O L A **OFFICE OF THE LEGISLATIVE AUDITOR**
STATE OF MINNESOTA

FINANCIAL AUDIT DIVISION REPORT

Department of Commerce

Internal Control and Compliance Audit

July 1, 2007, through March 31, 2010

December 9, 2010 **Report 10-36**

FINANCIAL AUDIT DIVISION
Centennial Building – Suite 140
658 Cedar Street – Saint Paul, MN 55155
Telephone: 651-296-4708 • Fax: 651-296-4712
E-mail: auditor@state.mn.us • Web site: http://www.auditor.leg.state.mn.us
Through Minnesota Relay: 1-800-627-3529 or 7-1-1

O L A

OFFICE OF THE LEGISLATIVE AUDITOR

State of Minnesota • James Nobles, Legislative Auditor

December 9, 2010

Senator Ann H. Rest, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

Mr. Glenn Wilson, Commissioner
Department of Commerce

This report presents the results of our internal control and compliance audit of selected financial areas of the Department of Commerce for the period July 1, 2007, through March 31, 2010. We emphasize that this has not been a comprehensive audit of the Department of Commerce.

We discussed the results of the audit with the Department of Commerce on November 23, 2010. The audit was conducted by Brad White, CPA, CISA, CFE (Audit Manager) and Carl Otto, CPA, CISA (Auditor-in-Charge), assisted by auditors Kayla Borneman, CPA, Lindsay Tietze, Adam Spooner, CPA, and Shanda Wilhelmy, CPA.

This report is intended for the information and use of the Legislative Audit Commission and the management of the Department of Commerce. This restriction is not intended to limit the distribution of this report, which was released as a public document on December 9, 2010.

We received the full cooperation of the Department of Commerce's staff while performing this audit.

James R. Nobles
Legislative Auditor

Cecile M. Ferkul, CPA, CISA
Deputy Legislative Auditor

Room 140 Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155-1603 • Tel: 651-296-4708 • Fax: 651-296-4712

E-mail: auditor@state.mn.us • Web Site: www.auditor.leg.state.mn.us • Through Minnesota Relay: 1-800-627-3529 or 7-1-1

Table of Contents

Page

Report Summary

Conclusion

The Department of Commerce did not have adequate internal controls to ensure that it accurately billed insurance companies for the cost of its examinations and investigations or to collect penalties assessed to regulated companies. The department generally had adequate internal controls to ensure it safeguarded receipts, accurately paid employees and contractors in accordance with management's authorization, produced reliable financial data, and complied with finance-related legal requirements. For the items tested, the department generally complied with finance-related legal requirements. However, the department had weaknesses in its internal controls and noncompliance with certain finance-related legal requirements. The department resolved five prior audit findings, but did not resolve two prior findings related to unclaimed property.

Key Findings

- The Department of Commerce could not identify or support some amounts it billed insurance companies to recover its investigative costs and did not always know whether insurance companies paid the billed amounts. (Finding 1, page 9)
- The Department of Commerce did not adequately pursue recovery of penalty amounts. (Finding 2, page 12)
- The Department of Commerce did not sufficiently identify, analyze, and document risks and internal controls related to some significant financial operations and compliance requirements. (Finding 3, page 13)
- The Department of Commerce allowed employees excessive or unnecessary access to update its licensing systems. (Finding 4, page 14)

Audit Objectives and Scope:

Objectives
- Internal Controls
- Compliance

Period Audited
July 1, 2007, through March 31, 2010

Programs Audited
- Assessments to Companies
- License Receipts
- Fines and Penalties
- Securities Registration
- Employee Personnel/Payroll
- Employee Travel Reimbursements
- Professional/Technical Contracts
- Unclaimed Property

Department of Commerce

Agency Overview

The Department of Commerce regulates financial institutions, insurance, real estate, utilities, and other commercial activities, such as registration of securities and business franchises and pricing for gasoline and cigarettes. The department's general powers and responsibilities are included in *Minnesota Statutes* 2009, Chapter 45 and specific regulatory powers are described in *Minnesota Statutes* 2009, Chapters 46 through 83. Mr. Glenn Wilson has served as the department's commissioner since 2003.

The Department of Commerce is organized into the following divisions:

- The **Administration Division** oversees core administrative functions within the department, including budget, human resources, information technology, legislative relations, and communications. It also manages the Unclaimed Property Program, the Petroleum Tank Clean-up Fund, and the weights and measures function.

- The **Market Assurance Division** investigates and enforces compliance with the state's licensing requirements and business practices by businesses providing insurance and security products in the state. The division consists of an investigations unit, an insurance filing and product unit, securities registration unit, an insurance fraud unit, licensing unit, and a consumer response team.

- The **Financial Institutions Division** examines and enforces compliance with the state's regulations by businesses providing financial services in Minnesota. The division employs financial analysts, examiners, and actuaries who ensure that Minnesota citizens have access to a broad range of financial products and services from numerous providers at competitive prices, while minimizing failures and risk of loss.

- The **Telecommunications Division** manages and administers the Telecommunications Access Minnesota Program that provides equal access to the telecommunications network for people who are deaf, hard of hearing, speech disabled, or physically disabled.

- The **Office of Energy Security** advocates on behalf of the public interest in regulated-utility matters; provides financial heating assistance and home weatherization improvements to income-qualified homeowners; and assesses the viability of new energy technologies seeking to enter the commercial market.

The Department of Commerce receives appropriations from the state's General Fund for many of its administrative costs and has dedicated revenues for some specific programs, such as its administration of the two federal programs (Low-Income Home Energy Assistance and Weatherization Program grants), Petroleum Tank Cleanup, Telecommunications Access Minnesota Program, and a variety of bank and insurance examination revolving accounts. Most significantly, the department received a substantial amount of federal funding for the Low-Income Home Energy Assistance Program.[1]

The department also collected a substantial amount of no dedicated revenue that is not available for spending. Table 1 shows major dedicated and no dedicated receipt areas for fiscal years 2008 to 2010 that the department managed.

[1] The Office of the Legislative Auditor annually examines federal grants considered to be major for the State of Minnesota's statewide single audit. We reported the results of that work in the *Minnesota Financial and Compliance Report of Federally Assisted Programs*, for fiscal year 2009, issued March 25, 2010. There were no findings related to the federal Low-Income Home Energy Assistance Program that expended $137 million. Because of our annual audit of the state's federal grant compliance, we did not examine the department's use of its federal grants as a part of this audit.

Table 1
Selected Receipts by Type
Fiscal Years 2008 to 2010 (through March 2010)

Receipt Type	2008	2009	2010[1]
Unclaimed Property[2]	$50,496,160	$63,102,673	$48,824,594
Unclaimed Property Refunds	(18,369,373)	(21,274,050)	(20,629,741)
Security Registration Fees	42,025,406	36,517,503	29,107,704
License Fees	13,538,094	12,650,344	9,987,953
License Technology Fees	2,325,380	1,835,635	2,646,350
Insurance Company Assessments	4,249,949	5,807,750	3,037,228
Insurance Fraud Assessments[3]	1,583,350	1,614,480	55,600
Bank Assessments	3,346,143	3,439,903	3,067,352
Energy Assessments	2,857,642	1,990,255	2,203,633
Telecommunications Assessments	1,996,321	1,344,914	1,059,227
Penalties and Fines[4]	2,665,986	1,819,011	10,443,361

[1]Fiscal year 2010 reflects partial-year financial information through March 31, 2010.

