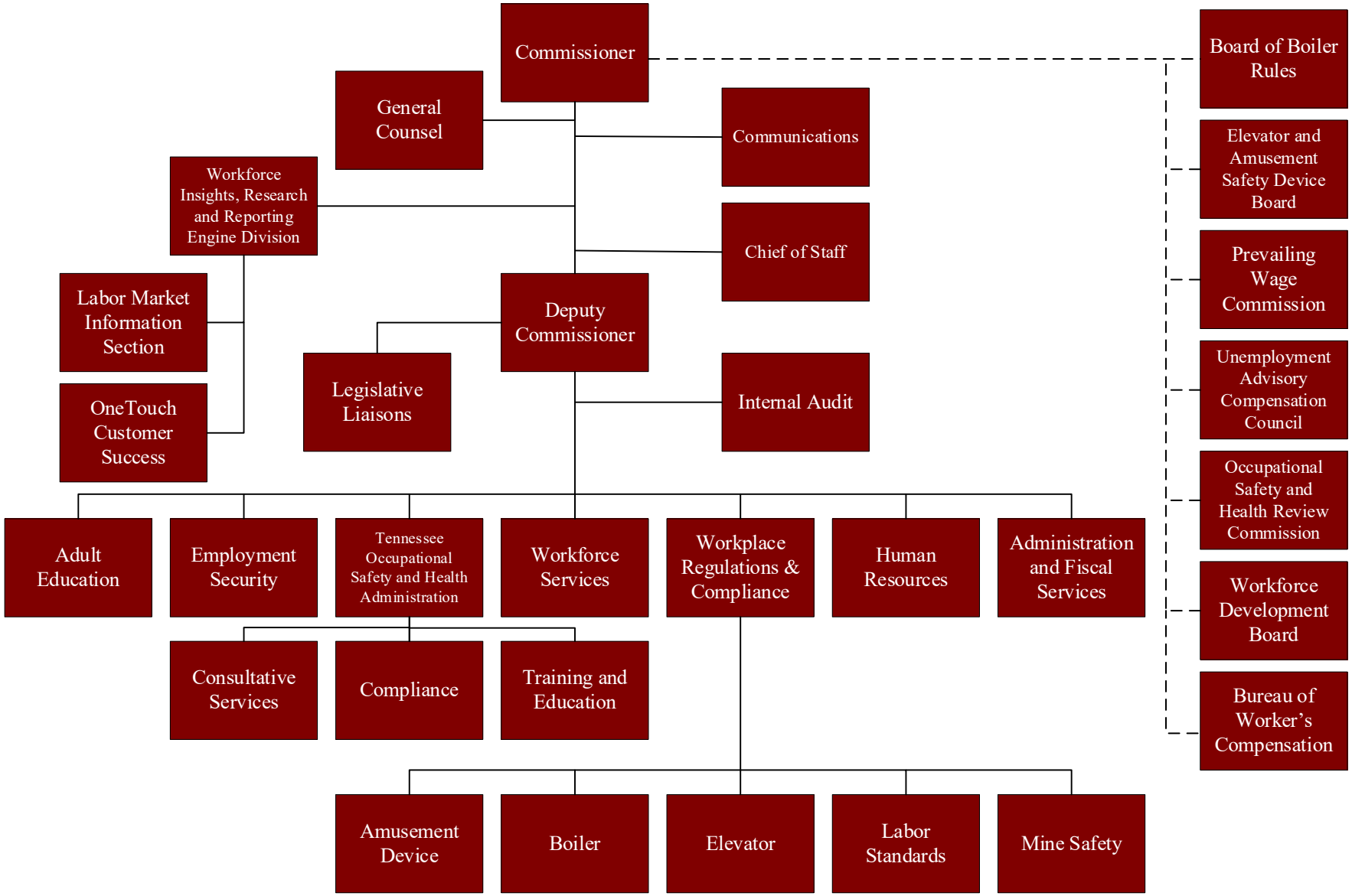
The **Occupational Safety and Health Review Commission** hears appeals by parties who disagree with citations and penalties issued by TOSHA and decides whether to uphold, modify, or dismiss citations and penalties.

The **Workforce Development Board** provides leadership and guidance to Tennessee's workforce development system to increase the competitive position of Tennessee businesses and to attract new businesses through developing a highly skilled workforce.

For more information on the **Board of Boiler Rules**, the **Elevator and Amusement Device Safety Board**, the **Unemployment Compensation Advisory Council**, and the **Prevailing Wage Commission**, see page 63.

The department's business unit codes are listed in **Appendix 1**, and an organization chart of the department is on page 5.

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
ORGANIZATION CHART
FEBRUARY 21, 2018



Source: Department of Labor and Workforce Development management.

AUDIT SCOPE

We have audited the Department of Labor and Workforce Development for the period July 1, 2014, through July 31, 2018. Our audit scope included a review of internal control and compliance with laws, regulations, policies, and procedures in the following areas:

- amusement device permits and the department's responses to accidents that occurred while these devices were operating;
- boiler inspections;
- elevator inspections;
- the state's mine rescue teams;
- enforcement of state labor laws;
- revenues collected by the Workplace Regulations and Compliance Division;
- reporting by the Internal Audit Division; and
- membership, meetings, and conflict-of-interest disclosures for the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, the State Unemployment Compensation Advisory Council, and the Prevailing Wage Commission, as well as the commission's determination of the prevailing wage rate for highway construction projects.

Department management is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, policies, procedures, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objective. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient appropriate audit evidence to support the conclusions in our report. Although our sample results provide reasonable bases for drawing conclusions, the errors identified in these samples cannot be used to make statistically valid projections to the original populations. We present more detailed information about our methodologies in the individual sections of this report.

We conducted our 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.

SINGLE AUDIT

As part of the annual Single Audit of the State of Tennessee, the Comptroller of the Treasury's Division of State Audit performs a risk assessment and audits certain federal programs administered by state agencies. We review the systems of internal control over federally funded programs and compliance with program regulations. The audit's objective is to determine the state's compliance with federal requirements regarding how those funds were used. For the audit period covered by this performance audit, the Department of Labor and Workforce Development's Employment Security, Workforce Services and Adult Education divisions were included in the state's fiscal year 2015, 2016, and 2017 Single Audits as described in **Table l**.

Table 1
Single Audit Findings - Department of Labor and Workforce Development

Federal Program (Division)	Federal Funds Expended (Average for Fiscal Years 2015-2017)	Findings by Fiscal Year		
		2015	2016	2017
Adult Education - Basic Grants to States Program (Adult Education Division)	$11,643,993	4	3	3
Unemployment Insurance Program (Employment Security Division)	$292,692,450*	8	11	15
Employment Service Program Cluster (Workforce Services Division)	$13,247,042	3	N/A**	N/A**
Workforce Investment Act Program Cluster (Workforce Services Division)	$50,411,568	4	N/A**	N/A**
Total Findings†		**14**	**13**	**16**

* The average amount includes benefits paid from Tennessee's Employment Security Fund, as well as administrative funds allocated to the state by the U.S. Department of Labor.
** The Employment Service and Workforce Investment Act programs were not audited for fiscal year 2016 or 2017.
† Some findings applied to multiple programs; therefore, the "Total Findings" is less than the sum of the findings for each program.
Source: Single Audit reports for fiscal years 2015, 2016, and 2017:
http://www.comptroller.tn.gov/repository/SA/2015_TN_Single_Audit.pdf
http://www.comptroller.tn.gov/repository/SA/2016_TN_Single_Audit.pdf
http://www.comptroller.tn.gov/repository/SA/2017_TN_Single_Audit.pdf

See **Table 2** for a summary of the department's results for the two programs audited for fiscal year 2017.

Table 2
Department of Labor and Workforce Development
Finding Summary for 2017 Single Audit

Repeat Findings	New Findings	Total Findings	Known Questioned Costs
7	9	16	$2,110,641

REPEAT FINDINGS

2017-043 The Department of Labor and Workforce Development's key control for detecting fraudulent unemployment claims was ineffective for the sixth consecutive year, resulting in the inability to detect and correct improper payments to state employees, a deceased individual, state inmates, individuals with unverified identities, and other ineligible claimants

2017-045 The Department of Labor and Workforce Development sometimes did not sufficiently request separation information from employers and, for the fourth consecutive year, sometimes did not provide written notice of all agency decisions to interested parties

2017-046 The Department of Labor and Workforce Development improved in three of the four areas noted in the prior audit; however, the department did not meet the federal benefit payment standard

2017-049 Due to continued difficulties with the Geographic Solutions Unemployment System, the Department of Labor and Workforce Development submitted uncorroborated, inaccurate, and late reports

2017-052 Although the Department of Labor and Workforce Development improved maintenance of benefit non-charge documentation since the prior audit, it did not process all non-charges in a timely manner and could not provide the decision letters for all approved non-charges

2017-055 As noted in the prior two audits, we were unable to access federal tax information needed to fulfill our audit objectives due to restrictions imposed by the Internal Revenue Service

2017-056 As noted in the prior two audits, the Department of Labor and Workforce Development did not provide adequate internal controls in one specific area

NEW FINDINGS

2017-041 The Department of Labor and Workforce Development lacks written procedures for key Adult Education and Unemployment Insurance expenditure controls

2017-042 The Division of Adult Education did not ensure that its subrecipients determined that students were eligible prior to allowing them to participate in the program

2017-044 The Department of Labor and Workforce Development did not implement identity verification software that it had purchased and that may have prevented fraudulent unemployment claims exceeding $1.3 million in fiscal year 2017

2017-047 The Employment Security Division did not properly calculate weekly benefit amounts for claimants, and paid benefits for which claimants were not eligible, for Trade Adjustment Assistance programs

2017-048 The Department of Labor and Workforce Development was unprepared to process Disaster Unemployment Assistance claims and did not properly pay benefits

2017-050 The Employment Security Division did not have adequate controls over the ETA 902 report to ensure its accuracy and completeness

2017-051 The Department of Labor and Workforce Development did not accurately report earnings information due to conversion errors related to the new unemployment insurance system

2017-053 The Department of Labor and Workforce Development sometimes did not apply interest to unemployment benefit overpayments or send benefit overpayment statements via postal or electronic mail, contributing to a $2.3 million decrease in collections

2017-054 The Department of Labor and Workforce Development lacked controls to ensure the accuracy and timeliness of data transmitted to the Internal Revenue Service, increasing the risk of incorrect federal unemployment tax assessments

In response to audit findings and recommendations, the department must develop corrective action plans to submit to the appropriate federal awarding agency. The federal grantor is responsible for issuing final management decisions on the department's findings, including any directives to repay the federal grants. Our office is required to determine whether the department has taken full corrective action, partial corrective action, or no action.

We are currently auditing, for the 2018 Single Audit, the Workforce Innovation and Opportunity Act (which supersedes the Workforce Investment Act) and Unemployment Insurance programs. The results of the audit, which includes our follow-up on the corrective actions for the prior audit findings, will be reported by March 31, 2019.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REVIEWS

The Department of Labor and Workforce Development has one additional program area, the Tennessee Occupational Safety and Health Administration (TOSHA), which we considered in planning this audit. The federal Occupational Safety and Health Administration performs annual reviews of TOSHA, with the most recent on-site review conducted in December 2017. According to the federal agency's report, reviewers did not identify any findings during that review. As such, we did not include TOSHA-specific objectives as part of our audit.

PRIOR AUDIT FINDINGS

REPORT OF ACTIONS TAKEN ON PRIOR AUDIT FINDINGS

Section 8-4-109*, Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report. The prior audit report was dated October 2014 and contained six findings. The Department of Labor and Workforce Development filed its report with the Comptroller of the Treasury on May 1, 2015. We conducted a follow-up of the prior audit findings as part of the current audit.

RESOLVED AUDIT FINDINGS

The current audit disclosed that the Department of Labor and Workforce Development resolved the following previous audit findings concerning the Workplace Regulations and Compliance Division:

- data reliability and reporting weaknesses in the Electronic Case Management and Tracking System (eCMATS) for the Boiler and Elevator Units;
- heavy caseload and lack of internal controls within the Boiler Unit; and
- the viability of the Amusement Device Unit.

The current audit also disclosed that the department corrected the previous audit finding concerning the Internal Audit Division's lack of documentation and reporting of internal audits.

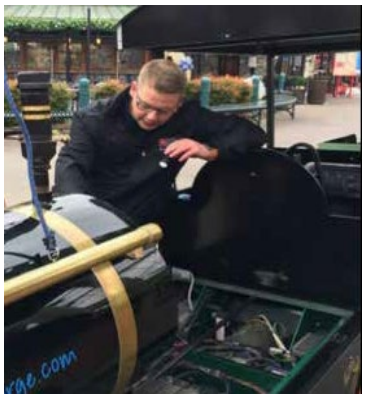
REPEATED AUDIT FINDINGS

The prior audit report also contained a finding stating that the Prevailing Wage Commission incorrectly calculated the prevailing wage rates for three years and another finding stating that the Mine Safety Unit within the Workplace Regulations and Compliance Division did not ensure that the state's mine rescue teams were stationed close enough to underground mines as required by statute. These findings have not been resolved and are repeated in the applicable sections of this report.

AUDIT CONCLUSIONS

AMUSEMENT DEVICE UNIT

Pursuant to Section 68-121-116, *Tennessee Code Annotated*, the General Assembly finds that unsafe amusement devices[5] are likely to cause serious and preventable injuries, that those injuries should be prevented, and that the public should be protected from them. To protect the public, the Amusement Device Unit regulates amusement device operations through annual permits and device inspections. Unit staff actively search for unpermitted devices and assist amusement device owners with obtaining permits. The unit also receives reports from owners when accidents involving devices occur and ensures that the devices are inspected and meet industry safety requirements before they are allowed back into service.



Source: Department of Labor and Workforce Development's 2016-2017 annual report.

Permits

No one may operate an amusement device unless the unit issues an initial or renewal permit for that device to the owner, pursuant to Section 68-121-117(a)(1)(A), *Tennessee Code Annotated*. Before issuing a permit, the unit must receive a completed application packet from the amusement device owner that includes

- an "Application for Annual Permit with Itinerary" with the owner's information and all locations where the devices will operate;
- an "Amusement Device List," showing all devices covered by the permit;
- a proof of insurance form;
- an inspection report that states the device "meets industry standards" from a qualified inspector;[6] and
- a permit fee of $150.

[5] Amusement devices include, but are not limited to, roller coasters, Ferris wheels, merry-go-rounds, glasshouses, walk-through dark houses, trampolines, escape rooms, and bounce houses.

[6] A qualified inspector must be certified by the National Association of Amusement Ride Safety Officials (NAARSO), the Amusement Industry Manufacturing and Suppliers (AIMS), or the Association for Challenge Course Technology (ACCT). NAARSO, AIMS, and ACCT are national and international organizations that set industry standards for amusement device inspections to ensure that inspectors are thorough and effective in ensuring that amusement devices are safe for public use. The unit does not employ any inspectors, so third-party, qualified inspectors conduct inspections at the amusement device owner's expense. To ensure an inspector's certification is valid, the unit's Administrative Assistant contacts the inspector's certifying organization by email to obtain confirmation that the inspector's certification is in good standing. After receiving this confirmation, the Administrative Assistant includes the certifying organization's response with the other application paperwork in the amusement device permit file.

The unit must receive the fee and all required documents before it issues a permit. Each permit is valid in Tennessee for one year from the date of issuance. See **Table 3** for a total of permits issued by fiscal year.

Table 3
Amusement Device Permits Issued
July 1, 2014, Through March 22, 2018

Period	Number of Permits Issued
July 1, 2014 – June 30, 2015	104
July 1, 2015 – June 30, 2016	246
July 1, 2016 – June 30, 2017	351
July 1, 2017 – March 22, 2018	263
Total Permits Issued	**964**

Source: Permit list provided by Amusement Device Unit management.

Renewal Permits

According to the unit's *Standard Operating Procedures*, the Administrative Assistant mails a renewal letter approximately 45 to 50 days before a permit is set to expire. The Administrative Assistant also sends an email to the owner on the first business day of the month before the permit expires. Finally, if there is no response to the previous communications, the Administrative Assistant calls the owner once a week for the last two weeks before the permit expires. If the owner does not renew, the Administrative Assistant mails a "Cease and Desist" notice to the owner seven days after the permit expires. If the owner continues to operate the device, the Manager drafts an affidavit for enforcement and prosecution as described below.

Unpermitted Devices

According to the unit's procedures, Safety Compliance Officers (SCOs) are responsible for identifying[7] unpermitted amusement devices. The unit has three SCO positions, one each for West, Middle, and East Tennessee. When SCOs find unpermitted devices, they contact the owners and explain the permitting process. If an owner continues to operate an amusement device without a permit, the Administrative Assistant will issue a "Cease and Desist" notice, which notifies the owner not to continue to operate the device without a permit; the owner has seven calendar days to begin the permit application process. The SCO returns to the device's location on or about the eighth day after the letter is issued to determine whether the owner ceased operations. If an owner continues to operate a device after receiving a "Cease and Desist" notice (either because it lacks a permit or because of safety concerns following an accident), the unit's Manager drafts an affidavit for enforcement and prosecution and sends it to the local law enforcement agency, the District Attorney's Office, the Attorney General's Office, and the owner. In addition to the SCOs' searches, the unit operates an online "tip line" where the public may report unpermitted devices. The SCOs follow up on all tips received.

[7] Based on discussion with the SCO for West Tennessee, he identifies unpermitted devices by reviewing social media and advertisements, as well as by taking note of new businesses that are operating amusement devices.

Reporting Accidents

When any "fatality, serious physical injury, or serious incident" occurs while a device is in operation, the amusement device owner must shut down the device immediately and report to the unit through an online form on the unit's website within 24 hours. After receiving a report, the Administrative Assistant emails the owner a "Cease and Desist" notice, and unit staff must receive an inspection report from a qualified inspector that states the device meets industry standards after the accident. Once the unit receives the inspection report, the Manager refers all documentation to the Administrator of the Workplace Regulations and Compliance Division,[8] who decides whether the device may resume operation. If the Administrator approves the device, the Administrative Assistant issues a letter to the owner allowing the device to resume operation. See **Table 4** for a breakdown of accidents reported to the unit by fiscal year.