[2]Unclaimed property accumulates in the state's General Fund until it is refunded to its legitimate owner. It is not available for department operations.

[3]Insurance fraud assessments for the second quarter of 2010 were sent to companies but had not yet been collected as of March 31, 2010.

[4]Penalties collected by the department fluctuated substantially from year to year due to the number and varying significance of the violations involved. In fiscal year 2010, the department received payment of $5.5 million for Minnesota's share of a national settlement from one company that had dishonest and unethical securities sales practices.

Source: Minnesota Accounting and Procurement System.

Table 2 shows selected administrative expenditures for department payroll, contractor services, and travel costs reimbursed to employees and contractors.

Table 2
Selected Administrative Expenditures by Type
Fiscal Years 2008 to 2010 (through March 2010)

Expenditure Type	2008	2009	2010[1]
Personnel/Payroll	$24,496,163	$24,908,324	$18,216,834
Employee Travel & Expense Reimbursements	672,518	652,398	447,664
Professional-Technical Contract Services	6,049,208	7,680,161	5,034,040
Contractor Travel & Expense Reimbursements	372,331	331,240	145,218

[1]Fiscal year 2010 reflects partial-year financial information through March 31, 2010.

Source: Minnesota Accounting and Procurement System.

Objectives, Scope, and Methodology

Our selected-scope audit of the Department of Commerce included revenues for assessments, licenses and fees, penalties, and unclaimed property, and expenditures for employee payroll, expense reimbursements, and professional-technical contract services for the period from July 1, 2007, through March 31, 2010, and focused on the following audit objectives:

- Were the department's internal controls adequate to ensure that it safeguarded its receipts, accurately billed costs to regulated companies, accurately paid employees and vendors in accordance with management's authorizations, produced reliable financial data, and complied with finance-related legal requirements?

- For the items tested, did the department comply with significant finance-related legal requirements?

- Did the department resolve prior audit findings?[2]

To meet the audit objectives, we gained an understanding of the department's financial policies and procedures. We considered the risk of errors in the accounting records and noncompliance with relevant legal requirements. We analyzed accounting data to identify unusual trends or significant changes in financial operations. In addition, we selected a sample of financial transactions and reviewed supporting documentation to test whether the controls were effective and if the transactions complied with laws, regulations, policies, and contract provisions.

[2] Office of the Legislative Auditor's Financial Audit Division Report 06-18, *Department of Commerce*, issued June 30, 2006.

We conducted the 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 used the guidance contained in the *Internal Control-Integrated Framework*, published by the Committee of Sponsoring Organizations of the Treadway Commission, as our criteria to evaluate the department's internal controls.[3] We used state and federal laws, regulations, and contracts, as well as policies and procedures established by the Department of Management and Budget, the Department of Administration, and the department's internal policies and procedures as evaluation criteria over compliance.

Conclusion

The Department of Commerce did not have adequate internal controls to ensure that it accurately billed insurance companies for the cost of its examinations and investigations or to collect penalties assessed to regulated companies. The department generally had adequate internal controls to ensure it safeguarded receipts, accurately paid employees and contractors in accordance with management's authorization, produced reliable financial data, and complied with finance-related legal requirements. For the items tested, the department generally complied with finance-related legal requirements. However, the department had weaknesses in its internal controls and noncompliance with certain finance-related legal requirements. The department resolved five prior audit findings, but did not resolve two prior findings related to unclaimed property.

The following *Findings and Recommendations* further explain the department's internal control and compliance weaknesses.

[3] The Treadway Commission and its Committee of Sponsoring Organizations were established in 1985 by the major national associations of accountants. One of their primary tasks was to identify the components of internal control that organizations should have in place to prevent inappropriate financial activity. The resulting *Internal Control-Integrated Framework* is the accepted accounting and auditing standard for internal control design and assessment.

Findings and Recommendations

Finding 1

The Department of Commerce could not identify or support some amounts it billed insurance companies to recover its investigative costs and did not always know whether insurance companies paid the billed amounts.

The department's Market Assurance and Financial Institutions divisions did not have adequate documentation to support amounts it billed to insurance companies for their investigations and desk audits. The department had also not sufficiently monitored amounts receivable. The Market Assurance Division lacked records to support that it had accurately and completely billed insurance companies for legitimate and appropriate costs. The division did not know what costs had been billed, what bills had been sent, whether the companies had paid the bills, or the amounts outstanding.

Minnesota Statutes allow the department to recover the costs of examinations, investigations, and desk audits from the insurance companies being examined.[4] From July 2007 through March 2010, the department collected about $4 million to reimburse the Market Assurance Division's costs and about $9 million to reimburse the Financial Institutions Division's costs.

The Market Assurance Division had weaknesses in the following areas:

- The Market Assurance Division did not have any support for employee costs it billed to insurance companies before fiscal year 2010.[5] A division supervisor stated that he and two other supervisors prepared and sent bills to the insurance companies for investigations conducted by department employees;[6] however, no one reviewed the bills for accuracy or retained copies of the bills or support for the amounts included in the bills. Without evidence of amounts billed and support for those bills, it is impossible to determine the accuracy and completeness of amounts billed to insurance companies. Department management indicated that its enforcement strategy was going through a period of transition; diminishing the use of contractors and increasing use of its employees to examine and investigate insurance companies.

- Recent Market Assurance Division bills we reviewed lacked sufficient detail of the underlying supporting data. For example, the department provided only

[4] *Minnesota Statutes* 2009, 60A.03, subd. 5.
[5] Starting in fiscal year 2010, the department's Administrative Division became responsible for billing new investigations. The Market Assurance Division continued to be responsible for billing for investigations begun before fiscal year 2010.
[6] The division also contracts with private firms for some investigations.

summary level information for billed employee time and travel. In addition, the department was unable to provide us with the detail that supported the summary amounts billed.

- The Market Assurance Division staff could not tell us the rates they billed the insurance companies for employee payroll costs for fiscal years 2008 and 2009, although staff asserted that they used an average of employee hourly rates. Division staff did have support for their calculation of the fiscal year 2010 employee average hourly rates, but the calculated amounts were not the amounts the department billed companies.

- The Market Assurance Division did not have effective and consistent methods for billing insurance companies in a timely manner. Staff told us that they generally did not bill an insurance company until after the completion of an examination or investigation. For example, a recent bill stated that it was for the period ending February 26, 2010, but support provided by the division's staff showed that it may have included some travel expenses dating back to fiscal years 2005 and 2006. The determination of billing rates and the identification of related payroll, contract, and travel costs makes these billings complex. Lack of regular, periodic billings makes it difficult for insurance companies to monitor the appropriateness of the costs, increases the risk that the department's bills will have errors or omissions, and does not allow the department to promptly recoup its costs.