Table 4
Accidents Reported to the Amusement Device Unit
June 1, 2016, Through May 5, 2018

Period	Number of Accidents
June 2016	2
July 1, 2016 – June 30, 2017	33
July 1, 2017 – May 5, 2018	24
Total Reported	**59**

Source: The Amusement Device Unit's accident files.

An owner who fails to comply with any of the requirements (ceasing operations, notifying the unit in writing, submitting an inspection report, or obtaining the unit's permission to resume operations) incurs a penalty of $300 per day until full compliance is achieved, beginning on the date of the accident. Fines are assessed through "Penalty Assessment Orders," which the Administrative Assistant mails to the owner. The owner has 15 days to either appeal or pay the fine. If the unit receives no response, the Administrative Assistant will mail a second notice requesting payment. If the unit does not receive a response after 30 days, it notifies the Department of Finance and Administration that the state's outside collection agency will need to pursue payment from the device owner.

Audit Results

1. **Audit Objective:** Did the Amusement Device Unit issue an initial permit before amusement device owners began operating a device? Did the unit issue renewal permits before the previous amusement device permit expired?

   Conclusion: Unit staff could not explain why over half of the renewal permits we reviewed were issued to amusement device owners after their previous

[8] The Administrator supervises the Workplace Regulations and Compliance Division, which includes the Amusement Device Unit, the Boiler Unit, the Elevators Unit, the Labor Standards Unit, and the Mine Safety Unit.

permit expired (see **Finding 1**). Because of vacancies, unit staff could not identify all unpermitted amusement device owners. Unit staff also could not issue initial permits to owners who were already operating a device without a permit for about half the first-time permits we reviewed (see **Observation 1**).

2. **Audit Objective:** Did the unit ensure that all inspectors were properly certified?

   Conclusion: Yes, the unit ensured that all inspectors were properly certified.

3. **Audit Objective:** Did the unit have written policies for its management of permit files and collection of fees and penalties, and did the unit collect, or attempt to collect, assessed penalties?

   Conclusion: The unit collected all assessed penalties and had written policies for the unit's permit file management. However, management did not have written policies for collecting penalties or identifying amusement device owners operating without permits. Additionally, the policies for sending "Cease and Desist" notices to owners were inconsistent and outdated, and staff did not comply with them (see **Observation 2**).

4. **Audit Objective:** Did the unit maintain permit and accident files that contained all required documentation?

   Conclusion: With minor exceptions, the unit had permit and accident files that contained all required documentation.

Methodology to Achieve Objectives

We interviewed the Amusement Device Unit's Manager and Administrative Assistant and reviewed the unit's *Standard Operating Procedures*. We also performed walkthroughs of the unit's procedures to obtain an understanding of how unit staff compile amusement device permit and accident files, ensure that all amusement device operators are properly permitted, respond to reported accidents, and collect penalties.

We obtained a list of amusement device permits issued from July 1, 2014, through March 22, 2018. From a population of 964 amusement device permits, we selected a nonstatistical, random sample of 30 amusement device permit files and a nonstatistical, haphazard sample of 30 amusement device permit files. We tested the 60 amusement device permit files to determine whether unit staff ensured that amusement device owners obtained permits and that the device inspectors were properly certified, as well as whether the permit files contained all required documentation.

We tested the population of all 59 files for reported amusement device accidents that occurred from June 7, 2016, through May 5, 2018, to determine whether unit staff included all required documentation in the accident files. From the 59 accident files, we also tested all 4

instances where penalties were assessed, totaling $10,400, to determine whether unit staff attempted to collect the amounts due.

Finding 1 – Amusement Device Unit staff did not document all communications with device owners and, therefore, could not explain late permit renewals

Amusement Device Unit staff did not document all communications regarding permit renewals with amusement device owners. The Administrative Assistant stated that after sending a renewal letter to the owner, she emails and attempts at least two phone calls if the owner does not respond. The Administrative Assistant files the renewal letter in the owner's permit file but does not document other subsequent communications. Since unit staff did not document any known reason for renewal delays in the permit files, they could not explain why some owners did not renew their permits before their previous permits expired. For 21 of 34[9] renewal permits tested (62%), unit staff did not issue renewal permits before the owner's previous permit expired. Unit staff issued renewal permits from 1 to 679 days after the owner's previous permit expired, with an average of 112 days.

According to the unit's Manager, owners of amusement devices in traveling carnivals and fairs do not renew their permits until they return to the state. The Manager also stated that the Electronic Case Management and Tracking System (eCMATS), which staff used to issue permits, prohibited staff from issuing new permits to an owner until after their most recent permit expired. The Manager did not, however, provide any documentation to support that these explanations were the reason that unit staff issued renewal permits late, and we did not find any documentation in the case files indicating that late renewals were limited to carnival devices or were a result of eCMATS' limitations.

Regarding permit renewals, the unit's *Standard Operating Procedures* states,

> If there is no response to the 7 calendar day letter, a last attempt telephone call is required to be made on the 8th day to the amusement device company and the conversation is required to be documented in the file (i.e., date of call, party spoke with, content of conversation and/or information left on voice mail message, etc.).

Management cannot be assured that staff have complied with the unit's procedures unless staff document their attempts to contact device owners about permit renewals. Unit management developed these procedures to assist owners in obtaining a renewal permit before or by the expiration date of their previous permit. If the unit does not ensure that all amusement device permits are renewed annually, the unit cannot be certain that devices are inspected and are safe based on industry standards.

Recommendation

The Administrator and the Manager of the Workplace Regulations and Compliance Division should ensure that unit staff document all attempts to contact device owners with permits

[9] The 60 permits in our testwork consisted of 34 renewals and 26 new permits.

due for renewal and that they document the reasons for delayed renewals in the permit files. If necessary, management should consider updating its case management system to ensure that staff can issue renewal amusement device permits before the previous permits expire to avoid a lapse in device inspections.

Management's Comment

We concur in part. The Amusement Device staff did not document all communications with device owners in program files. To avoid future occurrences, the Standard Operating Procedure (SOP) was modified on July 13, 2018. The updated SOP requires that "All correspondence regarding the case is to be documented in files" and goes on to list the specific and general documents and letters to be included in the file. Staff have been instructed to document telephone calls, emails, and on-site visits. Proper documentation is required to be placed in all files.

Additionally, staff have been further instructed to follow the SOP as it is written, to enforce other processes as instructed, and to document all attempts to contact device owners for new permits and renewals. Staff were further instructed to document the file if there is a renewal delay or glitch in the computer system.

Unit staff explained that some renewal permits were issued to amusement device owners only after previous permits expired because of current computer system limitations. The computer system was not created specifically for the Amusement Device Unit but was created for another program within the division. Because the current system does not take into account processes for the Amusement Device Unit, renewal permits could not be issued until after the previous permit expired.

The 2011 eCMATs Manual for Permit Renewals demonstrates that the current computer system was developed to issue permits after the permit expired, instead of as needed. After necessary information was obtained from device owners to show they had achieved statutory compliance requirements, generally companies were issued permits as soon as the computer system would allow.

In January 2018, the department's Information Technology Division created a workaround. Now, the unit can issue renewal permits two weeks prior to the expiration date. A new computer system is being developed for the Amusement Device Unit. This issue and others will be taken into consideration during the development stage.

As stated in the report, all third-party inspectors are certified. Upon receipt of an inspection report, the unit obtains a copy of an email from the proper certifying agency confirming certification and maintains information in each program file.

The SOP for the Amusement Device Unit was greatly enhanced. It was updated on July 13, 2018, to provide staff additional guidance. The updates include processes for collecting penalty payments, assessing penalties, identifying amusement device owners operating without permits, "Cease and Desist" notices, and accident reporting requirements.

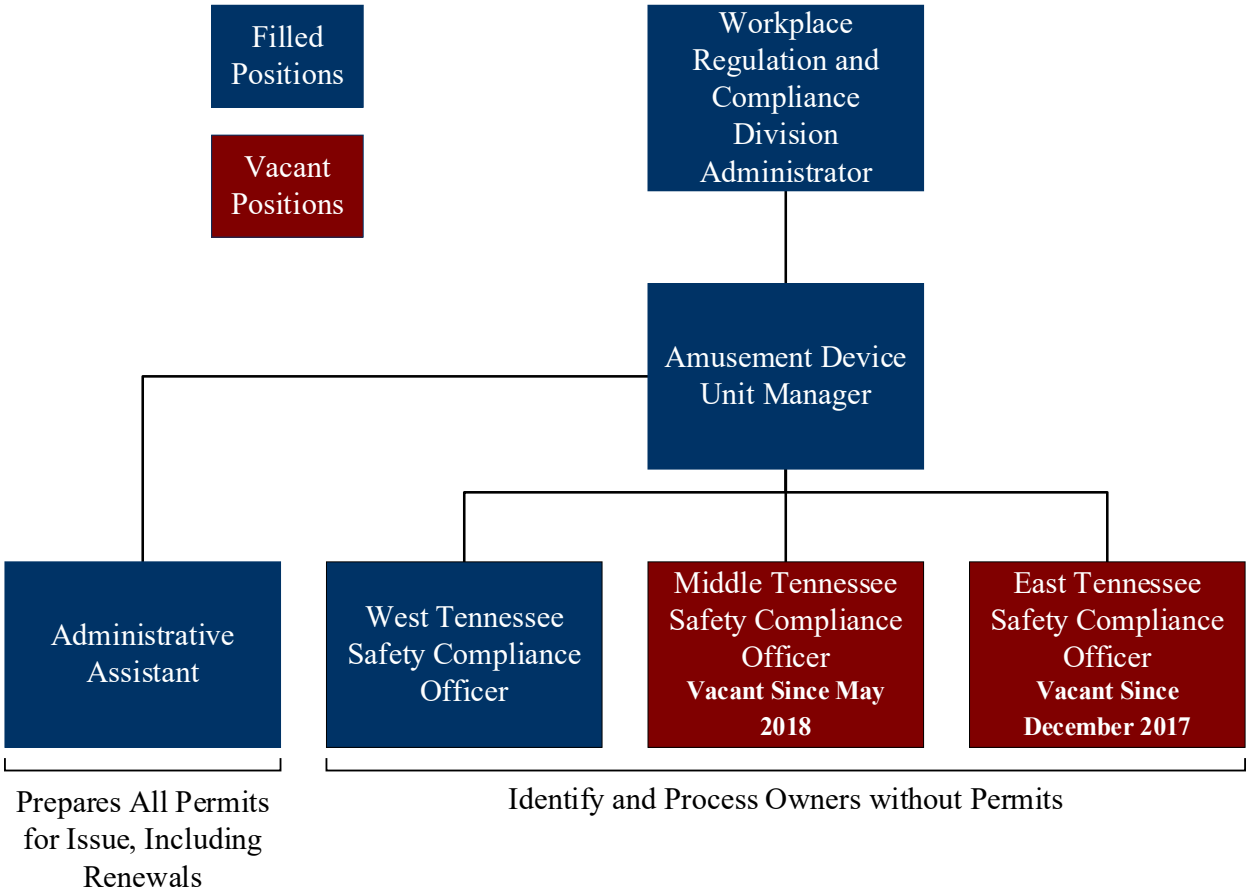
Staff have been instructed to follow the SOP as it is written and to enforce other processes as instructed. Policies will be reviewed/updated at least annually, and staff will comply with written policies until they are updated and enforce other processes as instructed.

Vacant SCO positions were filled in September 2018. The program currently has three Safety Compliance Officers (Middle, West and East Tennessee). Since one of the employees in the Amusement Device Unit was promoted, the Administrative Personnel Position is now vacant and will be filled next.

Observation 1 – The Amusement Device Unit should ensure its vacant Safety Compliance Officer positions are filled to increase its efforts to identify amusement device owners operating without permits

The Administrator of the Workplace Regulations and Compliance Division relies on the Amusement Device Unit's Safety Compliance Officers (SCOs) to identify unpermitted amusement device owners and assist them with completing the application process. We determined that two of three regional SCO positions (67%) were vacant from one to five months. According to the unit's Manager, SCO vacancies have limited the unit's ability to identify and work with amusement device owners without permits. See **Figure 1**.

Figure 1
Amusement Device Unit Structure as of May 31, 2018



Source: Management comments.

The West Tennessee SCO is unable to search for devices in all regions; with the current vacancies, he only identifies unpermitted devices in Middle or East Tennessee while searching for businesses in his area of the state.

The Administrator stated that the SCO positions were not filled because she decided to prioritize hiring by filling vacancies for all units in the division and focusing on one unit within the division at a time, based on a rotation schedule. The Administrator stated that she implemented this policy to manage vacancies, time, and efficiency within the division. The unit's vacant positions were filled in October 2017, so the division must fill vacancies in the Boilers, Elevators, Labor Standards Units, and Mine Safety Units before hiring new SCOs.

Management cannot be assured that amusement devices are safe for public use if the unit does not issue permits to owners prior to the device's operation. Vacancies negatively impact the unit's ability to locate unpermitted owners. In our testwork of permit case files, we noted that the unit issued 14 of 26[10] new permits (54%) to owners who already began operating amusement devices. The unit issued an initial permit to these amusement device owners 6 to 225 days, with

[10] The 60 permits in our testwork consisted of 34 renewals and 26 new permits.

an average of 93 days, after notifying the owner that they needed to comply with the state's inspection and permitting requirements.

Without the proper inspection that must be performed to obtain an initial permit, the public is at risk when using these devices. As an example of the importance of inspections and permits, our testwork identified one instance where unit staff issued an initial permit at least 112 days after the owner began operating the device. We found four accidents related to this device in the unit's accident files. These accidents occurred before the owner submitted a permit application, including an inspection report, to the unit.

The Administrator should fill the vacant SCO positions as soon as possible. If necessary, the Administrator should also work with the Commissioner of the Department of Labor and Workforce Development and others as necessary to fill vacancies and analyze staffing levels to ensure the staff levels are sufficient to identify unpermitted amusement device owners and bring them into compliance.

Observation 2 – Management should ensure that the Amusement Device Unit's *Standard Operating Procedures* are complete and up-to-date

The Amusement Device Unit does not have written policies for collecting penalties or identifying unpermitted amusement devices. Additionally, unit management did not ensure written policies to mail "Cease and Desist" notices to noncompliant owners were consistent in the unit's *Standard Operating Procedures* (procedures) and the letter's instructions. Unit management also did not ensure unit staff complied with either written policies. Unit management should compare actual business practices to written policies in the procedures and other written guidance to determine whether any other policies should be documented or updated.

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* (Green Book) sets internal control standards for the federal government and is considered best practice for non-federal entities. Green Book Principle 12.03, "Documentation of Responsibilities through Policies," states that management must determine the policies necessary to operate based on the objectives and related risks for the unit and must document the policy in the appropriate level of detail to allow management to effectively monitor the control activity.

According to the Administrator of the Workplace Regulations and Compliance Division, the Amusement Device Unit is relatively new[11] and could not update its procedures quickly enough to reflect the constant updates and improvements to the unit's policies. However, the Administrator and unit management could have made policies available to staff electronically so that the policies could be quickly updated to reflect best business practices. The Administrator stated that the unit's policies were made available to unit staff on July 13, 2018, on the unit's shared drive. She added that the procedures will be reviewed and updated at least annually, and staff will comply with the written policies until they are updated.

[11] The unit was created by statute in 2008. In our 2014 performance audit, we noted that unit still lacked personnel, reliable records, and funding sources.

Management should ensure that the *Standard Operating Procedures* are up-to-date and should provide staff with instructions for fulfilling the unit's critical functions.

BOILER UNIT

The Boiler Unit's responsibility is to "protect Tennessee's citizens from potential hazards involved in the operation of boilers and pressure vessels,"[12] according to its website. The unit inspects over 68,000 high-pressure, low pressure, and unfired pressure vessels (including steam boilers, hot water heaters, and air compressors) that are used in the commercial industry across the state in sites such as hotels, restaurants, factories, dry cleaners, and hospitals.

Source: Department of Labor and Workforce Development's 2016-2017 annual report.

Section 68-122-102(a), *Tennessee Code Annotated*, states that the Board of Boiler Rules formulates definitions, rules, and regulations for the safe and proper construction, installation, repair, use, and operation of boilers in the state. Section 68-122-106(b) states that the Chief Boiler Inspector will enforce these rules and regulations, and it describes the responsibilities of the position, including prosecuting violators; issuing, suspending, and revoking inspection certificates; and keeping a complete record of all boilers.

Inspectors and Commissions

The Chief Boiler Inspector oversees the Boiler Unit and supervises the inspectors employed by the state ("deputy inspectors") and third-party inspectors ("special inspectors") qualified to perform inspections for the state.

- *Deputy inspectors* – The state employed 13 deputy inspectors as of June 30, 2018. Section 68-122-107, *Tennessee Code Annotated*, requires deputy inspectors to have no less than five years of practical experience upon their hiring. Deputy inspectors are assigned to inspect any vessel that is insured by an agency that does not employ special inspectors.
- *Special inspectors* – As of June 30, 2018, the state relied on 181 special inspectors from 13 third-party agencies to conduct all other inspections. Pursuant to Section 68-122-108, *Tennessee Code Annotated,* special inspectors inspect "all boilers and unfired pressure vessels insured or all unfired pressure vessels operated by their respective companies." They must file inspection reports with the Chief Boiler Inspector within 30 days of the inspections.

[12] Section 68-122-102(e)(1), *Tennessee Code Annotated,* defines a "boiler" as "a closed vessel or vessels intended for use in heating water or other liquids or for generating steam . . . by the direct application of heat . . ." or "unfired pressure vessel[s]" that use an indirect heat source.