- The Market Assurance Division did not have any record of the amounts it had billed to the insurance companies and, consequently, the department could not monitor whether the companies paid the amounts billed. Without a record of the division's accounts receivable, the department is unable to take appropriate action to collect past due amounts and would not detect whether an employee fraudulently misdirected a receipt for personal gain.

The Financial Institutions Division had weaknesses in the following areas:

- The Financial Institutions Division could not ensure the integrity of data in the computerized system it used to determine billed payroll costs. Employees could change hours they previously posted in the system and were already billed to the company. The division also did not reconcile the payroll hours employees posted in the computerized system to the time posted in the state's payroll system.

- The Financial Institutions Division did not detect errors in bills it sent to insurance companies. It did not have an independent review of the calculations of direct and indirect costs assessed to companies before sending out the bills. Five of twelve billings we tested had errors in amounts billed for specific direct costs: The division undercharged two insurance companies by a total of about $660 and overcharged three companies a total of about $2,500.

In addition, the department made mistakes in all four 2009 quarterly indirect cost billings, resulting in about $42,500 of overcharges to insurance companies. The department did not have documentation to support the two 2008 quarterly indirect cost billings we selected for testing.

- The Financial Institutions Division did not report its outstanding accounts receivables to the department's Administrative Division, which was responsible to accumulate and report all of the department's accounts receivable to the Department of Management and Budget, as required by *Minnesota Statutes*.[7] Quarterly reports the Administration Division submitted to the Department of Management and Budget did not include any receivables for insurance examinations and investigations for fiscal years 2007, 2008, and 2009.

Minnesota Statutes require all officers and agencies of the state to maintain records necessary to provide full and accurate documentation of official activities.[8] Statutes further require that the chief administrative officer of each agency preserve the agency's records connected to the transaction of public business, including protecting these records from deterioration, mutilation, loss, or destruction. State policies reinforce this requirement.[9] Preserving public financial records is an important responsibility; it allows management to demonstrate its appropriate use of public resources and protects employees from accusations of error, abuse, and noncompliance with legal requirements.

As a regulatory agency, Department of Commerce employees who examine and investigate businesses work in an environment with a high risk of fraud. It is important that the department maintain adequate documentation and internal controls to ensure employee accountability and to protect employee integrity. Although we did not find direct evidence of fraud, the department's lax oversight allowed the Market Assurance Division to operate in a way that would allow a fraud to occur without detection.

Recommendation

- *The department should improve internal controls over the Market Assurance Division and Financial Institution Division's billings to insurance companies by:*
  - *retaining evidence to support the bills sent to insurance companies, the calculation of the billable rates, and the underlying data that support amounts billed;*

---

[7] *Minnesota Statutes* 2009, 16D.03, subd. 2.

[8] *Minnesota Statutes* 2009, 15.17, subd. 1 and subd. 2.

[9] Department of Management and Budget Policies 0102-01, *Internal Control*, and 0503-01, *Managing and Recording Accounts Receivable.*

- *having an independent review of amounts billed and a verification of the accuracy of underlying data used;*
- *securing the underlying assessment data and comparing it to employee-paid hours to avoid unauthorized data changes and reduce the risk of billing errors;*
- *billing companies at more frequent intervals and retaining bills to support amounts assessed to companies; and*
- *establishing accounts receivable records for amounts billed by the Market Assurance Division and reporting all department receivables to the Department of Management and Budget.*

Finding 2

The Department of Commerce did not adequately pursue recovery of penalty amounts.

As of June 2010, the department had not pursued collection on $23.5 million of penalties, and it had not established the unpaid amounts as formal obligations owed to the state. The department's Market Assurance Division issued penalties to businesses and individual proprietors for noncompliance with laws; however, the department had not pursued penalties dating as far back as January 2007. Employees monitored their cases without periodic management review of the status of collection on the penalties imposed.

The Market Assurance Division submits investigation results to the Office of Administrative Hearings, which conducts a hearing. As a result of the hearing, the office issues a "Finding of Fact, Conclusions of Law, and Order" that stipulates the penalty amount. The department then assesses the penalty to the company or individual proprietor. However, when a party failed to pay the penalty, the department did not submit the penalty for collection to the Department of Revenue's Collection Division, as required by statute.[10] The Market Assurance staff asserted that it needed to enter civil judgments with the county attorney before referring the unpaid penalties to the Department of Revenue for collection; however, they could not explain why this was necessary and why this had delayed the collection of penalties for several years.

The department had not established internal controls for its collection of the Market Assurance Division's penalties. It did not have any formal accounting for its unpaid penalties and did not have a defined process to pursue collection of unpaid amounts. As a result, the department could not ensure that the Market Assurance Division's record of unpaid penalties was complete or accurate, the diligence of collection efforts, or that it had sufficiently reduced the risk of fraud. The department also did not require the Market Assurance Division to

[10] *Minnesota Statutes* 2009, 16D.04, subd. 2 (b).

periodically communicate unpaid penalties to management for review and for reporting to the Department of Management and Budget.

Recommendation

- *The department should improve internal controls over assessed penalties by:*
  - *adequately separating incompatible duties;*
  - *maintaining a record of assessed penalties, payments, and unpaid amounts;*
  - *having management monitor the status and collection efforts for unpaid penalty amounts; and*
  - *submitting unpaid penalties to the Department of Revenue for possible recovery, as required by statute.*

Finding 3

The Department of Commerce did not sufficiently identify, analyze, and document risks and internal controls related to some significant financial operations and compliance requirements.

The Department of Commerce did not sufficiently develop an internal control framework and comprehensive risk analysis over its financial operations. Although it did establish a risk assessment model for various divisions and units to follow, it had only fully developed the model for its two large federal energy assistance programs. For its other financial processes and compliance requirements, the department was aware of certain risks, had many control activities in place, and performed selected internal control monitoring functions. However, without a comprehensive approach to the design of its internal controls over financial operations and compliance with finance-related legal requirements, the department had an increased likelihood of error, irregularities, and noncompliance occurring without detection. State policy requires each agency head to identify, analyze, and manage business risks that impact an entity's ability to maintain its financial strength and the overall quality of its products and government services.[11]

A comprehensive control structure has the following key elements:

- Personnel are trained and knowledgeable about internal controls and finance-related legal provisions and applicable policies and procedures.

- Management identifies risks associated with financial operations and finance-related legal provisions and develops policies and procedures to effectively address the identified risks.

[11] Department of Management and Budget Policy Number 0102-01.

- Management continuously monitors the effectiveness of the controls, identifies weaknesses and breakdowns in controls, and takes corrective action.

- Management focuses on continual improvement to ensure an acceptable balance between controls and costs.

The findings in this report identify weaknesses in the department's internal control procedures and specific noncompliance with finance-related legal requirements that the department's internal control structure did not prevent or detect. If the department had a comprehensive internal control structure, it could have identified these deficiencies, assessed the degree of risk of these deficiencies, designed control procedures to address significant risks, and monitored whether controls were working as designed and effective in reducing the risks to an acceptably low level. It is likely that the department will continue to have weaknesses in internal controls and noncompliance until it operates within a comprehensive internal control structure.

Recommendation

- *The department should regularly review, clearly document, and communicate to staff its risks, control activities, and internal control monitoring functions for its significant business processes and compliance requirements.*

Finding 4

The Department of Commerce allowed employees excessive or unnecessary access to update its licensing systems.

The department did not adequately monitor employee access to the computer systems it used to track licenses, such as insurance-related, real estate, or debt collection licenses and did not limit access based on an employee's current job responsibilities. The department had the following weaknesses related to security access to its licensing systems:

- The department had not deleted the access of 84 former employees to its computerized licensing systems. The department did not include the elimination of system access as a step when employees terminated and had not periodically reviewed who had access to these systems.

- The department allowed some current employees unnecessary or incompatible access to update the licensing systems. Twenty-five employees had incompatible access to the real estate and collections licensing system, including the ability to edit other users' security roles, issue licenses, and post receipt of the license amounts. In addition, 6 of 15 employees we tested had unnecessary access to post receipts in the licensing systems, although this was not a job duty.

Recommendation

- *The department should improve controls by periodically monitoring employee access to its licensing systems, avoiding incompatible access to licensing functions, and ensuring access is necessary based on current job responsibilities.*

Finding 5

The Department of Commerce lacked some internal controls for its receipt process.

The department had the following weaknesses in internal controls for its receipt process:

- The department had no record of the receipts from the time they arrived in the mailroom to the point they are given to the cashier for handling. In addition, the cashier had incompatible duties; the cashier handled incoming receipts, posted them into the appropriate subsystem, restrictively endorsed the checks, prepared the bank deposit, and took the deposit to the bank. Although the department involved other staff in the process after the cashier made the deposit, the department could not be assured that mailroom staff delivered all receipts to the cashier or that the cashier deposited all incoming receipts. We found a $6,113 check in the department's files that it received several months earlier. The cashier was unaware that the check had been misplaced rather than being deposited. Had the check been included on a list of initial receipts, the cashier would have been aware that the check was missing at the time she prepared the deposit. Combined with the lack of accounts receivable records for the Market Assurance Division's billings and penalties, as discussed in Findings 1 and 2, the incompatible duties increase the risk of error and fraud occurring without detection.

- The department did not always comply with a statutory requirement that it deposit receipts totaling $250 or more daily.[12] Noncompliance with the statutory daily deposit requirement put the receipts at an increased risk of loss or theft and reduced the state's investment income. The department had the following areas of noncompliance:

  – The department did not deposit 10 of 123 receipts we tested, ranging from $1,000 to $426,669, in a timely manner.

[12] *Minnesota Statutes* 2009, 16A.275.

– The department did not ensure that one of its two credit card processors transferred receipts to the state's bank account in a timely manner. The department contracted with these credit card processors to allow for online license renewals. One of the processors generally transferred funds into the state's bank account weekly rather than daily, although longer delays did occur. All five of the deposits we tested for this processor had delays ranging from 5 to 78 days. The credit card processor held one deposit totaling $371,662 for 78 days. The department's staff told us the delay was caused by problems the processor was having with reconciling receipts.

Recommendation

- *The department should improve internal controls over receipts and comply with state statute and policy by:*
  - *creating an initial record of receipts;*
  - *separating incompatible duties or implementing effective mitigating controls, such as an independent verification of the initial record of receipts to the bank deposits; and*
  - *depositing receipts daily, including credit card receipts, when the receipts total more than $250 daily.*

Finding 6

The Department of Commerce did not correctly account for some license technology fees, weakening its ability to monitor whether accumulated fees exceeded a statutory cap.

The department did not correctly record some technology fee receipts in the state's accounting system for fiscal years 2008 and 2009. Five of eight deposits we tested did not post about $65,000 to the technology fee account. Department staff explained that they were unable to distinguish the amount of the technology fee within the total amount received through a national insurance registry for online licenses it processed.[13] Staff stated that because they had problems accessing the insurance registry's system to identify the part of the receipt related to the technology fee, they recorded the entire deposit as license revenues and did not allocate any part of the deposit to the account for the technology fees. Our review of national registry license receipt transactions during fiscal years 2008 and 2009 found that the department frequently had not allocated a portion of these receipts to the technology fee account. In fiscal year 2010, the department started to correct some of the errors.

[13] The National Insurance Producer Registry is a national registry where insurance producers from any state can apply or renew licenses online. The national registry then remits the license fees to the appropriate state.

Minnesota Statutes provide authority for the department to add a technology fee to the cost of license originations and renewals and requires that the department record this fee in a special revenue account used to pay the costs of providing an online licensing system, such as the cost of processing credit card payments.[14] The statute allows the department to increase or decrease the fee amount as necessary to keep the fund balance at an adequate level but not in excess of $2,000,000. The department cannot show that it did not exceed this limit, because it did not deposit all of the technology fee amounts to this account.

Recommendation

- *The department should improve controls to ensure that it correctly records technology fees in the state's accounting system and monitors the account's balance to ensure that it does not exceed the statutory limit.*

Finding 7

PRIOR FINDING NOT RESOLVED: The Department of Commerce did not resolve differences between unclaimed securities held by its custodian bank compared to the securities recorded in its unclaimed property database.

Since 2004, the Department of Commerce has had difficulty reconciling securities recorded in its unclaimed property inventory database to the unclaimed securities held by the custodian bank. Statutes allow the department to hold the securities for one year before it can sell the securities and deposit the proceeds into the state's General Fund.[15] As of March 31, 2010, the department held over $13.5 million of unclaimed securities. Resolving differences between unclaimed securities held by the bank and reported in the department's database is critical to ensure that it accurately pays a claimant during the one-year holding period.

The department used a monthly automated comparison that successfully matched many of the securities in the unclaimed property system to the bank investment account. However, staff stated that they could not balance the remainder of the investment account because of differences caused by: 1) department delays in updating the unclaimed property database for up to six months; 2) companies that did not submit holder reports to the department identifying new unclaimed investments; and 3) some unclaimed securities that earned stock dividends or had reinvested earnings that had not been identified and were not yet recorded.

Recommendations

- *The department should promptly update the unclaimed property database for unclaimed securities reported to the*

[14] *Minnesota Statutes* 2009, 45.24.
[15] *Minnesota Statutes* 2009, 345.47, subd 3a.

department in holder reports from banks and investment companies.

- *The department should work with its custodian bank to resolve differences between securities held by the bank and securities recorded in the unclaimed property database in a timelier manner.*

Finding 8

PRIOR FINDING NOT RESOLVED: The department had not conducted a complete inventory of its tangible unclaimed property.