Both deputy and special inspectors must be commissioned in order to perform inspections. To be commissioned, all inspectors must pass an examination administered by the National Board of Boiler and Pressure Vessel Inspectors and hold a valid certificate of competency as outlined in the *Rules of the Tennessee Department of Labor and Workforce Development*, Chapter 0800-03-03-.06(3-4).

Inspections

Pursuant to Section 68-122-110(a), *Tennessee Code Annotated*, each boiler used, or proposed to be used, within the state should be thoroughly inspected in intervals outlined in Section 68-122-110(a)(1-4). Depending on the type of vessel, inspections are required every six months up to every two years. Section 68-122-111 states that if a boiler meets the requirements prescribed in the rules and regulations, the unit will issue the owner a certificate of inspection after the owner pays the applicable fees to the unit.

According to the department's 2016–2017 annual report, the Boiler Unit inspected **32,339** boilers and pressure vessels, including **1,862** newly installed vessels for fiscal year 2017. The unit also issued **33,662** certificates of boiler inspection.

For code violations, the inspector assigns a correction due date of one month or less from the inspection date and performs a follow-up inspection by that due date. The unit may also suspend—or withhold issuing—an inspection certificate if a boiler cannot operate safely or does not meet the requirements set forth in state statute. According to Section 68-122-112, operating a boiler without a valid inspection certificate constitutes a Class C misdemeanor, and each uncertified day of operation is considered a separate offense.

Results of Prior Audit

In the department's October 2014 performance audit report, we found that the Boiler Unit had a heavy caseload and had few internal controls to monitor inspectors to ensure they completed inspections timely. The Assistant Chief Inspector, who was responsible for performing quality monitoring reviews of inspectors at the time of the last audit, did not perform these reviews due to the large caseload that he was also assigned. In response to the prior audit finding, management concurred and stated that they were developing a system of internal controls to ensure timely and accurate inspections.

Audit Results

1. **Audit Objective:** Did the Boiler Unit perform timely inspections?

   Conclusion: Based on our testwork, we found that the unit did not perform inspections timely (see **Finding 2**). While performing testwork, we also noted that the unit did not follow procedures for collecting fees when owners did not pay for inspections and certificates (see **Observation 4**).

2. **Audit Objective:** Did the unit ensure that both internal deputy inspectors and third-party special inspectors were properly commissioned?

Conclusion: We found that the unit ensured that all inspectors were properly commissioned.

3. **Audit Objective:** In response to the prior audit finding, did the unit perform quality reviews to ensure that inspectors performed required inspections and completed inspection reports properly?

Conclusion: Our testwork disclosed that the unit was performing quality reviews but was not doing so consistently (see **Observation 3**).

Methodology to Achieve Objectives

To gain an understanding of the Boiler Unit's operating procedures and internal controls, we conducted interviews with applicable personnel. We also conducted walkthroughs of the unit's procedures for commissioning inspectors, performing inspections, processing inspection reports, and collecting fees.

We obtained a population of 144,406 inspections performed during the period July 1, 2014, through March 31, 2018, and a subset of that population that consisted of 138 inspections that noted violations. We selected a random, nonstatistical sample of 25 inspections from the population of 138 inspections that noted violations and a random, nonstatistical sample of 25 inspections from the population of all 144,406 inspections,[13] for a combined total sample of 50 inspections. We reviewed inspection reports and boiler histories to determine if inspections were performed timely; if they were properly documented; if inspectors followed up on inspections where violations were noted; and if controls for performing inspections and processing inspection reports were in place and operating effectively. We also reviewed invoices to ensure that unit staff collected the required fees before generating inspection certificates and that the staff sent second invoices or suspension letters when necessary. We reviewed inspector commission dates to ensure that the inspector's commission was current at the time of the tested inspection.

We obtained the population of 81 quality review reports completed in the audit period, along with the corresponding inspection reports. We tested the entire population and performed an analysis to determine if management performed quality reviews weekly of at least one inspection report from each inspector.

Finding 2 – The Boiler Unit did not timely perform required inspections and follow-up inspections

The Boiler Unit did not ensure that inspectors performed the required boiler inspections upon or before expiration of the current certificate of inspection. Additionally, the unit did not ensure that inspectors performed follow-up inspections for violation corrections on or before the correction due date. Specifically, we found the following:

[13] Our sample of the entire inspection population did not include any inspections from the population of inspections where violations were noted.

- For 15 of 50 boiler inspections tested[14] (30%), the inspector did not perform an inspection before the certificate of inspection expiration date.
    - Special inspectors performed 3 out of 21 inspections (14%) an average of 47 days late.
    - Deputy inspectors performed 12 out of 29 inspections (41%) an average of 169 days late.
- For 19 of 25 boiler inspections with violations tested (76%), the deputy inspector did not perform a violation follow-up inspection by the due date assigned by the inspector. Depending on the severity of the violation, deputy inspectors assigned follow-up inspection due dates that were between 5 and 31 days after the inspections. The deputy inspectors performed follow-up inspections between 3 and 65 days after the assigned due date, an average of 22 days late.

Section 68-122-110, *Tennessee Code Annotated*, states,

> Each boiler used or proposed to be used within this state . . . shall be thoroughly inspected as to their construction, installation, condition and operation as follows:
>
> (1) Power boilers shall be inspected annually both internally and externally . . . approximately six months following the date of each internal inspection;
>
> (2) Low pressure heating boilers shall be inspected both internally and externally biennially . . . ;
>
> (3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially . . . ; and
>
> (4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board.

According to the Chief Boiler Inspector, each deputy inspector is assigned geographic areas, and, with the number of inspectors employed by the state, it is impossible to cover each boiler coming due, overdue, or requiring a follow-up inspection. Based on discussion with the Chief Boiler Inspector, inspections can also be delayed when inspectors are unable to gain access to the boiler(s) when they arrive at the location. In addition, the unit does not monitor special inspectors' overdue inspections until they appear on a report, generated by the unit's information system, that shows boilers with certificates of inspection more than 90 days past their expiration date. When notified, the Chief Boiler Inspector calls the third-party company to ensure they are aware of the overdue inspection, and then the company either performs the inspection or, on occasion, requests that a state inspector perform the inspection.

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[14] Section 68-122-110, *Tennessee Code Annotated*, allows for a grace period of two additional months "between internal inspections of a [power] boiler while not under pressure or between external inspections of a [power] boiler while under pressure." When performing our testwork, we applied this grace period to the one power boiler inspection in our sample that would otherwise have been classified as late.

Entities that continue to operate boilers after the inspection certificates have expired do so at an increased risk to public safety, given the potential for injuries or deaths in the event of an accident. Similarly, when the unit does not ensure inspectors perform prompt follow-up inspections, the entities are not held accountable for corrective action and safety concerns could increase.

Recommendation

To ensure public safety, the Commissioner and the Chief Boiler Inspector should ensure all boilers are inspected timely. Management should develop a process for identifying boilers with upcoming inspection deadlines and ensure that the inspections are completed before the deadlines pass. The Chief Boiler Inspector should track the timeliness of inspections assigned to special inspectors in the same manner as deputy inspectors and should follow up on any overdue inspections.

Managements' Comments

Department of Labor and Workforce Development

We concur. As a result, the Chief Inspector will update the Standard Operating Procedure (SOP), enforce other processes as instructed, monitor territories quarterly, and reassign inspectors to assist with delinquent routes. Follow-up will be performed monthly to ensure appropriate corrective action is taken timely. A division employee was recently assigned to assist the Boiler Unit to track inspections. Inspections will be closely monitored to determine if they are being performed timely or untimely.

A new computer system will be developed for the Boiler Unit in 2019 to assist the unit in monitoring the number of inspections performed, the assigned inspector, the date the inspection is due, and the date the inspection is actually performed. The new system will include the capability to obtain weekly reports and verify that inspections are performed timely. If inspections are not performed timely, then the Boiler Unit will correct the issue by assigning other inspectors to cover routes as needed. Administrative staff will be further trained to review inspection reports and determine if reports are accurate and complete.

The Chief Inspector performed reviews but was not doing so consistently. To prevent future occurrences, the Chief Inspector will update the SOP, perform quarterly reviews for each inspector, and maintain written documentation. The assigned division employee will perform quality assurance reviews to ensure this is done.

The Boiler Unit did not ensure that the owners of boilers that have passed inspections pay applicable fees and obtain inspection certificates. To avoid similar issues in the future, the Boiler Unit will update the SOP to provide clear instruction. Staff will timely refer items the unit was unable to collect to the proper collections agency (Attorney General's Office – Collections Division).

In addition, staff will refer files where companies failed to achieve statutory compliance requirements to the proper District Attorney's Office after exhausting administrative remedies. The assigned division employee will perform quality assurance to ensure this is done. The SOP will be updated, and the Boiler Unit will follow the SOP as it is written and enforce other processes as instructed.

Board of Boiler Rules

We concur. The Department of Labor and Workforce Development, Workplace Regulations and Compliance Division, Boiler Unit will resolve this audit finding.

Observation 3 – The Chief Boiler Inspector should perform and document reviews of inspector performance consistently and should have written procedures in place detailing the review process

The Chief Boiler Inspector explained that he performs weekly quality reviews of each inspector to determine if the inspectors have performed inspections as required; however, we found that he did not perform these reviews as described. Although the Boiler Unit has made improvements from the previous audit by performing quality reviews, the Chief Boiler Inspector did not perform weekly quality reviews of inspection reports for each inspector and could not provide documentation for any quality reviews performed before July 2017. Specifically, in the 40 weeks since the Chief Boiler Inspector first documented reviews, he performed reviews for 19 of the 40 weeks. From those 19 weeks, he reviewed an average of 3 inspectors a week, while the department employed 13 inspectors.

In addition, our testwork disclosed that management has no specific written procedures in place detailing how inspection reports are selected for review, how many reports should be sampled, and how often the inspection verification process is performed.

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* (Green Book), Principle 10.03, provides examples of internal control activities management may implement, including reviews at the functional or activity level and documentation of transactions and internal control. The Green Book advises that management should "compare actual performance to planned or expected results throughout the organization" and "clearly document internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination." It also states that documentation and records should be "properly managed and maintained."

According to the Chief Boiler Inspector, he did not perform the inspection reviews on a regular basis because he also had to perform the roles of inspector and Assistant Chief Boiler Inspector because of staff vacancies. Although the unit hired a new Assistant Chief Boiler Inspector to assist with the workload in March 2017, he resigned in March 2018.

The Commissioner should ensure that the Chief Boiler Inspector performs quality reviews each week and documents the procedures used to perform the reviews. Without controls in place

and operating consistently, the Chief Boiler Inspector cannot determine if inspectors properly conduct inspections. Additionally, without written procedures, the Chief Boiler Inspector cannot ensure staff other than himself will be able to perform necessary reviews in his absence.

Observation 4 – The Boiler Unit should take steps to ensure that the owners of boilers that have passed inspections pay applicable fees and obtain inspection certificates

While performing our sample testwork of boiler inspections, we found boilers that did not have up-to-date inspection certificates because the owners had not paid the applicable fees. We noted that for 5 of the 50 inspections in our sample (10%), 1 of which included five boilers on the same invoice, the boiler owner had not paid inspection or certificate fees and the Boiler Unit had not pursued further action to collect the fees or to issue an updated certificate. See **Table 5** for details. All these devices had passed inspection, but the owners did not have up-to-date inspection certificates.

Table 5
Owners Operating Boilers Without Inspection Certificates

Boiler	Certificate Expiration Date	Inspection Date	Date New Certificate Issued	Days Operated Without Valid Certificate
1-5*	1/8/2015	1/11/2017	5/12/2017	855
6	6/6/2017	5/30/2017	Not Issued	387†
7	9/25/2014	5/5/2015	4/29/2016	582
8	2/9/2017	2/7/2017	Not Issued	504†
9	12/13/2017	11/30/2017	Not Issued	197†

* These five boilers appeared on the same invoice and share the same history.
† As of the end of our audit work, the owners had not paid the boiler inspection fees. The days without a valid certificate are, therefore, as of June 28, 2018.

Although unit staff send a letter of suspension to the boiler owner stating that they will refer the account to the department's Legal Division if not paid within 15 days, they do not enforce this policy. According to the Chief Boiler Inspector, the Legal Division has not formally pursued collecting outstanding fees because the dollar amounts were inconsequential.[15]

Section 68-122-111, *Tennessee Code Annotated*, gives the Chief Boiler Inspector the authority to suspend inspection certificates when a boiler cannot be operated safely or when it is found not to comply with applicable rules and regulations. This section also requires the boiler's owner or user to pay a certificate fee. In addition to the department's loss of revenue, the failure to obtain an inspection certificate "constitutes a Class C misdemeanor on the part of the owner, user, or operator of the boiler" according to state statute.

The Commissioner should ensure that staff take the proper action when boiler owners or users do not pay boiler inspection fees. The unit should either adhere to the actions stated in the suspension letter or change the wording of the letter. Management may wish to consider changing

[15] Inspections fees range from $25 to $500, and certificate fees are $35 and $50 per device.

its policies so that otherwise safe devices receive conditional certificates while the unit pursues the collection of unpaid fees.

ELEVATOR UNIT

Source: Department of Labor and Workforce Development's 2016-2017 annual report.

The Elevator Unit is responsible for inspecting and issuing permits for the installation of new, altered, or relocated elevators, escalators, dumbwaiters, moving walkways, aerial tramways, and other related devices. The unit includes 25 elevator inspectors and the Elevator Inspector Supervisor, in addition to administrative staff. Inspectors must be properly licensed and certified to perform inspections for the Elevator Unit. The unit's staff inspect elevators and related devices in state and public buildings, with the exception of public buildings in the City of Memphis.[16]

Inspections and Permits

> According to the Department of Labor and Workforce Development's 2016–2017 annual report, the Elevator Unit performed more than **22,536** inspections and issued **14,272** annual operating permits for fiscal year 2017.

Elevator inspectors inspect all new and altered devices for compliance with rules and laws adopted by the State of Tennessee to ensure that the owner maintains the device in safe operating condition. In addition to state guidance, the unit must follow the rules established by the Elevator and Amusement Device Safety Board and the American Society of Mechanical Engineers' safety code and guide. Following the initial inspection, the unit performs inspections biannually for the life of the device.

If the device does not conform with safety laws and codes, the inspector will inform the owner and may issue a citation or warning or may require the owner to discontinue the use of the device, depending on the severity of the code violation.

Each new or altered device must pass inspection before the unit issues an operating permit. The unit then renews permits annually upon payment of applicable fees. The unit may issue temporary permits after inspection to operate devices for freight service during construction; however, the device must undergo another inspection prior to allowing public access.

Audit Results

1. **Audit Objective:** Did the Elevator Unit perform timely inspections?

[16] Sections 68-121-107 and -111, *Tennessee Code Annotated*, allow municipalities to retain responsibility for and establish regulations over these devices. The City of Memphis employs its own Chief Elevator Inspector and staff to perform inspections.

Conclusion: Based on testwork performed, the unit did not always perform inspections timely (see **Finding 3**).

2. **Audit Objective:** Did the unit implement internal controls to ensure that inspectors were performing required inspections and properly compiling case files?

Conclusion: Although the unit did have these controls in place, it did not ensure that inspectors reported data consistently in the unit's information system and on their weekly reports (see **Observation 5**).

3. **Audit Objective:** Did the unit ensure that all inspectors were properly certified?

Conclusion: The unit did ensure inspectors were properly certified, with one exception; however, the unit should ensure inspectors renew state licenses as required (see **Observation 6**).

4. **Audit Objective:** Did the unit take appropriate action after identifying violations during inspections?

Conclusion: After inspectors reported violations, the unit did not ensure device owners timely reported corrections and did not perform any procedures to verify these corrections. The unit issued operating permits prior to receiving notifications of corrections from owners (see **Finding 4**).

Methodology to Achieve Objectives

To gain an understanding of the Elevator Unit's internal controls, we interviewed applicable personnel. We reviewed Sections 68-121-101 through 68-121-115, *Tennessee Code Annotated*; Rule 0800-03-04 of the *Rules of the Tennessee Department of Labor and Workforce Development*; the unit's *Standard Operating Procedures*; and the American Society of Mechanical Engineers' safety code and guide. We conducted walkthroughs of the unit's procedures for performing elevator inspections, collecting payments, and processing payments.

We obtained a list of the 26 current inspectors as of March 26, 2018, and a report from the unit's information system of the number of inspections performed by each inspector in fiscal year 2018. We performed an analysis of the number of inspections performed by elevator inspectors for the period of July 1, 2017, through March 31, 2018.

In addition, we obtained a list of 84,863 inspections performed by the unit from July 1, 2014, through March 31, 2018. We selected a random, nonstatistical sample of 25 inspections from this population. We also selected a random, nonstatistical sample from the population of 502 inspections with code violations for the period July 1, 2014, through March 31, 2018. In total, we tested 50 inspections for compliance with applicable guidelines and to ensure controls were operating effectively. We then tested an additional 25 inspections with code violations to determine if the unit took appropriate action after identifying violations during inspections.

Finding 3 – The Elevator Unit did not ensure each elevator or related device was inspected timely

The Elevator Unit initially inspects all elevators and related devices for compliance with state statute and the Elevator and Amusement Device Safety Board's rules. After the initial inspection, the unit performs routine safety inspections every six months at a fee of $60 per device to check the operation of the elevator or related device and to prevent potential hazards.

Based on our testwork, the unit did not timely perform 25 of 50[17] inspections (50%), including

- 20 passenger elevators,
- 2 vertical lifts,
- 1 freight elevator,
- 1 escalator, and
- 1 limited use/limited application elevator (LULA).[18]

These inspections were between 1 and 818 days late, with an average of 74 days late.

Section 68-121-106(3), *Tennessee Code Annotated*, states,

> The owner or lessee shall cause an inspection of every passenger elevator, dumbwaiter, escalator and freight elevator to be made periodically every sixth calendar month, following the month in which the initial inspection . . . has been made; provided that any such inspection . . . be made within the first fifteen (15) days of the month following the calendar month during which such inspection is due.

According to the Elevator Inspector Supervisor, some untimely inspections that were a day or two late could have been due to a holiday or weekend. However, the one inspection that was fewer than three days late did not fall on a holiday or a weekend. The remaining 24 inspections were three or more days late. The supervisor stated that other untimely inspections were possibly due to sick elevator inspectors or vacant elevator inspector positions. The unit had two vacant elevator inspector positions as of March 2018.

The supervisor added that approximately 500 elevators and related devices are constructed annually, resulting in more inspections added to the elevator inspectors' existing workload. Based on our analysis, elevator inspectors performed a total of 16,387 inspections for the period July 1, 2017, through March 31, 2018.

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[17] Of the 25 late inspections we tested, 12 were inspections with code violations and 13 were those without violations.

[18] LULA elevators are designed to accommodate individuals with disabilities and provide Americans with Disabilities Act-compliant accessibility that meets national and state codes.

By performing inspections late, the unit increases the risk of not detecting a defective device, potentially jeopardizing the public's safety. Late inspections also delay the collection of fees and subsequently result in a loss of revenue for the State of Tennessee.

Recommendation

The Commissioner should ensure that the Elevator Unit performs inspections timely. Specific measures he should take include ensuring that the unit is adequately staffed and that existing employees are able to manage their workloads.

Management's Comment

We concur. The Elevator Unit had multiple vacant routes during the time in question. In previous months the Elevator Unit had two vacant routes. In October 2018, the Elevator Unit filled one vacant Inspector Position in East Tennessee. Although the Middle Tennessee position was announced, we did not receive qualified candidates to fill the position. The position will be re-announced and filled when a qualified candidate is selected.

A division employee was assigned to assist the Elevator Unit to track inspections. Inspections will be closely monitored to determine if they are being performed timely or untimely. The new computer system developed and rolled out in June 2018 will also assist the unit in monitoring the number of inspections performed, the assigned inspector, the date the inspection is due, and the date the inspection is actually performed. Additionally, the Elevator Unit will obtain weekly reports to verify that inspections are performed timely. If inspections are not performed timely, then the Elevator Unit will correct the issue by assigning other inspectors to cover routes as needed. Administrative staff will be further trained to review inspection reports and determine if they are accurate and complete.

Staff will timely refer items the unit was unable to collect to the proper collection agency (Attorney General's Office – Collections Division). In addition, staff will refer files where companies failed to achieve statutory compliance requirements to the proper District Attorney's Office after exhausting administrative remedies.

The Standard Operating Procedure (SOP) will be created, and the Elevator Unit will follow the SOP as it is written and enforce other processes as instructed.

Finding 4 – The Elevator Unit improperly issued operating permits, did not ensure owners timely reported correction of code violations, and did not require verification of code violation corrections

Elevator inspectors are responsible for performing biannual inspections to ensure each device conforms with safety laws and codes, including having a valid operating permit on file. When inspectors identify deficiencies during these inspections, they document the violations, along with the dates by which the owners must bring the devices into compliance, on a citation form. The form states, "If the forgoing citation(s) are not complied with by their expiration

date . . . such person shall be guilty of a misdemeanor." Upon completing corrective action, the owner must sign, date, and return the citation form to the Elevator Unit (see **Figure 2**).

Figure 2
Owner's Statement of Compliance

WHEN THIS CITATION IS COMPLIED WITH, THE OWNER OR AUTHORIZED AGENT MUST SIGN AND RETURN THIS DOCUMENT TO:

ELEVATOR UNIT
220 FRENCH LANDING DRIVE, 2B
NASHVILLE, TN 37243

Signature of owner or authorized agent: _____

The below citation has been complied with this _____ day of _____

We performed testwork on the unit's inspections of elevators and related devices and found that the unit did not

- issue operating permits in accordance with state statute;
- ensure owners responded by the due date and complied with the code violation; and
- require a special inspection or documentation other than a statement of compliance that the code violation was corrected.

Operating Permits Not Issued in Accordance With State Statute

Section 68-121-107(b), *Tennessee Code Annotated*, mandates,

> If the inspection report required by [Section] 68-121-106 indicates failure of compliance with applicable rules and regulations approved by the board under [Section] 68-121-103, the commissioner shall give notice to the owner or lessee or the person or persons of changes necessary for compliance with the rules and regulations. After the changes have been made, the commissioner shall issue an operating permit.

Based on our testwork, the Elevator Unit did not issue an operating permit in accordance with state statute for 10 of 50[19] elevators or related devices (20%).

- For 9 of those 10 devices, we found that the unit issued operating permits before receiving the owners' notice of correction for code violations. Of these 9 devices,

[19] After testing our initial sample of 25 elevators and other related devices with code violations, we selected an additional 25 inspections with code violations to further test the unit's issuance of operating permits when the inspection noted code violations.

- the unit issued 7 permits 12 to 203 days (an average of 98 days) before receiving correction notices; and
- for the remaining 2 devices, as of June 30, 2018, those notices remained outstanding 122 and 199 days, respectively.

- For the 1 remaining device, unit staff did not issue an operating permit, even after receiving a notice of correction of violations from the owner. The unit did not review whether the device had an operating permit on file, which they should have done during their biannual inspection. Until we brought it to their attention, unit staff were unaware that the device had been in service without a permit for 971 days as of June 30, 2018.

The unit lacked controls to ensure it issued permits only for devices without outstanding code violations and to ensure it updated the system when devices were placed back in service after a violation caused a shutdown of the device. The Elevator Inspector Supervisor stated that the unit's information system[20] could not prevent staff from issuing an operating permit for a device with an uncorrected code violation. The supervisor explained that the only way to determine if the device had an uncorrected violation was for the administrative staff to manually check each device prior to issuing a permit, which they were not doing. For the device whose owner corrected the violations but was not issued a permit, the supervisor said that the inspector did not update system records to indicate compliance, which prevented the system from creating an invoice for a permit.

Lack of Controls to Ensure Code Violations Corrected Timely

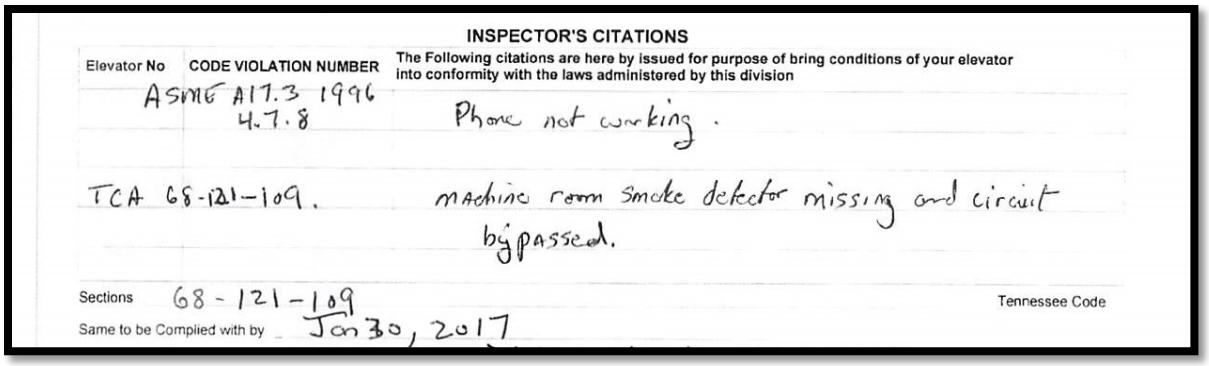
Section 68-121-109(a), *Tennessee Code Annotated*, states, "Every elevator, dumbwaiter and escalator shall be maintained by the owner or lessee in a safe operating condition and so that it conforms to the rules and requirements of the board." Section 68-121-115(a) then establishes, "Any person, firm or corporation that violates any of this chapter or the rules and regulations adopted by the board . . . commits a Class C misdemeanor."

We found that for 18 of 25 inspections tested that included citations (72%), the Elevator Unit did not take action to obtain a statement of compliance when the owner did not respond by the deadline. Specifically, we noted the following:

- For three devices, the owner had not returned the citation form to the unit stating correction of the code violation. As of June 30, 2018, the forms were between 122 and 613 days late, for an average of 376 days.
- For 15 devices, the owner reported correction of the code violation between 1 and 741 days, an average of 96 days, past the due date on the citation form. See **Figure 3** for an example.

[20] At the time of our audit work, the Elevator Unit relied on the enhanced Case Management and Activity Tracking System. It implemented a new information system, Jurisdiction Online, in June 2018, after we completed our testwork.

Figure 3
Example of Code Violations Noted and Not Corrected Timely



INSPECTOR'S CITATIONS

Elevator No	CODE VIOLATION NUMBER	The Following citations are here by issued for purpose of bring conditions of your elevator into conformity with the laws administered by this division
	ASME A17.3 1996 4.7.8	Phone not working.
	TCA 68-121-109.	machine room smoke detector missing and circuit bypassed.

Sections 68-121-109 Tennessee Code

Same to be Complied with by Jan 30, 2017

Note: The owner of this elevator received a citation with two code violations on January 12, 2017, and was required to comply by January 30, 2017. The owner did not submit the citation form stating compliance until 192 days after the due date.

In addition, we found that the owner-indicated compliance date on forms received by the unit did not always agree with the date recorded in the unit's information system, and that the unit also recorded compliance dates in its system for two devices with unreturned citation forms.

According to the Elevator Inspector Supervisor, the unit does not have guidelines for the inspectors on following up on inspections of devices with code violations that are not corrected by the due date provided by the elevator inspector. Both the Elevator Inspector Supervisor and the department's General Counsel said the unit did not refer any noncompliant owners to the department's Legal Division for further action during our audit period.

No Documentation or Special Inspection Required to Ensure Code Violation Corrected

Section 17.1-2010 of the American Society of Mechanical Engineers' *Safety Code for Elevators and Escalators* (which includes related devices) provides standards intended to enhance public health and safety. Section 8.6.1.4.1 states, "Maintenance records shall document compliance with 8.6 of the Code and shall include records on the . . . description and dates of examinations, tests, adjustments, repairs, and replacements." Pursuant to Section 8.6.1.4.2, "The maintenance records shall be available to the elevator personnel."

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* offers guidance to management for developing and maintaining documentation. Principle 10, "Design Control Activities," establishes,

> Transaction control activities are actions built directly into operational processes to support the entity in achieving its objectives and addressing related risks . . . Management may design a variety of transaction control activities for operational processes, which may include verifications, reconciliations, authorizations and approvals, physical control activities, and supervisory control activities.

Despite these guidelines, our testwork disclosed that the Elevator Unit did not require any supporting documentation (such as a receipt or work advice) or perform a special inspection to ensure code violations for the elevator or related device were corrected as the owner stated. The only documentation the unit required was the self-reported statement of compliance signed and dated by the owner.

The Elevator Inspector Supervisor affirmed that the unit's current policy did not require owners to submit supporting documentation showing evidence that the elevator or related device was repaired. According to the Elevator Inspector Supervisor, if the violation is not serious, the inspector can verify the correction at the next scheduled inspection. He also explained that if an elevator is shut down after a serious violation, inspectors must return for a follow-up inspection before the device restarts service. However, we noted that the unit did not have a policy or procedures for defining serious violations and, as described in **Finding 3**, did not perform inspections timely.

When the unit issues an operating permit to the owner of a device with an uncorrected code violation or does not verify that the owner made corrections timely and as stated, the unit risks issuing a permit for a device operating in an unsafe condition and allowing it to continue operating in the same manner.

Recommendation

The Elevator Unit should ensure that device owners have fully corrected code violations prior to issuing operating permits and that devices have valid operating permits on file. Moreover, the unit should ensure that device owners make necessary corrections in response to code violations by the date on the citation forms, and the unit should verify corrections through documentation or reinspection.

Management's Comment

We concur. The Elevator Unit did not always verify code violations had been corrected by owners or operators. The unit will follow up with owners and operators through a special inspection or correspondence/emails, which will be accompanied by proof such as receipts, work orders, inspection reports, or other corrective action documentation. Documentation will be maintained in program files to verify code violations have been corrected.

Prior to issuing permits, the Elevator Unit staff will review documents and ensure all elevators with code violations are marked with an "operating permit blocking" feature within the computer system. This will prevent permits from being automatically generated. When notice is provided to the owner or operator, the new computer system automatically alerts administrative staff and inspectors of unresolved violations with a red triangle indicator on the screen.

A division employee was assigned to assist the Elevator Unit to track code violations. Code violations will be closely monitored to determine if they are verified and corrected timely prior to issuing a permit.

Staff will timely refer items the unit was unable to collect to the proper collection agency (Attorney General's Office – Collections Division). In addition, staff will refer files where companies failed to achieve statutory compliance requirements to the proper District Attorney's Office after exhausting administrative remedies.

A Standard Operating Procedure (SOP) will be created, and the Elevator Unit will follow the SOP as it is written and enforce other processes as instructed.

The Elevator Unit will create licenses annually for elevator inspectors pursuant to existing law and ensure inspectors licenses are renewed timely. The law will be followed as it is written. In addition, inspectors will be tested within 12 months of licensing and qualification in conjunction with established guidelines.

Observation 5 – The Elevator Unit should ensure elevator inspectors submit inspection reports and should improve controls over inspection data

The Elevator Unit's elevator inspectors complete an inspection report each time they perform an inspection of a new, temporary, or existing elevator or related device. Once the inspection is complete, inspectors enter details of the device into the unit's information system, complete a written report of the inspection, and upload the signed inspection report into the unit's system. The unit's procedures require inspectors to send the unit's three administrative staff Weekly Work Accomplishment Reports and Weekly Count Sheets, listing every inspection performed during the specified week. The Inspector's Weekly Work Accomplishment Report shows the date, job name, location, inspection type, and time spent on inspections. The Weekly Count Sheet shows the device number and inspection date. The unit's administrative staff check the weekly reports completed and the inspections entered in the system by the inspectors for accuracy.

We found that for 8 of 50[21] inspections tested (16%), however, the unit's administrative staff did not ensure the elevator inspectors submitted complete and accurate required inspection documentation. Because of multiple problems in this documentation, we were unable to determine the accuracy of inspection dates entered into the unit's information system due to the following inconsistencies:

- weekly reports did not contain enough information regarding inspection locations to determine applicable inspection dates;
- weekly report dates were not documented or did not match the inspection dates entered in the unit's information system;
- signed inspection forms were not dated, had an incomplete date, or did not match the inspection date entered in the unit's information system; and

[21] Of the eight inspections where the inspectors did not submit accurate weekly reports and signed inspection forms, three were inspections with code violations and five were inspections without code violations.

- signed inspection forms were not uploaded into the unit's system, and staff also could not locate one form in the paper files.

Section 68-121-106(5)(A), *Tennessee Code Annotated*, states, "A report of every required inspection shall be filed with the department by the inspector making the inspection on a form approved by the department within twenty (20) days after the inspection or test has been completed."

The Elevator Unit's *Standard Operating Procedures* provide the procedures for "Performing Quality Assurance for Elevator Inspection Reports" and instruct staff to

> Process inspections each Monday by printing inspector's weekly reports and review that approximately 400 re-inspections, special inspections, temporary and 2nd visits have been correctly entered into [the unit's information system] and they have been scanned and invoiced.

The Elevator Inspector Supervisor stated that it would be too time-consuming for the administrative staff to check each inspection due to the large volume of inspections. He added that the inspectors need to make sure they document and enter accurate inspection information and upload each signed inspection form to the unit's information system. Regarding the inspection for which staff could not locate the signed inspection form in the system or on file, the Elevator Inspector Supervisor stated that the inspector did not fully document the inspection because he performed the inspection on behalf of another inspector and did not bring the correct form. The inspector only noted that the inspection was performed on an internal document and submitted the form to the unit's administrative staff. The document does not state if the device is in safe operating condition and in compliance with all rules and regulations; furthermore, the document does not include a signature from the witness and the inspector showing the inspection was performed.

The Commissioner should ensure that the Elevator Unit develops and follows a review process for verifying the accuracy and completeness of inspection data. When the unit does not ensure that inspection dates are accurate and that copies of the written inspections are on file, it risks recording incorrect information, affecting the timeliness of later inspections, and charging owners for inspections that did not occur.

Observation 6 – The Elevator Unit should ensure all inspectors are certified timely after meeting the licensing and qualification requirements and should ensure all inspectors renew their state licenses annually

Tennessee Code Annotated requires Elevator Unit inspectors to obtain state licensure prior to inspecting elevators and related devices. To become licensed, elevator inspectors must pass a written examination testing their knowledge of Section 68-121, *Tennessee Code Annotated*, and the *Rules of the Tennessee Department of Labor and Workforce Development*. Inspectors who are qualified and licensed must also obtain certification no later than 12 months from the date of qualification and licensing in accordance with Labor Rule 0800-03-04-.07.

In addition to state licensure, inspectors may obtain certification through the National Association of Elevator Safety Authorities or the Qualified Elevator Inspector Training Fund once they meet the qualification requirements, including education, training, and experience. Once certified, inspectors are required to obtain continuing education and recertify annually through the certifying agency.

License Renewals Not Completed

During our testwork for the period July 1, 2014, through March 31, 2018, we found that the unit did not ensure inspectors maintained licensing as required by state statute. The Elevator Inspector Supervisor stated that the unit has never required elevator inspectors to renew their state licenses annually as mandated by Section 68-121-110(a), *Tennessee Code Annotated*, which states, "the license shall be renewable annually at a fee of two dollars ($2.00)." The Elevator Inspector Supervisor and the Administrator stated they were not aware of the renewal requirements. As of March 31, 2018, the unit's 26 inspectors, each with between 1 and 27 years of service, have an average of 9 years of service.

Certification Not Obtained Timely

We also noted that the unit did not ensure that 1 of 22 elevator inspectors tested[22] obtained certification within 12 months of licensing and qualification. The inspector met the licensing and qualification requirements but did not obtain certification until 41 days beyond the 12 months after meeting these requirements. The *Rules of the Tennessee Department of Labor and Workforce Development*, Rule 0800-03-04-.07(2), state, "inspectors that are qualified and licensed as prescribed in [*Tennessee Code Annotated* Section] 68-121-110 shall obtain certification in accordance with . . . the Elevator Safety Code as soon as possible, but no later than twelve (12) months from the date of qualification and licensing."