The Department of Commerce had not fully verified that the contents of unclaimed safe deposit boxes agreed with the holder remittance reports provided by the banks when they turned over the unclaimed safe deposit boxes to the department. As of May 2010, the department stated that it had verified the contents of approximately 70 percent of the unclaimed safe deposit boxes it held. Unclaimed property staff entered information from the banks' holder remittance reports into the department's unclaimed property database. However, department staff did not verify the contents of the safe deposit boxes to the database until several months after receipt. Without a timely verification of the contents, the department would be unable to determine whether a discrepancy between the recorded contents of a box and its actual contents was due to error or theft, and whether the error or theft occurred before or after they had custody of the safe deposit box. Department staff stated that records showed that items in the unverified safe deposit boxes were of little value.

Recommendation

- *The department should ensure it promptly compares contents of abandoned safe deposit boxes to holder remittance reports and the unclaimed property inventory database.*

Finding 9

The Department of Commerce did not have written agreements with the other state agencies for some shared staff and computer system costs.

The Department of Commerce provided administrative resources to three state agencies without having interagency agreements. Without an authorized written agreement, disputes could arise about responsibilities of each agency or the value of the shared cost.

The following interagency arrangements lacked authorized written agreements:

- The department acquired a new computerized system to calculate, bill, and monitor collection of assessments to energy and telecommunications companies. The department allowed the Public Utilities Commission to use the new system to manage its assessments and provided the commission with personnel for system maintenance and to monitor and collect the amounts due from utility companies. During fiscal year 2009, the department allocated costs of $500,000 to the Public Utilities Commission for the commission's share of staff and computer system costs. We also reported this concern in a recent audit of the Public Utilities Commission.[16]

- The department provided computer support and accounting services to two boards (the Board of Accountancy and the Board of Architecture, Engineering, Land Survey, Landscape Architecture, Geoscience and Interior Design). The department collected approximately $30,500 annually from the boards for the cost of services provided.

Minnesota Statutes provide authority for the department to enter into a cooperative agreement for the sharing of costs with the other state agencies.[17] State policy authorizes the use of interagency agreements to define the services provided, duration of the agreement, financial obligations, and responsibilities of each agency.[18]

Recommendation

- *The department should develop written interagency agreements with other state agencies to clarify responsibilities and financial obligations between the parties.*

Finding 10

The Department of Commerce did not ensure that it accurately billed utility companies for certain costs and did not charge interest on unpaid accounts.

The department did not have adequate controls to ensure that it accurately billed energy and telecommunications companies. Statutes provide the department (and the Public Utilities Commission) with the legal authority to assess its regulatory costs to utility companies.[19] From July 1, 2007, to March 31, 2010, the department collected over $11 million from utility companies.

[16] Office of the Legislative Auditor, Financial Audit Division, Report 10-21, *Public Utilities Commission*, issued June 15, 2010.
[17] *Minnesota Statutes* 2009, 216A.095.
[18] Department of Management and Budget Policy 0705-05.
[19] *Minnesota Statutes* 2009, 216B.62.

The department made several errors in its billings to energy and telephone companies for direct, overhead fringe, and indirect costs.[20] Department staff stated that they do some "spot-checking" of billings, but the variety and types of mistakes indicate a need for a complete, independent review and approval of the amounts billed. The department had the following errors:

- For fiscal years 2008 and 2009, the department used incorrect employees' pay rates and inaccurately applied hours causing it to underbill companies by $12,885.
- The department made mistakes in its calculation of direct overhead fringe rates used in fiscal years 2008 and 2009, causing it to overbill gas and electric utility companies about $42,000 in fiscal year 2008 and about $62,000 in fiscal year 2009.
- For alternative energy companies, the department made an error in determining the final amount owed for 2009 indirect costs, causing it to overbill alternative energy companies about $36,000 in fiscal year 2010.
- The department improperly included some 2006 legal costs in its 2008 indirect cost bills, causing it to overbill gas and electric companies by almost $47,500 and telecommunications companies by almost $162,000 in fiscal year 2008.

The department's administrative unit did not retain sufficient documentation to support its settlement of estimated prior indirect costs for fiscal years 2008, 2009, and 2010. The department makes adjustments in the following year to settle the difference between estimated and actual costs billed utility companies. In addition, the department did not retain documentation to support its indirect overhead fringe rate calculation used in fiscal years 2008 and 2009 bills. The indirect overhead fringe rate is used to bill administrative employee leave and fringe benefits and other expenses to utility companies.

The department also did not pursue collection of interest for quarterly indirect costs not paid by utility companies within 30 days. *Minnesota Statutes* allow the department to charge interest on past due bills.[21] The department did not include unpaid interest in its subsequent indirect cost bills and did not include interest in the final indirect cost settlements with utility companies. As a result, the

[20] 'Direct costs' involve employee time and travel directly related and billed semi-annually to the company involved and, in addition, direct overhead fringe costs are billed semi-annually for employee leave and fringe benefits, such as healthcare premiums and other expenses. 'Indirect costs' are general operating costs generally attributable to all utility companies that the department billed using quarterly estimates and adjusted to actual amounts in the following year and, in addition, indirect overhead fringe costs are similarly billed quarterly for employee leave and fringe benefits.

[21] *Minnesota Statutes* 2009, 216B.63.

department did not collect $25,674 of interest on indirect cost billings between July 2007 and March 2010.

Recommendations

- *The department should improve internal controls over assessments to utility companies by:*
  - *having an independent review of amounts assessed and verification of the accuracy of bills and underlying billing data; and*
  - *retaining evidence to support the calculation of the billing rates, including interest owed on past due accounts.*

- *The department should review the identified energy billing errors and recover or refund amounts to the affected utility companies.*

Finding 11

The Department of Commerce made some compensation errors, did not document management authorization of some employee compensation changes, and did not complete written performance evaluations of staff.

The department made some employee compensation errors and did not have documentation of management authorizations for some important personnel decisions, such as pay increases and employee performance evaluations.

The department made the following compensation errors in the transactions we tested:

- The department inappropriately authorized $2,000 achievement awards for two deputy commissioners in fiscal year 2008. Department staff did not realize that these lump-sum payments caused the deputy commissioners' salaries to exceed the commissioner's salary, which resulted in noncompliance with *Minnesota Statutes*.[22]

- The department paid an employee one salary step less than the amount approved for this employee by the Department of Management and Budget. The employee's salary was corrected during the audit, and the employee was paid $2,801 as a result of the error.

[22] *Minnesota Statutes* 2009, 43A.17, defines salary, including lump sum payments, and limits the top salary of agency employees to the amount paid to the commissioner of that state agency with certain exceptions, such as department actuaries.

In addition, the department did not document management's authorization for pay increases, and it did not always complete employee performance evaluations. The department had the following weaknesses:

- The department's human resources office processed salary increases without documenting management's authorization or the effective date of pay increases. Employee bargaining unit contracts provide progression step increases based on satisfactory performance, and salary plans provide increases tied to performance standards or objectives.

- The department did not have evidence that it completed annual employee performance evaluations for four out of seven employees tested, as required in *Minnesota Statutes* and the respective state personnel plans or bargaining unit contracts.[23] Tracking documents used by the human resources office showed many performance evaluations were more than one year old. Without performance appraisals, there is no documented basis for any pay changes or possible disciplinary actions.