According to the Elevator Inspector Supervisor, the unit waits until it has a sufficient number of inspectors eligible for certification before scheduling the certifying agency to visit. He explained that this inspector obtained certification at the first opportunity for the unit to bring one of the certifying agencies, the Qualified Elevator Inspector Training Fund, to the department.

The Commissioner should ensure that all elevator inspectors are certified timely and that they renew their state licenses as required. When the unit does not ensure that elevator inspectors timely obtain certification and renew licensure, it does not comply with requirements and decreases the credibility of inspections.

[22] We tested 50 inspections, 25 with code violations and 25 without code violations, and reviewed each applicable inspector who performed the device inspection to determine if the inspector was licensed and certified at the time of the inspection.

MINE SAFETY UNIT

Source: Department of Labor and Workforce Development's 2016-2017 annual report.

In addition to providing health and safety training for miners, the Mine Safety Unit has historically maintained two rescue teams to assist underground miners in the event of emergencies. According to Section 59-12-102, *Tennessee Code Annotated*, the Commissioner of the Department of Labor and Workforce Development must appoint members to the state's mine rescue teams based upon the results of regularly conducted manpower studies. The state's mine rescue teams must consist of eight members, as well as one substitute member from each underground mine in the state. The teams must also be geographically located within two hours of all underground mines. Due to the highly skilled nature of the teams' work, all regular and substitute team members must be compensated for their participation in rescue operations and training activities.

To serve on a mine rescue team, an individual must hold a certificate in mine rescue from the Mine Safety and Health Administration (MSHA). "Mine Rescue Teams," Title 30, *Code of Federal Regulations* (CFR), Part 49, Section 8(a) states that an individual must attend an initial 20-hour course "in the use, care, and maintenance of the type of breathing apparatus that will be used by the mine rescue team" to obtain a mine rescue certification. The individual must also attend at least 40 hours of refresher training annually to maintain his or her mine rescue certification. To meet the federal requirement for annual training, Section 59-12-102(e), *Tennessee Code Annotated,* states that "each [mine rescue] team must maintain official drill [training], at least once each month."

> Substitutes are designees from every underground mining operation in the state who train and serve in the event of a mine rescue operation. Sections 59-12-102 and 59-12-103, *Tennessee Code Annotated*, state that substitutes should be compensated for their participation in rescue and training activities.

Mine rescue stations must create records to document training that the rescue teams received to qualify for MSHA's mine rescue certification. According to 30 CFR 49.8, a "record of training of each team member shall be on file at the mine rescue station for a period of one year." MSHA conducts quarterly reviews of all mine rescue teams and concludes in a written report whether the team has received the necessary training and met all other federal requirements.

Audit Results

1. **Audit Objective:** Did the Mine Safety Unit ensure the state's mine rescue teams were staffed with at least eight members and a substitute from each active mine, pursuant to Section 59-12-102, *Tennessee Code Annotated*?

   Conclusion: Until January 22, 2018, the unit ensured that the state's mine rescue teams were staffed with at least eight members and a substitute from each active mine. Since January 22, 2018, the unit has been unable to staff the state's

mine rescue teams due to the decrease in coal mining activity across the state and the resulting lack of qualified personnel (see **Finding 5**).

2. **Audit Objective:** Did the unit ensure that the state's mine rescue teams were stationed within two hours of active mines as required by Section 59-12-102(c), *Tennessee Code Annotated*?

   Conclusion: As noted in the prior audit, the unit did not ensure that the state's mine rescue teams were stationed within two hours of active mines (see **Finding 5**).

3. **Audit Objective:** Did the unit ensure that the state's mine rescue team members, including substitutes, attend the training required by 30 CFR 49.8(g) and Section 59-12-102, *Tennessee Code Annotated*?

   Conclusion: The unit's Director ensured that all regular team members attended the initial required training and monthly training. However, the Director did not obtain documentation regarding substitutes' initial training and did not include the substitutes in the state teams' monthly trainings (see **Finding 6**).

Methodology to Achieve Objectives

We obtained a list of the state's 25 mine rescue team members and 23 substitutes for the period July 1, 2014, through December 31, 2017, and reviewed the list to determine if the teams were fully staffed. We reviewed a list of 18 mines served by the state's mine rescue team from July 1, 2014, through December 31, 2017. We utilized Google Maps and Great Circle Mapper mapping software to determine whether the state's mine rescue teams were within two hours of the mines.

We interviewed the Mine Safety Director and reviewed the unit's *Standard Operating Procedures* to obtain an understanding of the training completed by state mine rescue team members, including substitutes. We reviewed quarterly reports from MSHA and the unit's training database to determine whether all rescue team members and substitutes attended monthly trainings.

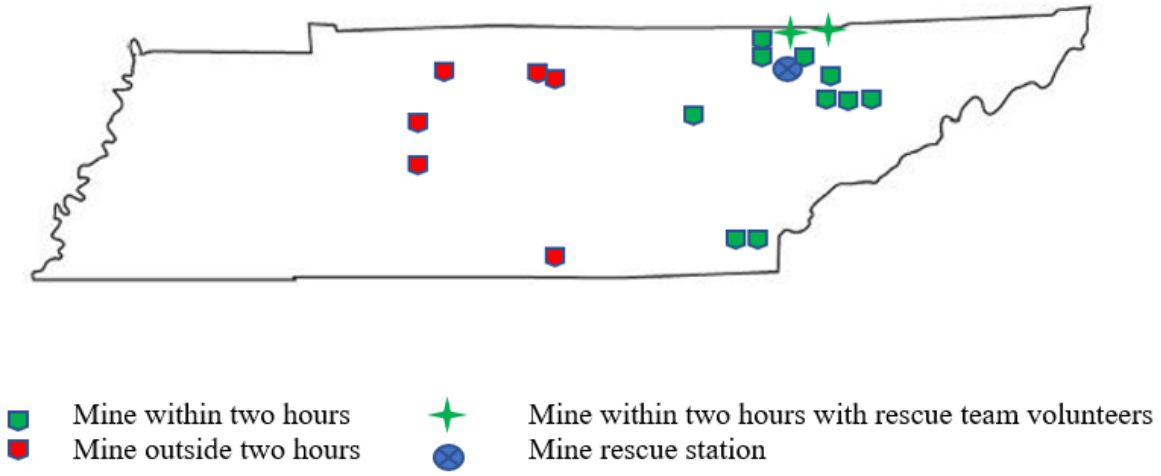
Finding 5 – As noted in the prior audit, department management did not have mine rescue teams located within two hours of underground mines

The Department of Labor and Workforce Development staffed the state's mine rescue teams primarily with volunteers from coal mines in the northeast corner of the state. As a result, the teams could not reach some mines within the two hours required by state statute, and the department did not maintain the state's rescue teams after January 2018 due to workforce reductions at the two coal mines the department relied on to provide volunteers.

Proximity to Mines

In response to the prior audit finding regarding the state rescue teams' distance from underground mines, the Mine Safety Unit developed a procedure to use a state aircraft in the event of an emergency. The Director, however, stated that the plane requires at least one hour to ready. Additionally, the state's aircrafts are in Nashville and must be flown to the Campbell County Airport, located 5.5 miles from the mine rescue station in Caryville, which is approximately a 45-minute flight. The mine rescue team members must also drive to the airport from their respective rescue stations, which are located approximately 50 minutes away from the airport. These factors made it impossible for the mine rescue team to reach 6 of the 18 mines that were in operation from July 2014 to January 2018 within two hours; see **Figure 4** below.

Figure 4
Locations of Mines, Mine Rescue Station, and Rescue Team Volunteers



In September 2017, when the teams were called to an accident at a Middle Tennessee mine more than two hours from the mine rescue station, the teams drove rather than use a state plane.

State Mine Rescue Teams

Based on discussion with the Mine Safety Director, the department relied on two East Tennessee coal mines for volunteers because the federal requirements for mine rescue teams that serve coal mines are more stringent than the requirements for metal and nonmetal mines. According to the Director, one of the two coal mines closed, and the other downsized to 20 employees in January 2018. Without the 13 volunteers from these mines, the department could no longer staff its two 8-member mine rescue teams. The Director stated that he had compiled a list of miners from metal and nonmetal mines who were interested in volunteering to serve on the mine rescue teams, but the mine operators refused to allow their employees to serve on the state's team.

Without a state mine rescue team nearby, there is increased risk of injuries and loss of life. Although mine operators are also required to have their own mine rescue teams (or contract with third parties for these services), the state's mine rescue teams were asked to assist with all three mine accidents that occurred in the state from July 1, 2014, through January 22, 2018.

Recommendation

The Administrator of the Workplace Regulations and Compliance Division and the Director should ensure that the unit complies with state statute. The Administrator should consider having a team located in another part of the state, as teams in East Tennessee are unable to reach the Middle Tennessee mines within two hours, whether by ground or air travel.

Management's Comment

We concur in part. In order to comply with state law, a policy was created for the Mine Safety Unit to utilize a state aircraft in the event of a mining emergency or disaster to meet the two-hour requirement. This option does not resolve the issue because of the time it takes to prepare the aircraft, ready the team, travel, and other related activities. Funds are not available to locate a team in another part of the state.

A legislative proposal to eliminate the state mine rescue team has been discussed. Due to the decrease in underground mines throughout the state, the current law has outlived its usefulness and all underground mining companies have their own rescue services. If state rescue teams are eliminated, the Mine Safety Unit will focus on training miners throughout the state. Since January 22, 2018, the Mine Safety Unit has not had rescue teams.

The Standard Operating Procedures (SOP) will be created, and the Mine Safety Unit will follow the SOP as they are written and enforce other processes as instructed. A division employee was recently assigned to perform quality assurance and determine if the SOP are followed.

Matter for Legislative Consideration

This audit identified an area in which the General Assembly may wish to consider statutory changes to improve efficiency and effectiveness of the Mine Safety Unit's operations, specifically in relation to its mine rescue teams. Although the Commissioner is responsible for appointing qualified members to the mine rescue team, dependent upon the results of the manpower study, he has no way to compel the mines to allow their employees to serve on the state teams. The Director stated that the mines still in operation are unwilling to allow their employees to serve on the Department of Labor and Workforce Development's mine rescue teams. As a practical matter, the state's mine rescue teams would be very difficult to staff without the assistance of private mine employees. All mines have their own private mine rescue teams or contract with third parties to provide mine rescue services. Considering that the department is not able to staff mine rescue teams with qualified volunteers and rescue services are available through the mines' federally required teams, the General Assembly may wish to amend Section 59-12-102, *Tennessee Code Annotated*.

Finding 6 – Department management did not ensure that substitutes on the state's mine rescue teams received adequate training

Initial Training

According to the Director, substitute mine rescue team members complete their initial 20 hours of training when they began serving on their mines' private rescue teams, prior to serving on the state's team. Since "Mine Rescue Teams," Title 30, *Code of Federal Regulations*, Part 49, Section 8(g), only requires mine rescue stations to keep training records for one year, the records for substitutes' initial training are no longer available if they have served on their mine's rescue team for more than a year. According to the Director, managers from the mines where the substitutes are employed communicated to him how long the substitutes had served on the mine's private team, but he did not retain this information.

As a result, we found that the Mine Safety Unit did not have a record of the initial training for 21 of 23 substitutes tested (91%). We also noted that the unit does not have a Records Disposition Authorization or any written policy that covers the Department of Labor and Workforce Development's mine rescue teams' training records.

Section 10-7-303(d), *Tennessee Code Annotated*, states, "No record or records shall be scheduled for destruction without the unanimous approval of the voting members of the public records commission." Furthermore, according to the Department of State's *Records Management Best Practices and Procedures,*

> Public officials are legally responsible for creating and maintaining records that document the transactions of government business. These records provide evidence of the operations of government and accountability to its citizens. Public officials must maintain this information according to established Records Disposition Authorizations (RDA).

Monthly Training

The Director did not include the state's substitute mine rescue team members in required monthly training. The Director stated that substitutes attended monthly trainings when held at their respective mines but did not document this in the training logs for the department's teams. He also stated that substitutes were excluded from the monthly trainings because the unit could not afford to pay them for their time; our review of the department's budgets confirmed that the unit did not have funding for the substitutes. We also reviewed the unit's budget requests for fiscal years 2015 through 2019 and noted that the unit did not request additional funding for this expense. We determined that from January 1, 2015, through January 22, 2018, there were 10 to 11 substitute members who were not compensated for their service[23] on the department's teams.

Section 59-12-102(f), *Tennessee Code Annotated*, states that substitutes should attend the same monthly training as regular mine rescue team members. Additionally, Section 59-12-103,

[23] Substitutes' service to the mine rescue teams is predominantly the monthly training, as substitutes are only called to respond to accidents that occur at their place of employment.

Tennessee Code Annotated, states that, while performing a rescue operation or attending training, substitutes and regular mine rescue team members are employees and should be compensated accordingly.

Since the Director did not retain documentation regarding substitute team members' initial training, we could not determine whether the substitutes received training required by federal regulations. Additionally, management cannot be assured that substitutes are prepared to respond in an emergency since they did not attend the monthly trainings required by state statute. Without adequate training, there is an increased risk that a substitute could cause an accident and harm themselves or others when responding to a mining accident.

Recommendation

The Commissioner and the Administrator of the Workplace Regulations and Compliance Division should ensure that substitutes obtain the required initial training and attend monthly trainings. If necessary, the Commissioner and the Administrator should secure additional funding so that all substitutes may attend the monthly training for the department's teams, as required by Sections 59-12-102 and 59-12-103, *Tennessee Code Annotated*. The Director should request mine managers to inform him of substitutes' initial training in writing and should retain this documentation. Finally, the Administrator and the Director should work with the department's Public Records Officer to develop an RDA and written policy for the mine rescue teams' training documentation.

Management's Comment

We concur in part. In order to comply with state law, the Mine Safety Unit obtained a list of substitutes from each underground mine and maintained this list at the Caryville Office. Substitutes did not participate in monthly training, because funding was not available for additional employees.

Currently, funding is limited to 4 full-time state employees (3 serve on the mine rescue team) and 13 part-time positions for rescue team members. Although a specific line item for substitutes was not requested, prior requests for additional funding for the Mine Safety Unit were submitted but denied. In order to obtain additional funding, the department applies for a federal grant for the Mine Safety Unit annually.

A legislative proposal to eliminate the state mine rescue team has been discussed. The current law has outlived its usefulness. All mining companies have their own rescue services. If state rescue teams are eliminated, the Mine Safety Unit will focus on training throughout the state. Due to the decrease in mining operations, the Mine Safety Unit does not currently have rescue teams or substitutes.

Although mine rescue team members received adequate training, it was not documented and a record was not maintained. The Mine Safety Unit was instructed to obtain proper documentation from mining companies for initial training of substitutes. A form was created for the Mine Safety Unit to document monthly training. The manager has been instructed to ensure

training forms are signed by participants and forms are maintained according to Records Disposition Authorization guidelines.

The Mine Safety Unit was further instructed to follow the law and division policy and immediately inform management if there are noncompliance issues. *Standard Operating Procedures* (SOP) will be created, and the Mine Safety Unit will follow the SOP as they are written and enforce other processes as instructed. A division employee was recently assigned to perform quality assurance and determine if the SOP are followed.

LABOR STANDARDS UNIT

Source: Department of Labor and Workforce Development's 2016-2017 annual report.

The Labor Standards Unit enforces six state labor laws:

- The Child Labor Act of 1976 prohibits employing minors in certain occupations and in working conditions that may be hazardous.
- The Wage Regulations Act protects wage earners from unfair practices regarding pay and addresses employment issues including breaks and meal periods, fringe benefits, sex discrimination, final paychecks, and payday regulations and deductions.
- The Prevailing Wage Act for State Highway Construction Projects protects wage earners from unfair practices regarding pay on state-funded highway construction projects.
- The Employment of Illegal Aliens Act prohibits employers from knowingly employing, recruiting, or referring for a fee for employment foreign individuals living in the United States without authorization.
- The Tennessee Lawful Employment Act requires all employers in Tennessee to demonstrate that they are hiring and maintaining a legal workforce.
- The Non-Smoker Protection Act prohibits smoking in most enclosed public places.

The unit carries out inspections to determine if employers abide by these laws. The unit employs nine inspectors that report to the Labor Standards Director and four administrative assistants that report to the Administrative Services Manager.

Inspections

Labor Standards inspectors perform inspections in accordance with the unit's standard operating procedures applicable to each labor law. The unit's inspections are either random on-site visits or are injury- and complaint-driven; staff schedule them based on reviews of monthly statewide child injury reports, recorded employee complaints, and tips received from other governmental agencies. Inspections are unannounced and consist of obtaining relevant documentation to support a determination of whether an employer complied with the applicable

labor law. Inspectors obtain necessary information while at an employer location and through Request for Information letters and Final Notice letters.

After performing an inspection, the inspector completes an inspection report that details information about the employer, whether they complied with applicable labor laws, and a narrative including any important details from the labor law inspection. The inspector is responsible for informing the employer of any noncompliance found during an inspection and obtaining an employer's signature for the inspection. If an employer is not compliant with the Non-Smoker Protection Act, the inspector will discuss a corrective action plan while on-site and request compliance within 15 days of the inspection; for all other labor laws, the unit's administrative staff notify employers about the necessary corrective actions after the inspections.

Case Documentation and Correspondence

After inspectors perform inspections, they provide administrative staff with completed inspection reports and any documentation obtained during the inspections. Administrative staff date stamp the inspection reports as received and place them, along with any supporting documentation, into numbered case files that serve as the labor law inspection records.

Administrative staff provide the employer written correspondence detailing any instances of possible noncompliance related to each labor law violation and include the appropriate actions necessary to address the noncompliance. Administrative staff include documentation of any correspondence in the case file and document any actions the employer takes to resolve noncompliance. The administrative staff send the employer either a Certified Letter or a Notice and Initial Order, notifying employers of their responsibility to provide proof that they corrected any noncompliance. The unit determines whether to assess a penalty or provide a warning based on the timeliness of the employer's response, corrective actions taken, and previous noncompliance.

Administrative staff close case files after they send a warning or the employer pays the assessed penalty. If the unit finds that an employer does not comply with the Non-Smoker Protection Act, administrative staff provide the applicable inspection report to the department's Tennessee Occupational Safety and Health Administration or the Department of Health.[24]

Audit Results

Audit Objective: Did the Labor Standards Unit perform inspections to ensure that employers complied with labor laws and properly compiled case files?

Conclusion: Based on our testwork, the unit did not properly perform inspections or compile case files (see **Finding 7**).

[24] According to Section 39-17-1806, *Tennessee Code Annotated*, the Non-Smoker Protection Act "shall be enforced by the department of health in those enclosed public places otherwise regulated by the department… [and] enforced by the department of labor and workforce development in those enclosed public places otherwise regulated by the department." Facilities regulated by the Department of Health include restaurants, health care facilities, hotels, motels, bed and breakfast facilities, organized camps, and tattoo and body-piercing parlors.

Methodology to Achieve Objective

To gain an understanding of the unit's procedures for labor law inspections and case file documentation, we performed walkthroughs with applicable staff. We also obtained and reviewed the unit's standard operating procedures. We obtained lists of inspections performed by the unit from July 1, 2014, through May 3, 2018, without violations for each labor law and with violations for each labor law. See **Table 6**.

Table 6
Labor Standards Inspections Populations
For July 1, 2014, Through May 3, 2018

Labor Law	Population of Labor Law Inspections With Compliant Determinations	Population of Labor Law Inspections With Noncompliant Determinations
Child Labor Act of 1976	3,650	704
Tennessee Lawful Employment Act	1,833	674
Non-Smoker Protection Act	N/A*	99
Wage Regulations Act/Prevailing Wage Act for State Highway Construction Projects	351	345
Employment of Illegal Aliens Act	10	16

* The unit only tracks noncompliant Non-Smoker Protection Act inspections; the department is required to complete inspections for this labor law while performing its other inspections.

We selected a random, nonstatistical sample of 25 inspections without violations from each labor law and a random, nonstatistical sample of 25 inspections with violations from each for a total sample of 50 inspections. For the Employment of Illegal Aliens Act, we tested the entire population because the population consisted of only 26 inspections. We reviewed the case files related to each inspection in our samples to ensure that the unit obtained required information from each inspection, maintained proper documentation in the case file, and communicated violations to employers in accordance with the unit's standard operating procedures.

Finding 7 – Labor Standards Unit personnel did not complete Non-Smoker Protection Act inspections as required by statute and did not comply with case management requirements specified in the unit's standard operating procedures

Inspections

Based on our testwork, we noted that Labor Standards Unit inspectors did not conduct Non-Smoker Protection Act inspections in conjunction with 21 out of 23 Employment of Illegal Aliens Act inspections (91%) and 2 out of 50 Child Labor Act inspections (4%).

Section 39-17-1806, *Tennessee Code Annotated*, addresses the enforcement of the Non-Smoker Protection Act. According to Section 39-17-1806(d), "The department of health and the

department of labor and workforce development shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this part."

Case Documentation and Correspondence

In our review, we also noted the following weaknesses related to case file documentation and correspondence with employers; see **Table 7**.

Table 7
Labor Standards Unit's Standard Operating Procedures
Results of Testwork

Labor Law	Sample Size	Error Size	Error Rate	Error	Criteria (From the Labor Standards Unit's Standard Operating Procedures)
Child Labor Act of 1976 – Noncompliant	25	8	32%	Administrative staff did not mail certified letters to inspected entities within three business days of receiving completed inspection reports.	"Within three (3) business days of receipt of a Non-Compliant report, 'Certified Letters' are sent to the Registered Agent and site location or attorney representing the employer allotting a 10 calendar day response deadline."
Child Labor Act of 1976	50	2	4%	Inspectors did not obtain employers' signatures on inspection reports.	"At the conclusion of the inspection, if violations occur, the inspector should provide the [employer] with a list of the violations with instructions to correct them immediately. The [employer] should sign the list of violations indicating their awareness. Both the [employer] and the inspector should retain a copy of the signed non-compliance document."
Employment of Illegal Aliens Act – Noncompliant	10*	9	90%	Administrative staff did not mail certified letters to the inspected entities within three business days of receiving completed inspection reports.	"Administrative personnel should send certified letter within three (3) business days of receipt of Inspection Report giving notice of facts to [employer]."
Employment of Illegal Aliens Act	23*	11	48%	Inspectors did not request proof that employees were lawfully employed by using the request for information and final notice, as applicable.	"j. If the Inspector does not obtain proof of compliance during the investigation, the Inspector should send a Request for Information letter to the [employer] requesting proof within fifteen (15) calendar days. . . l. If the [employer] does not respond and the Inspector does not obtain the requested information, the Inspector will send a Final Notice Letter to [the employer] and provide the [employer] seven (7) calendar days to respond. m. If the [employer] responds and provides proof of compliance, then the Inspector should summarize the investigation report and send the report to the Central Office administrative personnel with a recommendation to close the file for "compliance" (applies to 7-day letter). n. If the [employer] does not respond to the final notice letter, the Inspector will summarize and complete the investigation report and send the report to the Central Office for handling."
Employment of Illegal Aliens Act	23*	7	30%	Administrative staff did not date stamp inspection reports as reviewed and complete.	"Reports are 'date stamped' on the date received; administrative personnel should stamp the Investigation Report and each additional page."

* Although we reviewed the entire population, several Employment of Illegal Aliens Act inspections were "not applicable" when evaluating whether the Labor Standards Unit complied with its standard operating procedures. One inspection was closed because the underlying complaint was withdrawn, and five other inspections were incomplete at the time of our audit work.

Non-Smoker Protection Act – Noncompliant	25	19	76%	Inspectors did not provide documentation of corrective action that employers took to address noncompliance.	"If a violation is found the Inspector discusses the corrective action plan with the employer and in the Inspection report. If corrective action was observed by the Inspector then no corrective action letter is required, but it is noted on the Field Observation Report."
Non-Smoker Protection Act – Noncompliant	50**	3	6%	Inspectors did not complete the inspection reports by obtaining employers' signatures.	"Inspector secures a valid signature on the report and leaves a copy of the report with the [employer] and requests compliance within (15) days of the on-site inspection."
Non-Smoker Protection Act – Noncompliant	50**	1	2%	Administrative staff did not forward the completed inspection report to the Tennessee Occupational Safety and Health Administration (TOSHA).	"The electronic file will be forwarded to designated TOSHA staff, with a copy forwarded to the Inspector."
Tennessee Lawful Employment Act	50	1	2%	Inspectors did not request proof that employees were lawfully employed by using the request for information and final notice, as applicable.	"If the inspector does not obtain proof of compliance during the on-site investigation, the inspector should immediately hand-deliver or mail/email a Request for Information letter to the [employer] requesting proof within fifteen (15) calendar days. . . If the [employer] does not respond and the inspector does not obtain the requested information, the inspector should immediately mail/email a Final Notice letter to the [employer] requesting proof within seven (7) calendar days."
Wage Regulations Act – Noncompliant	50**	8	16%	Administrative staff did not mail certified letters to the inspected entities within 3 business days of receiving completed inspection reports.	"If there is any period of non-compliance during the period of time relevant to the inspection, send 'CERTIFIED LETTER' to the [employer] within three (3) business days of receipt of the inspection report."
Wage Regulations Act	52†	7	13%	Administrative staff did not date stamp inspection reports as reviewed and complete.	"Upon receipt of the claim form and claimant's supporting documentation, Administrative Personnel date stamps the form and supporting documents."
Wage Regulations Act	50**	6	12%	Inspectors did not date stamp wage claims as reviewed and complete.	"Upon receipt of the claim form and claimant's supporting documentation, all documents are date stamped."

** After noting errors when reviewing the originally selected sample, we expanded our testwork in this area to test 50 inspections where the unit had cited employers for noncompliance with labor laws.

† Two items that we selected for our sample of inspections with violations were mislabeled on the spreadsheet the unit provided to us. We moved these two items to the sample of inspections without violations and selected an additional two inspections where the unit noted violations.

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government*, Principle 10.02, states

> Management designs control activities in response to the entity's objectives and risks to achieve an effective internal control system. Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives and address related risks. As part of the control environment component, management defines responsibilities, assigns them to key roles, and delegates authority to achieve the entity's objectives.

The Administrator of the Workplace Regulations and Compliance Division stated that inspectors did not carry out Non-Smoker Protection Act inspections in conjunction with Employment of Illegal Aliens Act inspections because the inspectors' focus is on carrying out Employment of Illegal Aliens Act inspections, which are complaint-driven. The Administrator stated that inspectors did not carry out Non-Smoker Protection Act inspections in conjunction with Child Labor Act inspections due to inspectors not correctly following the division's standard operating procedures.

According to the Administrator, inspectors did not obtain employers' signatures because the inspectors used new software to record information from the inspections that at times did not allow them to obtain a signature. We noted, however, that inspectors obtained signatures during other inspections that used the new software.

The Administrator stated that the remaining errors, including the Non-Smoker Protection Act investigations not completed in conjunction with Child Labor Act inspections, were due to investigative and administrative staff failing to correctly follow the division's standard operating procedures.

Without conducting the required inspections, the Labor Standards Unit cannot be assured that employers are complying with the Non-Smoker Protection Act. Additionally, the unit must maintain sufficient case files to mitigate risks of inadequate inspections. Finally, there is an increased risk that labor law violations will not be corrected if the unit does not properly notify employers and, if applicable, TOSHA, or if it does not obtain reports on corrective actions from employers.

Recommendation

The Commissioner and the Workplace Regulations and Compliance Division Administrator should ensure that investigators review employers' compliance with the Non-Smoker Protection Act while performing their other inspections. In addition, the Administrator should ensure that Labor Standards Unit staff notify employers of labor law violations; obtain employers' signatures on inspection reports; request all necessary information about employees; date stamp inspection reports; obtain corrective action letters from employers; and, when applicable, forward completed inspection reports to other entities. If necessary, management should update the unit's information system to ensure that staff have employers' signatures and other inspection records.

Management's Comment

We concur. The Labor Standards Unit has updated six Standard Operating Procedures (SOPs) and created quality assurance forms to review processes and determine whether staff is properly following the SOP as written and enforcing other processes as instructed.

A division employee was recently assigned to perform quality assurance and determine if Non-Smoker Protection Act inspections are being performed, whether staff is properly notifying employers of labor law violations, if proper signatures are being obtained on inspection reports, whether necessary information is being requested about employees, if inspection reports are being date-stamped, whether corrective action letters from employers are placed in program files, and if completed inspection reports are forwarded to proper entities. These issues will be closely monitored to determine if they are being performed timely.

The Labor Standards staff obtained a new computer system. The effective and go-live date was January 31, 2017. The new computer system is equipped with electronic signature capabilities. Inspectors and company representatives are required to sign inspection reports during on-site inspections. If the electronic signature is not captured due to signal failure or the employer refuses to sign the inspection report, staff has been instructed to document the signal failure or refusal and place documentation in the program file.

REVENUE COLLECTIONS BY THE WORKPLACE REGULATIONS AND COMPLIANCE DIVISION

The Amusement Device, Boiler, and Elevator Units within the Workplace Regulations and Compliance Division protect the public from the potential hazards inherent to the operation of boilers, pressure vessels, elevators, aerial tramways, chairlifts, escalators, dumbwaiters, moving walkways, and amusement devices. The units collect revenue by charging owners and operators inspection, permit, or certificate fees and, in some instances, imposing monetary fines on those violating rules and laws. Additionally, the Labor Standards Unit enforces labor laws and may impose a monetary penalty on those in violation of these laws.

The Amusement Device Unit is authorized by Section 68-121-117(b), *Tennessee Code Annotated*, to charge fees for annual permits. The *Rules of the Tennessee Department of Labor and Workforce Development* set the fee at $150. Additionally, Section 68-121-118(c), *Tennessee Code Annotated*, authorizes the unit to assess a fine of $300 per day when an amusement device owner does not report a fatality, serious physical injury, or serious incident to the department within 24 hours.

The Boiler Unit requires boiler operators to pay an inspection fee and a certificate fee when the unit determines the boiler or pressure vessel is compliant with the state's rules and regulations. Depending on the size of the vessel and the type of inspection, the unit may charge operators $25 to $81 for each inspection fee and $35 to $50 for the certificate fee.

The Elevator Unit is authorized by Section 68-121-101, *Tennessee Code Annotated*, to charge elevator operators a fee for inspections and permits. Depending on a variety of factors, including the inspection and device type, the unit charges elevator operators $60 to $400 for an inspection fee and $55 to $200 for a permit fee.

The Labor Standards Unit is authorized by Sections 50-5-103 et seq., 50-2-103, and 50-1-703, *Tennessee Code Annotated*, to fine companies violating the Child Labor, Wage Regulations, or Tennessee Lawful Employment Acts. The unit may charge companies $150 to $2,500 per violation, depending on the law violated and the number of violations.

Table 8 below presents the revenue collected by each unit in the division.

Table 8
Workplace Regulations and Compliance Division's Revenues by Unit
July 1, 2014, Through June 30, 2017
(unaudited)

Unit	Fiscal Year 2015	Fiscal Year 2016	Fiscal Year 2017	Total
Amusement Device	$84,200	$154,760	$122,870	**$361,830**
Boiler	$2,206,246	$2,402,425	$2,144,329	**$6,753,000**
Elevator	$2,385,562	$2,415,817	$2,549,102	**$7,350,481**
Labor Standards	$183,900	$379,563	$269,150	**$832,613**

Source: Revenues obtained from Edison by State Audit Information Systems.

Audit Results

1. **Audit Objective:** Did Workplace Regulations and Compliance Division personnel deposit collected funds within one to five business days in accordance with Section 9-4-301, *Tennessee Code Annotated*, and the Department of Finance and Administration's (F&A) Policy 25, "Deposit Practices"?

   Conclusion: The Amusement Device and Labor Standards Units did not always deposit collected funds in accordance with Section 9-4-301, *Tennessee Code Annotated,* and F&A Policy 25. Additionally, the Boiler and Elevator Units did not document the receipt dates for funds collected (see **Finding 8**).

2. **Audit Objective:** Did management design internal controls to safeguard funds collected by the division?

   Conclusion: Management did not design internal controls to safeguard the funds collected by the Labor Standards Unit for Wage Regulations Act violations (see **Finding 8**).

Methodology to Achieve Objectives

We performed walkthroughs and reviewed written policies and procedures for depositing the collections of fees and fines in each unit of the Workplace Regulations and Compliance Division.

We obtained a list of amusement device permits issued from July 1, 2014, through March 22, 2018. From a population of 964 amusement device permits, we selected a nonstatistical, random sample of 30 amusement device permit files and a nonstatistical, haphazard sample of 30 amusement device permit files. We also obtained the population of all 59 files for reported amusement device accidents that occurred from June 7, 2016, through May 5, 2018, including the 4 instances where penalties were assessed. Finally, we obtained the population of 429 deposits completed by the Labor Standards Unit for the period July 1, 2014, through July 5, 2018. We selected a nonstatistical, random sample of 30 deposits that included 53 checks. We tested the collected funds for the 60 amusement device permits, the 4 accident penalties, and the 53 labor law penalties to determine whether unit staff deposited these funds in accordance with Section 9-4-301(a), *Tennessee Code Annotated*, and F&A Policy 25.

Finding 8 – The Administrator did not follow established law and policy to deposit collected funds promptly, nor did unit staff ensure these funds were secure until deposit

Division Revenue Not Deposited Immediately

Staff in the Amusement Device and Labor Standards Units did not deposit funds in accordance with Section 9-4-301(a), *Tennessee Code Annotated*, and Department of Finance and Administration (F&A) Policy 25, "Deposit Practices". Pursuant to Section 9-4-301(a), *Tennessee Code Annotated*, funds collected must be deposited "immediately" into the state treasury or to another authorized bank account. F&A Policy 25 defines "immediately" as within 24 hours after $500 or more has been accumulated and five business days for accumulated amounts of more than $100 but less than $500. Based on our testwork, staff did not deposit the following funds collected within the required timeframe:

- 34 of 60 amusement device permit fees (57%) were deposited an average of 25 days late;
- 2 of 4 fines for unreported amusement devices accidents (50%) were deposited an average of 61 days late; and
- 3 of 53 fines for noncompliance with state labor laws (6%) were deposited an average of four days late.

The other two units within the Workplace Regulations and Compliance Division—the Boiler Unit and the Elevator Unit—did not document the dates that they received fine and fee collections. As a result, we were unable to determine if the two units deposited funds in accordance with statute and with F&A Policy 25.

On March 27, 2018, we inspected the safe the division uses to secure funds collected until they are deposited. The division uses the safe to secure funds overnight when they cannot be deposited the same day, such as funds received after the day's deposit. We found that division staff did not deposit 14 of the 20 checks found in the safe (70%) within the timeframe required by statute and F&A Policy 25. We found that

- Amusement Device Unit staff were waiting for amusement device owners to submit all required documentation before depositing and processing 12 permit fees;
- Amusement Device Unit staff could not provide a reason why one fine was not deposited; and
- Elevator Unit staff accepted prepaid inspection fees before the inspections were performed but did not intend to deposit the funds until the inspections were performed.

As of April 4, 2018, 5 of the 14 checks were deposited, and the remaining nine checks were voided and returned to the amusement device owners because the checks were no longer valid.

The Administrator for the Workplace Regulations and Compliance Division stated she was not aware that the division was required to make deposits within a certain timeframe after receiving the funds. After we brought this issue to the Administrator's attention, she issued a new policy, effective April 11, 2018, requiring staff to deposit funds collected within one business day. During our May 31, 2018, re-inspection of the safe, we did not find any undeposited checks.