Recommendations

- *The Department of Commerce should improve internal controls over compensation decisions by:*
  - *ensuring that lump-sum payments do not result in top management compensation beyond statutory limits;*
  - *documenting management's authorization and the effective date of pay rate increases; and*
  - *ensuring that all employees receive written, annual performance evaluations.*

- *The department should correct the identified employee compensation errors.*

Finding 12

The Department of Commerce did not ensure employee mileage reimbursement rates complied with state travel policies.

The department did not adequately control employee travel claims to ensure that mileage rates complied with state policies.[24] It did not ensure that employees were reimbursed for use of their personal vehicle at the lower mileage rate when a state-provided vehicle was available. Instead, the department reimbursed employees for use of their personal vehicle at the higher mileage rate. Mileage reimbursements totaled $363,253 from July 1, 2007, to March 31, 2010.

[23] *Minnesota Statutes* 2009, 43A.20, requires annual performance evaluations for employees of the executive branch.
[24] Department of Management and Budget Policy PAY0021.

The department did not have an established practice to document authorization for mileage reimbursement at a higher rate when the employee opted to use a personal vehicle rather than a state-provided vehicle.[25] Employee contracts and salary plans require a lower mileage rate when an employee declines the use of a state-provided vehicle for trips outside the metropolitan area. From July 2007 through March 2010, the department staff stated that they had used the higher mileage rate to reimbursed nearly $16,150 to one employee who declined the use of a state-provided vehicle for undocumented safety reasons. The reimbursement would have been about $2,150 less if the department had reimbursed the employee at the lower mileage rate.

Without proper authorization for reimbursement at higher mileage rates, the department created an opportunity for fraud or abuse to occur without detection.

Recommendations

- *The department should develop controls to authorize reimbursement at a higher mileage rate by documenting when a state-provided vehicle is unavailable.*

- *The department should review all employees that claimed mileage and seek reimbursement from those paid at the higher rate when it can determine that a state vehicle was available for the employees' use.*

Finding 13

The department did not establish policies and procedures to control costs and reimbursements for a contractor.

The Market Assurance Division did not sufficiently control its expense reimbursements to contractors to ensure that the expenses were reasonable and necessary. The division contracted with several companies to perform examinations of regulated businesses. The contractors submitted their employees' payroll and expense reimbursements to the department for reimbursement; the department then billed those costs to the companies being regulated.

The department had the following weaknesses in its reimbursement to contractors for expense reimbursements:

- The department had not defined what costs were eligible for reimbursement. For example, department policies did not address whether it was appropriate to reimburse a contractor for training costs needed to

[25] A state-provided vehicle could include a state vehicle available within the department or a car provided through the state's negotiated car rental contract.

perform a specialized examination or whether the contractor should incur the cost of that training. In another example, department policies did not clarify whether it was appropriate for the department to reimburse $137 for computer software that the contractor should have provided to its employee.

- The department did not ensure the reasonableness of reimbursements for contractors' employees travel costs when they traveled to locations other than their homes on weekends. The department typically reimbursed contractors for airfare home and back every other weekend. However, the department sometimes reimbursed contract company employees for airfare to other locations when its documentation did not show that the cost was less than or equal to the cost of flying home. For example, in 2008, the department reimbursed airfare from $524 to $593 to one contractor's employee, whose home was in South Dakota, for some weekend trips to South Carolina; exceeding the typical reimbursements (which ranged from $282 to $490) for trips home to South Dakota. The department accepted, without verification, the reasonableness of the cost justification the contractor provided asserting that the alternative travel plans were less than or equal to normal expenses. In another example, the department reimbursed the same contractor for airfare to South Carolina on a weekend when the contractor would normally have stayed in Minnesota. We estimate that the department paid between $60 and $105 more than it would have paid for the contractor to stay in Minnesota.

- The department reimbursed one contractor for a ten-day car rental, although the contractor parked the car at the airport for three of the ten days. In addition to the three days of unnecessary rental costs, the department reimbursed $64 to the contractor for airport parking.

- The department reimbursed contractors for mileage without identification of the locations they traveled to. Without a location, the department could not verify that the mileage claim was accurate and reasonable.

- Finally, the department did not identify staff responsibilities for the review and authorization of contractors' expense reimbursements. The contractor reimbursement forms did not have evidence of review and approval, similar to the supervisory authorizations that the department required for its own employees.

Recommendation

- *The department should develop policies to define the types of reasonable and necessary contractor expenses it will reimburse and establish controls to ensure that it only reimburses contractors in accordance with those policies and contract provisions.*

The Department of Commerce did not ensure the appropriate use of travel benefits earned by employees reimbursed for state-paid travel.

Finding 14

The department did not have procedures in place to monitor the use of personal membership rewards when reimbursing employees for state-paid travel costs. The department's draft policy stated that an employee should not use personal rewards accounts.[26] However, some support for three employees' expense reimbursement claims included information that showed the employees had earned rewards by using their personal credit cards while traveling on state business. One of the employees appropriately used a free day of lodging on a subsequent state business trip; however, another employee earned the personal membership points by charging about $7,000 of department-related lodging to a personal credit card. We saw no evidence that the employee used those reward points to offset lodging costs on subsequent state business trips. *Minnesota Statutes* prohibit an employee from receiving direct or indirect benefits or rewards through their official duties.[27]

Recommendation

- *The department should enforce the prohibition from using personal membership reward accounts or, if used, monitor the reward accounts to ensure any benefits received are used to offset future state travel costs.*

[26] At the time of our audit, the department's travel policy was a draft policy.
[27] *Minnesota Statutes* 2009, 43A.38, subd.2.

Minnesota Department of Commerce

85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
www.commerce.state.mn.us
651.296.4026 FAX 651.297.1959
An equal opportunity employer

December 6, 2010

James Nobles, Legislative Auditor
Room 140 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155-1603

Dear Mr. Nobles:

Thank you for your recent audit of select Commerce activities. We realize the importance of regularly auditing significant aspects of our business and we appreciate the effort you and your staff invested in the review. As with all audits and reviews, we welcome your guidance and will do our best to implement your recommendations. The department's response to the audit findings are listed below.

Finding 1:
The Department of Commerce could not identify or support some amounts it billed insurance companies to recover its investigative costs and did not always know whether insurance companies paid the billed amounts.

Recommendations:

- *The department should improve internal controls over the Market Assurance Division and Financial Institution Division's billings to insurance companies by:*
    - *Retaining evidence to support the bills sent to insurance companies, the calculation of the billable rates, and the underlying data that support amounts billed;*
    - *Having an independent review of amounts billed and a verification of the accuracy of underlying data used;*
    - *Securing the underlying assessment data and comparing it to employee-paid hours to avoid unauthorized data changes and reduce the risk of billing errors;*
    - *Billing companies at more frequent intervals and retaining bills to support amounts assessed to companies; and*
    - *Establishing accounts receivable records for amounts billed by the Market Assurance Division and reporting all departmental receivables to the Department of Management and Budget.*

Response:
The department agrees.

Market Assurance: During the time period covered by the audit, examinations were primarily done by contract examiners. Exam billings by Market Assurance employees were not a regular activity.

Since that time, Market Assurance received statutory authority to recover the costs of regular examinations. In order to implement this new recovery process, we have initiated a new billing process in which employees track time using the SEMA4 system. The Financial Management unit summarizes the information, issues a monthly invoice to the company and retains support documents. Financial Management is also tracking the accounts receivable information and reporting to Minnesota Management and Budget per policy.

Financial Institutions:
"Timetrap" is the program that analysts and examiners use for recording direct time to be billed to specific companies. A process is now in place where the billing clerk will notify staff of the date upon which direct time entries will be closed and no edits will be allowed. At that time, the time for billing purposes will be "frozen" and any further corrections will have to be presented to the supervisor for correction in the subsequent billing cycle. In addition, the billing clerk will reconcile payroll hours in Timetrap to the state's payroll system and issue quarterly invoices.

The division has also implemented a procedure to detect errors in invoices issued by a contract vendor. In the past, discrepancies were detected only after the invoices were produced and sent out. The billing clerk will now have access to status reports in the system that will allow verification of the amounts invoiced prior to distribution.

Financial Institutions is now reporting accounts receivable information to the Financial Management unit for inclusion in quarterly accounts receivable reports.

Staff responsible for implementation: Paul Hanson and Jaki Gardner
Expected date of completion: December 31, 2010

Finding 2:
The Department of Commerce did not adequately pursue recovery of penalty amounts.

Recommendations:

- *The department should improve internal controls over assessed penalties by:*
  - *Adequately separating incompatible duties;*
  - *Maintaining a record of assessed penalties, payments and unpaid amounts;*
  - *Having management monitor the status and collection efforts for unpaid penalty amounts; and*
  - *Submitting unpaid penalties to the Department of Revenue for possible recovery, as required by statute.*

Response:
The department agrees. Reports on penalties assessed and collected are now run on a monthly basis and distributed to the Financial Management unit as well as other employees responsible to submit data to the Department of Revenue, Minnesota Collection Enterprise (MCE). Financial Management is tracking these penalties as accounts receivable and is now reporting to Minnesota Management and Budget per policy.

In addition, the department now has on-line access to report outstanding receivables to MCE and all outstanding receivables for which we have the SSN/EIN and a current address have been reported. In some cases, SSN/EIN information is not available and MCE will not accept the receivable. The on-line access will also allow staff to run reports concerning collection efforts at MCE and these reports will be distributed to all applicable department staff.

Staff responsible for implementation: Robert Commodore
Expected date of completion: December 31, 2010

Finding 3:
The Department of Commerce did not sufficiently identify, analyze, and document risks and internal controls related to some significant financial operations and compliance requirements.

Recommendation:
- *The department should regularly review, clearly document, and communicate to staff its risks, control activities, and internal control monitoring functions for its significant business processes and compliance requirements.*

Response:
The department agrees. In January 2010, the department dedicated a full-time resource to bolster our efforts to strengthen our internal controls. We established a sponsor team inclusive of a number of high-level managers and have evaluated and documented our control environment. As the finding indicates, we have developed a comprehensive approach to strengthening our internal controls. The OLA correctly notes that the first phase of the department's approach, based on our initial risk assessment, targeted two large federal energy assistance programs before some of our other financial processes. We understand the necessity of documenting all of our control processes and the tools that we have developed will enable us to complete this work agency wide by the end of 2011.

Staff responsible for implementation: Jim Pearson, Tim Jahnke and John Harvanko
Expected date of completion: December 31, 2011

Finding 4:
The Department of Commerce allowed employees excessive or unnecessary access to update its licensing systems.

Recommendation:
- *The department should improve controls by periodically monitoring employee access to its licensing systems, avoiding incompatible access to licensing functions, and ensuring access is necessary based on current job responsibilities.*

Response:
The department agrees. Two systems are used to used for licensing – Sircon and Pulse. There are more security options available in Sircon and moving forward we will develop a plan to use those options. Since the OLA's fieldwork, access for former employees has been removed in

Sircon and security staff have reviewed existing security roles and are working to eliminate incompatible access.

Corrective action in Pulse will take longer to achieve because new security roles will need to be defined and created. Department security staff are now creating a new security role for former employees so they can be placed in an "inactive" status as they are within Sircon.

In addition, department system security personnel in conjunction with HR staff have implemented a process through which department security staff will be notified of the end dates of service for any personnel leaving the department. Those end dates will immediately be recorded in the applicable system.

Staff responsible for implementation: Robert Commodore
Expected date of completion: June 30, 2011

Finding 5:
The Department of Commerce lacked some internal controls for its receipt process.

Recommendations:

- *The department should improve internal controls over receipts and comply with state statute and policy by:*
  - *Creating an initial record of receipts;*
  - *Separating incompatible duties or implementing effective mitigating controls, such as an independent verification of the initial record of receipts to the bank deposits; and*
  - *Depositing receipts daily, including credit card receipts, when the receipts total more than $250 daily.*

Response:
The department partially agrees. The department will continue to review the internal control framework related to the receipt process, and reassess risks related to receipt processing. Due to current resource levels, it will be difficult to implement or reallocate resources to fully implement the recommendations. Factors that will come into play include current staffing levels, the ability to reallocate current staff, funding available for additional staff and the decreased risks associated with having fewer staff members handle the checks to decrease the chance of misplacement, separation from supporting documentation, and/or fraud.

The department makes every effort to comply with the requirement to make daily deposits for receipts totaling $250. The contract vendor referenced in the report is currently sending funds to the state on a daily basis.

Staff responsible for implementation: Tim Jahnke
Expected date of completion: June 30, 2011

Finding 6:
The Department of Commerce did not correctly account for some license technology fees, weakening its ability to monitor whether accumulated fees exceeded a statutory cap.

Recommendation:

- *The department should improve controls to ensure that it correctly records technology fees in the state's accounting system and monitors the account's balance to ensure that it does not exceed the statutory limit.*

Response:
The department agrees. Access to information on the NIPR website has been fixed and license technology fees are now being credited to the proper account.

Staff responsible for implementation: Amy Trumper
Expected date of completion: Completed

Finding 7:
PRIOR FINDING NOT RESOLVED: The Department of Commerce did not resolve differences between unclaimed securities held by its custodian bank compared to the securities recorded in its unclaimed property database.

Recommendations:

- *The department should promptly update the unclaimed property database for unclaimed securities reported to the department in holder reports from banks and investment companies.*
- *The department should work with its custodian bank to resolve differences between securities held by the bank and securities recorded in the unclaimed property database in a timelier manner.*

Response:
The Department partially agrees. Over the past several years, the department has resolved numerous discrepancies between the securities held by the custodian, and what is reflected within the unclaimed property database. This reconciliation process is an on-going effort. Due to the nature of the program and the ability for any business to transfer securities into the custodian account without proper or accurate holder reporting, the custody account will always have reconciling items outstanding. Program staff continuously monitors the securities account, and works to resolve discrepancies as they arise. The department will explore resource options to more timely resolve discrepancies and expedite the holder report loading process.