Due to the division's lack of knowledge of required depositing procedures, management did not ensure controls were in place to comply with statute and policy, so the Amusement Device and Labor Standards Units did not promptly deposit $38,075 from July 1, 2014, through July 5, 2018.

Lack of Segregation of Duties

Also, based on our testwork, we found that Labor Standards Unit management did not properly segregate depositing duties among multiple individuals; rather, it assigned these duties to one individual. Also, management did not implement a compensating control such as an appropriate supervisory review to reduce the unit's risk of theft. Specifically, we determined the unit's Administrative Assistant could

- collect funds for Wage Regulations Act violations,
- record and apply the collections to the impacted companies' invoices, and
- send reminder notices to companies that had not remitted payment to the unit.

After collected funds were deposited, the Administrative Assistant verbally communicated the deposit total to either the Administrative Supervisor for the Boiler or Elevator Unit rather than providing them with the receipts from the deposit. The Supervisors then reviewed the batch in

iNovah (the state's cash receipting system) to ensure the amounts matched, without reviewing any supporting documentation.[25]

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* (Green Book) sets internal control standards and is considered best practice for non-federal entities. Green Book Principle 10.3, "Segregation of Duties," states,

> Management divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event.

The Administrator stated that she was unaware these procedures were not sufficient to prevent or detect loss or theft, thus she did not implement compensating controls to mitigate these risks.

The risk of fraud increases when one individual receives and processes funds collected; records the collections against invoices; and reports deposit balances verbally with no supporting documentation. Additionally, without reviewing an auditable paper trail, the Administrative Supervisor cannot independently verify the reported deposits.

Recommendation

Division management should develop procedures to ensure that staff deposit all funds immediately as required by Section 9-4-301(a), *Tennessee Code Annotated*, and F&A Policy 25. Management should assess the risks related to the revenues that it collects and implement the necessary internal controls, such as establishing proper segregation of duties.

Management's Comment

We concur in part. The Amusement Device Unit did not always deposit collected funds timely. In order to receive annual operating permits, amusement device companies are required to timely submit documentation and achieve statutory compliance requirements. Sometimes amusement device companies do not timely submit proper documentation and permits cannot be issued.

When the administrative process for the Amusement Device Unit was established in February 2015, one division employee handled revenue for the program. The borrowed division employee was assigned to process payments. Payments were processed and approved by the same employee when customers satisfied statutory compliance requirements. If the company failed to meet statutory compliance requirements, payments were not processed. Furthermore, the Standard Operating Procedures (SOP) created in 2015 did not include a check return policy.

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[25] The Administrative Supervisors for the Boiler and Elevator Units review and approve the Labor Standards Unit's iNovah deposits because they have supervisory review roles, while the Administrative Supervisor for the Labor Standards Unit does not.

To prevent future occurrences, the Amusement Device Unit has been instructed to immediately deposit payments within 24 hours of receipt and monitor files to determine when compliance is achieved. If compliance is not achieved and payments are received and deposited prior to the customer meeting statutory compliance requirements, proper steps consistent with F&A guidelines will be taken to issue refunds. New employees will be trained as to program policies, as they are hired.

Other internal control measures include monitoring revenue bags and the division safe daily, weekly, and monthly. Revenue Approvers have been instructed to immediately inform the Administrator if payments are left in program revenue bags or the division safe.

Upon learning about the revenue issue, the Administrator immediately responded and took appropriate action to resolve issues. SOP and policies were amended, payments were removed from the safe, files were reviewed, copies of payments were made, and payments were either deposited or returned to the customer.

When asked if she was aware that the division was not making timely deposits, the Administrator took full responsibility and immediately corrected the issues. The Administrator did not state or intend to imply that she was not aware the division was required to make deposits within a certain timeframe after receiving funds.

If there is no division policy or if an issue is not mentioned in the program SOP, the division follows established state rules, state policies, and state laws. Of course, state laws supersede. If there are questions about policies, rules, or laws, Supervisors are to immediately notify the Administrator.

The Labor Standards Unit did not segregate duties when the same employee prepared penalty assessments under the Wage Regulations Act and also processed wage payments. As part of the division's segregation of duties, the Receptionist receives division mail/payments and provides payments to appropriate program Supervisors. Supervisors provide payments to the designated Processor within their unit. The Processor provides calculation tape, receipts, and/or other documentation to the Revenue Approver. Also, the Amusement Device Unit did not segregate duties when the same employee processed and approved payments.

To avoid future occurrences, the Amusement Device Unit and the Labor Standards Unit will be monitored to ensure payments are not given to the same employee who assessed penalties and prepared penalty orders. Additionally, the same person who processes payment will not approve payments. Furthermore, deposit information will not be verbally communicated to the Revenue Approver. Processors will print receipts, make copies of the receipt, and provide information to the Revenue Approver so they may initial and date it. In addition, Processors will also initial and date the same documentation and maintain a copy of the document along with a monthly payment log in unit accounting files.

Elevator Unit staff accepted prepaid inspection fees before the inspections were performed but did not intend to deposit the funds until the inspections were performed. The Elevator Unit, like the Amusement Device Unit, will monitor files to ensure companies meet statutory

compliance requirements. If compliance is not achieved and payments are received or deposited prior to the customer meeting statutory compliance requirements, proper steps consistent with F&A guidelines will be taken to issue refunds. New employees will be trained as to program policies as they are hired. SOP will be updated or created, and staff will follow the SOP as they are written and enforce other processes as instructed.

INTERNAL AUDIT DIVISION

The Internal Audit Division consists of two units, Internal Audit and Program Accountability Review (PAR). Internal Audit performs audits and investigations, responds to hotline calls, conducts internal inspections for federal tax information, and monitors Unemployment Insurance program activities. PAR performs both program and fiscal monitoring of subrecipients for the Workforce Services Division and fiscal monitoring of Adult Education Division subrecipients.

Internal Audits

In accordance with Section 4-3-304, *Tennessee Code Annotated*, the Internal Audit Director coordinates the internal auditing activities with the Office of the Comptroller of the Treasury. The director submits an annual audit plan to the Division of State Audit by July 1, listing audits planned for the upcoming fiscal year. The department's *Internal Audit Manual* states that the process for performing internal audits includes the following steps:

- notifying management of the audit,
- preparing an audit work program,
- performing audit fieldwork,
- writing an audit report,
- having an exit conference with management,
- releasing the audit report, and
- sending the audit report and management's response to the Division of State Audit, Comptroller of the Treasury.

Investigations

Internal Audit investigates alleged employee fraud, internal security violations, and employee misconduct. Once the division begins an investigation, the Internal Audit Director notifies the Office of the Comptroller of the Treasury (the Comptroller's Office). The Director may coordinate the investigation with the Comptroller's Office or perform an in-house investigation. Once the investigation is complete, the Director provides a recommendation to management and releases a report to the Human Resources Division and other applicable personnel.

Hotline Calls

When the Comptroller's Office refers an allegation of fraud, waste, or abuse to the department, the Internal Audit Director reviews the allegation and, if necessary, forwards it to the appropriate division. Once the review is complete, the Director drafts a response and sends it to the department's General Counsel and Deputy Commissioner. Once the General Counsel and Deputy Commissioner approve the response and the Commissioner signs the cover letter, the Director sends the response to the Comptroller's Office.

Program Accountability Reviews

PAR Unit staff report directly to the Internal Audit Director. PAR's program monitoring determines if program objectives are met for the Workforce Services Division. Its fiscal monitoring objectives for the Workforce Services and Adult Education Divisions may include

- assessing the reliability of internal controls;
- testing the reliability of the financial and programmatic reporting;
- testing whether the costs and services are allowable and eligible; and
- verifying contractual compliance.

Results of Prior Audit

In our October 2014 performance audit report, we noted that the department performed few internal audits. Management concurred in part with the prior finding and stated that Internal Audit staff would make a more diligent effort to perform, complete, and report internal audits.

Audit Results

1. **Audit Objective:** Did the department correct the October 2014 finding regarding its internal auditing?

   Conclusion: Based on our review, the Internal Audit Division increased the number of reports that it issued since the prior audit and, with only minor exceptions, properly documented its work.

2. **Audit Objective:** Did the Internal Audit Division report fraud, waste, and abuse to the Comptroller's Office?

   Conclusion: The Director of Internal Audit did not notify the Comptroller's Office of an instance when the department's Adult Education Division inappropriately used a subrecipient's grant funds to pay for division management and staff's travel expenses (see **Finding 9**).

Methodology to Achieve Objectives

To gain an understanding of the Internal Audit Division, we interviewed applicable personnel. We also reviewed the *Internal Audit Manual* and the division's hotline call procedures. We reviewed the internal audit plans for fiscal years 2015 through 2018 to determine if the division completed its audits as planned and issued reports. We inspected the division's investigation, audit, and hotline call logs, as well as the related audit files, to determine if the division properly reported instances of known or suspected fraud, waste, and abuse to the Comptroller's Office.

Finding 9 – The Director of Internal Audit did not notify the Comptroller's Office when the Adult Education Division's management and staff inappropriately used a subrecipient's grant funds

On April 27, 2017, a Program Accountability Review (PAR) monitor informed the Internal Audit Director that the Adult Education Division's management and staff used a subrecipient's grant to pay for their travel expenses—instead of submitting travel reimbursement expenses to the department through Edison, the state's accounting system. According to our discussion with the Internal Audit Director, he added the monitor's notification to his investigation log to determine if the division's employees were circumventing travel regulations. The Internal Audit Director, however, did not report to the Comptroller's Office that he was investigating the appropriateness of the division's employees.

Before the Internal Audit Director could complete his review, the Adult Education Division's Administrator resigned on June 19, 2017, having accepted a position with one of the division's educational services vendors. According to the Internal Audit Director, he spoke with the Administrator at his exit interview about the deviation from the state's normal method of reimbursing travel expenditures, but the Administrator would not provide any explanation. Once the Administrator resigned, the issue remained open on the Internal Audit Director's investigation log.

The Internal Audit Director issued a monitoring report on August 17, 2017, almost four months after the PAR monitor informed him of the questionable use of subrecipient funds found during the site visit. Monitoring reports are addressed primarily to the management of the subrecipient; the Comptroller's Office received a copy of this report that only included the following observation:

> According to the supporting documentation, most of the expenditures [for the $20,000 grant award] were associated with staff development (e.g., hotel rooms at a state conference and food at state meetings). However, these "staff development" expenditures could have been handled through the normal state expenditure process. For example, the hotel room charges for a state employee attending a state-sponsored meeting could be handled through the employee's travel expense report in Edison.

Based on our review of the Internal Audit Division's files and our discussions with the Internal Audit Director, the original notification from the PAR monitor called into question the actions of the former Adult Education Division Administrator and his staff. According to the Internal Audit Director, he did not notify the Comptroller's Office because he could not prove that the employees' use of the grant contract was unallowable, and he did not find other department employee payments made through the contract. The Internal Audit Director did, however, note that he believed that the former employees were trying to circumvent controls and that the Administrator, who managed the division, refused to discuss the topic.

Subsequent Discovery of Inappropriate Travel and Other Activities by Adult Education Personnel

Based on later allegations that we received and discussions with various department personnel, Adult Education personnel inappropriately used state-funded travel to promote a nonprofit corporation and worked on this business using their state computers. In November 2017, the department terminated the division's Assistant Administrator for gross misconduct, and its Education Consultant resigned. Had the department investigated the division and the inappropriate activities identified by the PAR monitor, department management could have promptly identified and stopped the misconduct.

Impact on Fiscal Year 2017 Single Audit

Our audit work is facilitated by management's full and timely cooperation. It is management's responsibility, as a part of the audit process, to disclose any events or other factors that might significantly affect internal controls or compliance with federal award requirements. We began a scheduled audit of the federally funded Adult Education program on May 9, 2017. The Internal Audit Director did not inform the audit team that the Adult Education Division's management and staff had been involved in questionable practices even though he knew our audit scope included the federal Adult Education grant and the employees who administer the grant.

The Internal Audit Division's Charter states that "the IA [Internal Audit] Director is responsible for coordinating activities with external auditors to ensure adequate audit coverage and to minimize the duplication of efforts." The charter further states that the Internal Audit Division should coordinate with the Comptroller of the Treasury and report instances of fraud or suspected fraud, particularly those related to departmental employees.

As a result of the failure to report this questionable use of funds, we were unaware of the control weaknesses and potential risks in the Adult Education program and did not have the opportunity to interview the Administrator before he left the department. Had management informed the audit team of these problems, we would have planned our audit of the Adult Education program and the division to address these risks identified by the PAR monitors and internal audit staff. A timely investigation by the Comptroller's Office could have promptly identified and possibly prevented the questionable travel and other improper activities by the former Adult Education Division personnel.

Recommendation

The Internal Audit Director should immediately assess the impact of potential fraud, waste, and abuse and report known or suspected instances to the Comptroller's Office, particularly when department management may be involved. The Commissioner should ensure that all department personnel are fully aware of the obligation to use federal and state funds responsibly, as well as their responsibility to report the misuse of funds to the Comptroller's Office.

Management's Comment

We concur in part.

We do not agree with some of the items presented in this finding.

- First, the monitor informed the Internal Audit Director that there were questionable expenditures on April 27, 2017. We did not know the full extent of what occurred, why, or reached any conclusion on April 27, 2017.
- Second, the Director added this to the investigation log, but only after reviewing the supporting documentation and making an assumption as to what occurred. It was also added to the investigation log because the monitoring staff did not look into this further, but Internal Audit staff examined these transactions. So, for better tracking purposes, it was added to the investigation log.
- Third, the grant agreement was "to provide staff development services/support for Adult Education programs." The allowable travel expenditures were related to staff development.
- Fourth, the Comptroller's Office was notified with the copy of the report. Also, their finding states that they did receive a copy of the report.
- Fifth, the auditors suggest that a timely investigation could have "stopped the misconduct" when discussing the subsequent discovery. This is not true, since some of this other possible misconduct had already occurred as early as August 2016.
- Sixth, just this questionable process would not have justified a full investigation into Adult Education's remaining management. Our discussions with grantee staff indicated this staff development grant was the former Administrator's idea. Also, the expenditures were still allowable.

Internal Audit staff interviewed grantee staff regarding these grant expenditures on June 7, 2017. The Internal Audit Director interviewed the former Administrator at least three times: the first time was on June 8, 2017, and the final interview was on June 19, 2017. We did not have a full or complete understanding of this situation until interviewing appropriate state and grantee staff and reviewing the applicable documentation. The monitoring report was released to the Comptroller's Office in August 2017.

The auditors performing Single Audit work had from August 2017 until at least the middle of January 2018 to evaluate any risk and possible impact on the Single Audit.

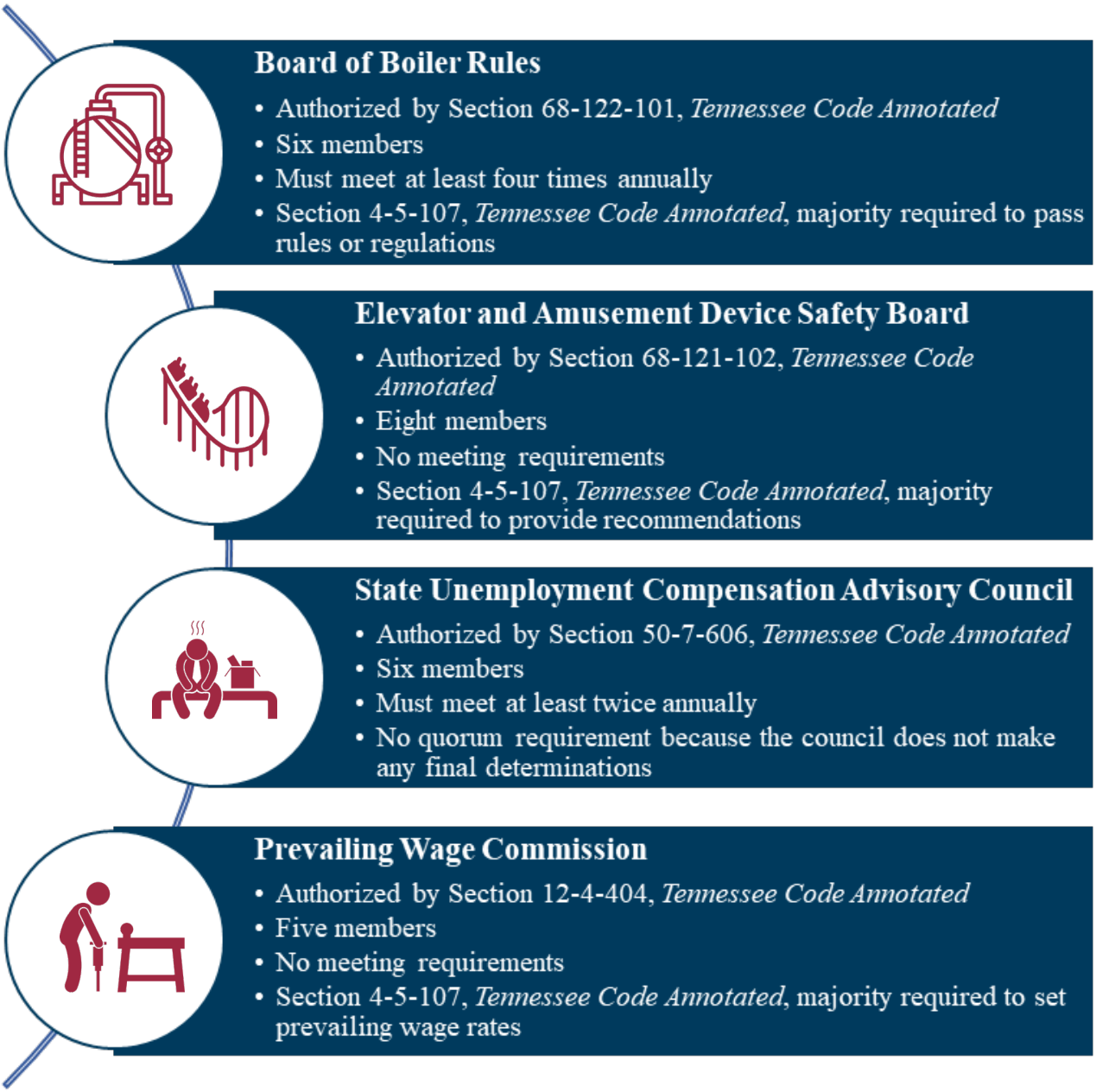
We concur and we will continue to report fraud, waste, and abuse to the Comptroller's Office. As part of the new employee onboarding process, department staff from either Internal Audit or the Division of Human Resources stresses to report fraud, waste, and abuse to either Internal Audit or the Comptroller of the Treasury. Also, signs are throughout state and grantee buildings informing anyone coming into the buildings to report fraud, waste, and abuse to the Comptroller's Office through their 1-800 number or website.

Auditor's Comment

As stated in management's comment, the Internal Audit Director reports that "other possible misconduct had already occurred as early as August 2016"; as such, both the Director and top management should have promptly assessed the risks and controls for this program and fully communicated these risks and control issues to us during our audit fieldwork. Two allegations received by our office in August and September of 2017 raised further concerns about Adult Education Division personnel. These allegations underscored the importance of reporting any unusual actions, particularly when they are taken by management or when internal audit cannot obtain a "complete understanding of [the] situation." Management's "notification" about critical misconduct should not be buried in a routine monitoring report for auditors to discover on their own. Finally, the Director appears to not fully understand that the grant is awarded to benefit the subrecipient. Only subrecipient personnel—not the state employee who circumvented state policy—are allowed to incur costs and spend the grant funds.

BOARDS, COMMISSION, AND COUNCIL

According to Section 4-29-240, *Tennessee Code Annotated*, the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, the Prevailing Wage Commission, and the State Unemployment Compensation Advisory Council are scheduled to terminate with the Department of Labor and Workforce Development on June 30, 2019. Department staff provide administrative support, such as coordinating meetings and ensuring compliance with legal requirements, to the boards, commission, and council.



Board of Boiler Rules

The Board of Boiler Rules supports the department's Boiler Unit, which protects the public from hazards inherent in the operation of boilers and pressure vessels. The board formulates definitions, rules, and regulations for the construction, installation, repair, use, and operation of boilers.

Elevator and Amusement Device Safety Board

The Elevator and Amusement Device Safety Board provides technical recommendations based on board members' education and expertise. Board members review issues relating to elevators, dumbwaiters, escalators, aerial passenger tramways, and amusement devices (such as roller coasters, Ferris wheels, and merry-go-rounds) in the interest of protecting the public, owners, operators, and other employees from potential hazards.

State Unemployment Compensation Advisory Council

The State Unemployment Compensation Advisory Council aids the department's Commissioner in formulating Unemployment Insurance program policies and meets to discuss issues that impact the state's program.

Prevailing Wage Commission

Pursuant to Sections 12-4-404 and 12-4-405, *Tennessee Code Annotated*, the Prevailing Wage Commission is responsible for determining the annual prevailing wage rates for state highway construction projects, including highways, roads, and bridges. The prevailing wage rate is the minimum amount of pay a state contractor may offer employees whose duties meet one of the 25 job classifications common to state highway construction projects, such as truck drivers and crane operators.

The commission consists of five members: the Commissioner of the Department of Labor and Workforce Development, who serves as chair; the State Architect; the Commissioner of the Department of Transportation or a designee; and two members appointed by the Governor, who serve two-year terms.

Pursuant to Section 12-4-413, *Tennessee Code Annotated,* the commission is authorized to assign administrative responsibilities to the department to assist with determining the prevailing wage rate. The commission relies on the Labor Standards Unit since it is responsible for ensuring that state contractors adhere to prevailing wage rate requirements. In order to assist the commission with determining the prevailing wage rates, which are effective January 1 of each year, Labor Standards Unit personnel send annual surveys requesting wage information to highway construction contractors that are prequalified to bid on state contracts and are included in a list approved by the commission. Contractors' responses[26] to these surveys are entered into the prevailing wage system, which calculates the "survey rate," or average hourly wage paid to

[26] The prevailing wage survey is voluntary, and contractors are given one month to respond. In 2017, 132 of 735 contractors surveyed (18%) responded.

employees in the calendar quarter immediately preceding the survey, for each of the 25 job classifications.

Pursuant to Section 12-4-405(4), *Tennessee Code Annotated*, the commission should use the survey rate to determine the prevailing wage rate for each job classification. State statute enables the commission, at its discretion, to adjust the amount by 6% of the existing year's prevailing wage rate; see **Table 9** below.

Table 9
Allowable Prevailing Wage Rate Formulas

Minimum	Survey Rate – (6% x Existing Prevailing Wage Rate)
Maximum	Survey Rate + (6% x Existing Prevailing Wage Rate)

Results of Prior Audit

In the department's October 2014 performance audit report, we found that the commission set prevailing wage rates outside the parameters established by Section 12-4-405, *Tennessee Code Annotated*. Management concurred with the prior finding and stated that the department's database and manual operations were updated to ensure compliance with statute.

Audit Results

1. **Audit Objective:** Did the boards, commission, and council meet a requisite number of times and provide adequate public notice in accordance with the Tennessee Open Meetings Act, Section 8-44-103, *Tennessee Code Annotated?*

   Conclusion: We determined that the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, and the Prevailing Wage Commission met in accordance with statute. While the State Unemployment Compensation Advisory Council met in accordance with statute in 2014, 2015, and 2016, we could not verify that the council met twice in 2017 as required by statute, because the department could not provide meeting minutes or a public notice for the December meeting, the second meeting of the year (see **Observation 7**).

2. **Audit Objective:** Are internal controls in place and operating effectively to identify and mitigate board, commission, and council members' conflicts of interest?

   Conclusion: Department personnel obtained conflict-of-interest disclosure forms for the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, and the Prevailing Wage Commission but did not do so for the State Unemployment Compensation Advisory Council (see **Observation 7**).

3. **Audit Objective:** Have department personnel created and maintained meeting minutes for the boards, commission, and council as required by statute?

Conclusion: Department personnel created and maintained meeting minutes for the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, and the Prevailing Wage Commission. However, staff could not provide meeting minutes for the State Unemployment Compensation Advisory Council meetings in 2015, 2016, and 2017 (see **Observation 7**).

4. **Audit Objective:** Did the department ensure that the Governor or Commissioner, as applicable, appointed board, commission, and council members with the qualifications required by statute?

Conclusion: The department ensured that all appointees for the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, the Prevailing Wage Commission, and the State Unemployment Compensation Advisory Council had the necessary qualifications to serve in their positions.

5. **Audit Objective:** Did the Prevailing Wage Commission correct the October 2014 finding involving the prevailing wage rates?

Conclusion: The Prevailing Wage Commission set prevailing wage rates for four job classifications for 2018 that were not in accordance with Section 12-4-405, *Tennessee Code Annotated* (see **Finding 10**).

Methodology to Achieve Objectives

We obtained and analyzed all available public notices and meeting minutes for the Board of Boiler Rules, the Elevator and Amusement Device Safety Board, the Prevailing Wage Commission, and the State Unemployment Compensation Advisory Council to determine if these boards, commission, and council met as required by statute and created and maintained minutes for each meeting.

We obtained and reviewed applicable law and the department's conflict-of-interest policy for the boards, commission, and council. We obtained a list of board, commission, and council members as of December 31, 2017, and reviewed each member's conflict-of-interest form for the period, July 1, 2014, through March 31, 2018, to determine whether the members disclosed any financial conflicts. We reviewed all available meeting minutes to verify that members abstained on actions related to a documented conflict. We also researched each member to determine whether they met the statutory requirements to serve on the boards, commission, and council.

We reviewed Sections 12-4-404 and 12-4-405, *Tennessee Code Annotated*, and Chapter 0800-3-2 of the *Rules of the Tennessee Department of Labor and Workforce Development* to gain an understanding of the requirements for determining prevailing wage rates. We reviewed the Labor Standards Unit's standard operating procedures, interviewed the unit's personnel, and conducted a walkthrough of the unit's procedures. We obtained lists and supporting documentation for all 25 job classifications for calendar years 2015 through 2018 and tested the population to determine whether the rates were set in accordance with Section 12-4-405, *Tennessee Code Annotated*. To ensure the accuracy of the survey rates presented to the commission, we

recalculated the 2018 survey rates using the data highway construction contractors provided to the Labor Standards Unit. We also calculated the range within which the Prevailing Wage Commission could set the 2018 rates, based on the survey responses from the highway construction contractors.

Finding 10 – The Prevailing Wage Commission once again did not set prevailing wages in accordance with statute

For 4 of 25 prevailing wage rates (16%) for calendar year 2018, the commission did not set the rates in accordance with Section 12-4-405(4), *Tennessee Code Annotated*. The commission members elected to use rates calculated by the Labor Standards Unit without verifying that these rates fell within the parameters required by statute. Of the 4 rates, the commission approved

- 3 rates below the minimum allowable amounts, and
- 1 rate above the maximum allowable amount (see **Table 10** below).

Table 10
Prevailing Wage Rates Not in Accordance With Statute

Job Classification*	Prevailing Wage Rate Set by the Commission*	Range of Allowable Rates**	Amount Above (Below) Allowable Range Rates**
Electrician	$26.13[27]	$27.66 to $30.67	($1.53)
Survey Instrument Operator	$21.32	$21.95 to $24.41	($0.63)
Truck Driver (5 or more axles)	$17.65	$17.84 to $19.87	($0.19)
Mechanic (Class II) Light	$21.19	$18.47 to $20.91	$0.28

* Job classifications and 2018 prevailing wage rates set by the Prevailing Wage Commission, obtained from the Department of Labor and Workforce Development website.
** We calculated the range of allowable rates and variances.

For 2017 and 2018, Labor Standards Unit personnel, at the commission's request, calculated the average increase for *all* job classifications and applied it to the previous year's prevailing wage rates for each of the 25 job classifications— instead of using the individual survey rates for each job classification as the basis for the new prevailing wage rates. In 4 instances for 2018, the calculations were not within the boundaries established by Section 12-4-405(4), *Tennessee Code Annotated*. An example of how the commission's requested calculation deviated from the statutory limits is exhibited in **Figure 5** below.

[27] See **Figure 5** for an illustration of the prevailing wage rate calculation for electricians.

Figure 5
Example of Prevailing Wage Rate Calculation: Electricians

Previous Year's Prevailing Wage Rate – 2017	**$25.06**
Average Hourly Rate per Survey – 2018 *(Electricians Only)*	**$29.16** *16% increase from previous year's prevailing wage rate*
Average Hourly Rate per Survey – 2018 *(All Job Classifications)*	*4% increase from previous year's prevailing wage rate*
Calculation Used by Labor Standards Unit and Commission:	$25.06 previous year's prevailing wage rate + ($25.06 x 4% average hourly rate for *all* job classifications) = **$26.13**
Method Defined in *Tennessee Code Annotated* and Used by the Auditor:	$29.16 average hourly rate for electricians – (6% that commission can adjust final wage determination x $25.06 previous year's prevailing wage rate) = **$27.66**

After we brought these errors to the unit's attention, the commission met on May 21, 2018, and set revised rates that complied with Section 12-4-405(4), *Tennessee Code Annotated*. The revised rates were effective that day and made available on the unit's public website. Despite this corrective action, the new highway construction contracts for the first several months of 2018 were negotiated with the incorrect prevailing wage rates. Under such contracts, electricians, survey instrument operators, and truck drivers working on these projects may be paid less than the prevailing wage rates. Additionally, for light mechanics needed for highway construction projects, state contractors were obligated to pay more than the minimum amount required by statute. Due to the long-term nature of highway construction projects, the errors in setting the prevailing wage rates for these four job classifications might affect payments to state construction project workers over the next several years.

Recommendation

The Commissioner, as the commission chair, and the other members of the commission should ensure that Labor Standards Unit personnel develop procedures to present prevailing wage analyses to the commission that comply with state law. Furthermore, the commission should thoroughly review prevailing wage analyses and only approve rates that comply with Section 12-4-405(4), *Tennessee Code Annotated*.

Management's Comment

We concur. For 4 of 25 prevailing wage rates (16%) for the calendar year 2018, the commission did not set the rates in accordance with Section 12-4-405(4), *Tennessee Code Annotated*. In these instances, calculations were not within the boundaries established by Section 12-4-405(4), *Tennessee Code Annotated.*

In order to prevent future occurrences, internal controls have been created. A Prevailing Wage Calculations Spreadsheet, which includes classifications, craft numbers, number of responses, survey rates, current prevailing wage rates, percentage of change from current rate to survey rate, 6% of current prevailing wage added to and subtracted from the survey rate, state average added to and subtracted from the current prevailing wage rate, proposed rates, percentage

of change from current rates to proposed rates, and final prevailing wage rates for the upcoming year, will be used during commission meetings so that members may view rates proposed by the Labor Standards Unit.

Prior to commission meetings, staff will calculate proposed rates and provide information to commission members to review. During the meetings, commission members will thoroughly review, discuss, and only approve proposed prevailing wage rates that fall within the appropriate range in order to comply with Section 12-4-405(4), *Tennessee Code Annotated.* Clarification of Section 12-4-405 by the General Assembly will be helpful and appreciated.

The Prevailing Wage Standard Operating Procedures (SOP) will be updated, and staff will follow the SOP as they are written and enforce other processes as instructed.

Matter for Legislative Consideration

This audit identified an area in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Prevailing Wage Commission's operations, specifically in relation to its prevailing wage determinations. Section 12-4-405, *Tennessee Code Annotated*, states that highway contractors "shall have the *right* to certify . . . copies of payroll records" [emphasis added] when providing the commission with information to calculate the annual prevailing wage rates. The General Assembly may wish to clarify the commission's responsibilities regarding certification of payrolls.

Observation 7 – Management should ensure supporting documentation is created and maintained for the State Unemployment Compensation Advisory Council

Department of Labor and Workforce Development management, which provides administrative support for the State Unemployment Compensation Advisory Council, did not ensure that staff followed best practices and complied with statutorily required supporting documentation procedures. We determined that the department

- could not provide public notices for the council's November 2014 and December 2017 meetings pursuant to the Tennessee Open Meetings Act, Section 8-44-103, *Tennessee Code Annotated*;
- could not provide meeting minutes for the council's June 2015, September 2016, July 2017, and December 2017 meetings, as required by Section 8-44-104(a), *Tennessee Code Annotated*; and
- did not collect or retain, as a matter of best practice, conflict-of-interest forms completed by council members.

Meeting minutes are intended to make public officials' actions transparent and aid them in recalling prior discussions and actions. Without this necessary transparency, workers and businesses have no assurance that the council has represented their interests in Unemployment Insurance program policies.

According to the Special Projects Coordinator and the Internal Audit Director, the council did not have meeting minutes or conflict-of-interest forms for members because the council does not set state or department policy.

The Internal Audit Director stated that the public notices from 2014 were lost when the state updated the department's webpage. According to a Division of Strategic Technology Solutions Programmer in the Department of Finance and Administration, there were no public notices for the council from 2014 in any of the state's archived systems. The department's Chief of Staff stated that the December 2017 public notice was not available because the Special Projects Coordinator had just begun serving as the council's liaison and did not know that a public notice needed to be posted to the department's website.

After bringing these problems to management's attention, the council met on May 25, 2018. Department staff made a public notice for the meeting available on the department's website, recorded meeting minutes, and obtained completed conflict-of-interest forms from the commission members.

APPENDICES

APPENDIX 1
Business Unit Codes

33701	Administration Division
33702	Tennessee Occupational Safety and Health Administration
33703	Workers' Compensation
33704	Mines
33705	Boilers and Elevators
33706	Labor Standards
33708	Second Injury Fund
33709	Adult Basic Education
33710	Workforce Services
33715	Workers' Compensation Employee Misclassification
33720	Unemployment Insurance
33799	Employment Security Fund

APPENDIX 2
Budget and Actual Expenditures and Revenues
Fiscal Year Ended June 30, 2017
(Unaudited)

Department of Labor and Workforce Development*		Recommended Budget**	Actual Expenditures and Revenues†
Expenditures	Payroll	$80,839,000	$52,968,176
	Operational	$104,614,200	$93,683,972
	Total	**$185,453,200**	**$146,652,148**
Revenues	State	$20,348,500	$18,095,400
	Federal	$162,292,300	$127,455,700
	Other	$2,812,400	$1,101,900
	Total	**$185,453,200**	**$146,653,000**

* Excluding amounts for the Bureau of Workers' Compensation.
**Source: Tennessee State Budget, Fiscal Year 2016 – 2017.
†Source: Tennessee State Budget, Fiscal Year 2018 – 2019 (Actual Revenues) and State Audit Information Systems (Actual Expenditures).

Budget and Estimated Expenditures and Revenues
Fiscal Year Ended June 30, 2018[28]
(Unaudited)

Department of Labor and Workforce Development*		Recommended Budget**	Estimated Expenditures and Revenues†
Expenditures	Payroll	$ 78,457,300	$ 79,708,000
	Operational	$ 98,923,900	$ 101,105,900
	Total	**$ 177,381,200**	**$ 180,813,900**
Revenues	State	$ 20,483,100	$ 21,096,000
	Federal	$ 149,166,200	$ 150,691,700
	Other	$ 7,731,900	$ 9,026,200
	Total	**$ 177,381,200**	**$ 180,813,900**

* Excluding amounts for the Bureau of Workers' Compensation.
**Source: Tennessee State Budget, Fiscal Year 2017 – 2018.
†Source: Tennessee State Budget, Fiscal Year 2018 – 2019.

[28] During our audit work, fiscal year ended June 30, 2018, had not closed; therefore, we presented the estimated revenues and expenditures for that period.