Staff responsible for implementation: Amy Trumper
Expected date of completion: June 30, 2011

Finding 8:
PRIOR FINDING NOT RESOLVED: The department had not conducted a complete inventory of its tangible unclaimed property.

Recommendation:

- *The department should ensure it promptly compares contents of abandoned safe deposit boxes to holder remittance reports and the unclaimed property inventory database.*

Response:

The department partially agrees. Based on department resources, management decisions have been made to first focus on the holder reports with a cash value or securities related to the owner. As resources become available, the safe deposit box inventory is completed. Over the past several years, the department has not recorded a single exception to the inventory report submitted by the financial institution for box contents. The department will explore resource options to expedite the safe deposit box inventory process.

Staff responsible for implementation: Amy Trumper
Expected date of completion: June 30, 2011

Finding 9:
The Department of Commerce did not have written agreements with the other state agencies for some shared staff and computer system costs.

Recommendation:
- *The department should develop written interagency agreements with other state agencies to clarify responsibilities and financial obligations between the parties.*

Response:
The department agrees. An interagency agreement is now in place with the Board of Accountancy and the Board of Architecture, Engineering, Land Survey, Landscape Architecture, Geoscience and Interior Design. The Public Utilities Commission works very closely with the department in a variety of areas related to utility regulation. It will be helpful to document the nature and cost of that relationship and an interagency agreement is currently in process.

Staff responsible for implementation: Greg Fetter
Expected date of completion: December 31, 2010

Finding 10:
The Department of Commerce did not ensure that it accurately billed utility companies for certain costs and did not charge interest on unpaid accounts.

Recommendations:
- *The department should improve internal controls over assessments to utility companies by:*
  - *Having an independent review of amounts assessed and verification of the accuracy of bills and underlying billing data; and*
  - *Retaining evidence to support the calculation of the billing rates, including interest owed on past due invoices.*
- *The department should review the identified energy billing errors and recover or refund amounts to the affected utility companies.*

Response:
The department agrees. In prior years, utility assessments were created through an internally developed Foxpro database. The database was old, not particularly user-friendly and needed a fair amount of maintenance to produce the utility assessment invoices. A new assessment system, eAssess, was implemented in FY10 to better invoice and track both direct and indirect

utility assessment costs. eAssess allows Financial Management staff to manage data and run a greater number of reports to allow for better verification of the invoiced amounts and provides better documentation.

Financial Management will begin cross-training another staff member to do additional verification of certain items. There will also be additional review by Financial Management supervisors. In addition, documentation requirements have been strengthened to make sure backup documentation is readily available for each billing.

It would be virtually impossible to calculate, with any accuracy, refund or recovery amounts based on the examples cited in the report. Each assessment is based on data from a specific date in time and it would be extremely difficult to recreate the data set used for each calculation. In addition, the Foxpro database has not been maintained for over a year.

Staff responsible for implementation: Tim Jahnke and Amy Trumper
Expected date of completion: June 30, 2011

Finding 11:
The Department of Commerce made some compensation errors, did not document management authorization of some employee compensation changes, and did not complete written performance evaluations of staff.

Recommendations:

- *The Department of Commerce should improve internal controls over compensation decisions by:*
  - *Ensuring that lump-sum payments do not result in top management compensation beyond statutory limits;*
  - *Documenting management's authorization and the effective date of pay rate increases; and*
  - *Ensuring that all employees receive written, annual performance evaluations.*
- *The department should correct the identified employee compensation errors.*

Response:
The department agrees. To improve our internal controls over compensation decisions we will include a staff attorney in the decision process to ensure future compliance with statutory compensation limits. We are also in the process of finalizing an electronic document, to be maintained by our human resources staff and centrally located, so managers and supervisors have a clear record of when performance appraisals are due. By creating an easily accessible document for all managers to see we can now ensure the consistency of the information and create a higher level of accountability because it will be obvious when employee performance appraisals are due (and which managers and supervisors have not done them). As part of this process, human resources staff will no longer accept verbal authorizations of effective dates and pay rate increases.

Staff responsible for implementation: Colleen Hegstrom
Expected date of completion: December 31, 2010

Finding 12:
The Department of Commerce did not ensure employee mileage reimbursement rates complied with state travel policies.

Recommendations:

- *The department should develop controls to authorize reimbursement at a higher mileage rate by documenting when a state-provided vehicle is unavailable.*
- *The department should review all employees that claimed mileage and seek reimbursement from those paid at the higher rate when it can determine that a state vehicle was available for the employees' use.*

Response:
The department agrees. The department has implemented a policy that reimburses employee mileage at the current IRS rate minus $.07 per mile (or the rate specified by the applicable collective bargaining agreement or compensation plan) *unless* the employee documents that a state vehicle is not available. The policy provides reimbursement at the higher rate if the total miles traveled multiplied by the current IRS rate is less than the daily rate for a mid-sized car under the current state vehicle rental contract (currently at $36.00 per day). By communicating and implementing this policy we strengthen one of our internal controls and eliminate the opportunity for fraud or abuse to occur in this area.

Staff responsible for implementation: Jim Pearson
Expected date of completion: December 31, 2010

Finding 13:
The department did not establish policies and procedures to control costs and reimbursements for a contractor.

Recommendation:

- *The department should develop policies to define the types of reasonable and necessary contractor expenses it will reimburse and establish controls to ensure that it only reimburses contractors in accordance with those policies and contract provisions.*

Response:
The department agrees. The department concurs that the use of contractors and their associated expenses should be documented and justified. Review and documentation standards will be increased for travel and expense reimbursement to more closely follow the process used for internal reimbursement of employee travel. Contractors will be required to provide Mapquest maps to document the number of miles driven and they will be required to provide a cost/benefit analysis prior to booking alternative travel plans.

Work orders against the master contract will be modified to more clearly identify the types of items for which the state will provide reimbursement. This process could be challenging because the contractors are retained for non-routine examinations and it is very difficult to predetermine what expenses and costs may be needed to complete each examination. Whenever feasible, special expenses will be approved in advance, however, standards for expense review will need to remain somewhat flexible to not materially impact an examination where a special need arises.

Staff responsible for implementation: Paul Hanson
Expected date of completion: January 31, 2011

Finding 14:
The Department of Commerce did not ensure the appropriate use of travel benefits earned by employees reimbursed for state-paid travel.

Recommendation:

- *The department should enforce the prohibition from using personal membership reward accounts or, if used, monitor the reward accounts to ensure any benefits received are used to offset future state travel costs.*

Response:
The department agrees. The department will reinforce the prohibition on employees enrolling in personal membership reward accounts and will monitor information attached to expense reports to make sure employees are complying. If found, employees will be asked to cancel their enrollment in the program or provide quarterly reports on account activity to the Financial Management unit.

Staff responsible for implementation: Amy Trumper
Expected date of completion: December 31, 2010

Sincerely,

Glenn Wilson

Glenn Wilson
COMMISSIONER