

U.S. CONSUMER PRODUCT SAFETY COMMISSION



OFFICE OF THE INSPECTOR GENERAL

SEMIANNUAL REPORT TO CONGRESS

April 1, 2014 - September 30, 2014



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814

Memorandum

Date: October 30, 2014

TO : Elliot F. Kaye, Chairman
Robert S. Adler, Commissioner
Marietta S. Robinson, Commissioner
Ann Marie Buerkle, Commissioner
Joseph P. Mohorovic, Commissioner

FROM : Christopher W. Dentel
Inspector General

SUBJECT : Semiannual Report, April 1, 2014 through September 30, 2014

I hereby submit the Semiannual Report for the Office of the Inspector General for the period April 1, 2014 through September 30, 2014. The report, which is required by the Inspector General Act of 1978, as amended, summarizes the activities of this office during this six-month period. Section 5 of the Act requires that the head of the agency transmit this report to the appropriate Congressional committees within 30 days of its receipt.

I appreciate the cooperation and support received from the Commission staff during the reporting period.

Sincerely,


Christopher W. Dentel
Inspector General

EXECUTIVE SUMMARY

This semiannual report summarizes the major activities performed by the Office of the Inspector General (OIG), during the reporting period April 1, 2014 through September 30, 2014. During the reporting period, this office worked on 8 audits or reviews. At the end of the reporting period, 5 audits or reviews and 1 investigation were in progress.

The OIG received a number of complaints during the reporting period, 4 of which resulted in the initiation of formal investigations. Eight investigations were closed or transferred during the reporting period. Management officials, with the exception noted in the first case listed in the reportable investigation section, acted on the recommendations made in the completed investigations.

The OIG continues to be involved with the Council of the Inspectors General on Integrity and Efficiency and the Council of Counsels to the Inspectors General.

INTRODUCTION

U. S. CONSUMER PRODUCT SAFETY COMMISSION

The U.S. Consumer Product Safety Commission (CPSC) is an independent federal regulatory agency created in 1972, under the provisions of the Consumer Product Safety Act (CPSA) (P.L. 92-573) to protect the public against unreasonable risks of injuries associated with consumer products. Under the CPSA and the Consumer Product Safety Improvement Act of 2008 (CPSIA), Congress granted the CPSC broad authority to issue and enforce standards prescribing performance requirements, warnings, or instructions regarding the use of consumer products. The CPSC also regulates products covered by a variety of other acts, such as the Virginia Graeme Baker Pool and Spa Safety Act, the Children's Gasoline Burn Prevention Act, the Flammable Fabrics Act, the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, and the Refrigerator Safety Act.

The CPSC is headed by five Commissioners appointed by the President with the advice and consent of the Senate. The Chairman of the CPSC is designated by the President. The CPSC's headquarters is located in Bethesda, MD. The agency has field personnel stationed throughout the country. The CPSC had a budget of \$118 million and 548 authorized full-time equivalent positions for FY 2014.

OFFICE OF THE INSPECTOR GENERAL (OIG)

The OIG is an independent office, established under the provisions of the Inspector General Act of 1978, as amended by the Inspector General Act Amendments of 1988, and the Inspector General Reform Act of 2008. The Inspector General Act gives the Inspector General the authority and responsibility to:

- conduct and supervise audits and investigations of CPSC programs and operations;

- provide leadership, coordination, and recommend policies for activities designed to: (i) promote economy, efficiency, and effectiveness in the administration of the CPSC's programs and operations; and (ii) prevent and detect fraud, waste, and abuse of CPSC programs and operations; and
- keep the Chairman and Congress fully and currently informed about problems and deficiencies relating to the administration of CPSC programs and operations and the need for progress or corrective action.

The OIG investigates complaints and information received concerning possible violations of laws, rules, and regulations, mismanagement, abuse of authority, and waste of funds. These investigations are in response to allegations, complaints, and information received from CPSC employees, other government agencies, contractors, and other concerned individuals. The objective of this program is to ensure the integrity of the CPSC and ensure individuals fair, impartial, and independent investigations.

The OIG also reviews existing and proposed legislation and regulations relating to the programs and operations of the CPSC concerning their impact on the economy and efficiency in the administration of such programs and operations.

The OIG was authorized seven full-time equivalent positions for FY 2014: the Inspector General, a Deputy Inspector General for Audits, an Attorney-Investigator, an office manager, an Information Technology auditor, and two line auditors.

AUDIT PROGRAM

During this period, the OIG worked on 8 audits and reviews. A summary of each follows:

AUDIT OF FINANCIAL STATEMENTS (ongoing)

The Accountability of Tax Dollars Act of 2002 requires that the CPSC and other smaller agencies, which had not been required to perform annual financial audits in the past, begin performing annual audits of their financial statements. This audit is being performed to meet this statutory requirement.

The objectives of this audit are to ensure that the CPSC is meeting its responsibilities for: (1) preparing the financial statements in conformity with generally accepted accounting principles; (2) establishing, maintaining, and assessing internal controls to provide reasonable assurance that the broad control objectives of the Federal Managers' Financial Integrity Act are met; (3) ensuring that the CPSC's financial management systems substantially comply with statutory requirements; and (4) complying with other generally applicable laws and regulations.

To conduct this audit, the CPSC OIG contracted with CliftonLarsonAllen, an independent certified public accounting firm. The contract requires that the audit be performed in accordance with generally accepted government auditing standards and the Financial Audit Manual.

This audit is scheduled for completion in November 2014.

FEDERAL INFORMATION SECURITY MANAGEMENT ACT REPORTING REQUIREMENTS (ongoing)

The Federal Information Security Management Act of 2002 (FISMA) requires each federal agency to develop, document, and implement an agency-wide program to provide information security

for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source.

FISMA requires agency program officials, chief information officers, and inspectors general to conduct annual reviews of the agency's information security program and report the results to the Office of Management and Budget (OMB). OMB uses this data to assist in its oversight responsibilities and to prepare this annual report to Congress on agency compliance with the Act.

FISMA assigns specific responsibilities to federal agencies, the National Institute of Standards and Technology (NIST), and OMB to strengthen information system security.

This review will measure agency compliance with FISMA requirements and is scheduled for completion in November 2014.

AWARDS PROGRAM AUDIT

The purpose of the CPSC's Performance and Incentive Awards and Within-Grade Increase Program (Awards Program) is to recognize outstanding performance by employees and to encourage increased productivity and efficiency in agency operations. It provides managers a way to recognize excellent performance, exceptional achievement, constructive ideas, and suggestions that conserve work time or increase program effectiveness.

The CPSC's Awards Program is governed primarily by local agency guidance in the form of CPSC Directive System Order 1024.1, Employee Evaluation and Recognition, Performance and Incentive Awards Programs and Within-Grade Increases. The purpose of the guidance is to establish policies and procedures for implementing the CPSC's Performance and Incentive Awards component of its Performance Management System in accordance with Federal law and Office of Personnel Management (OPM) requirements.

The CPSC OIG retained the services of Withum, Smith & Brown (WS+B) an independent certified public accounting firm, to assess the Award Program's compliance with laws and regulations and to measure the effectiveness of the program at meeting its stated goals. Under a contract monitored by the Office of Inspector

General, WS+B concluded that the CPSC had effectively implemented the annual appraisal and performance rating component of its Awards Program. The CPSC had written policies and procedures that established performance standards for the evaluation of employee job performance in compliance with federal laws and regulations. The process is documented in accordance with OPM requirements and subsequently reported to OPM's Central Personnel Data File, where all personnel actions for the federal workforce are maintained. Based on WS+B's audit testing, they found that the CPSC's appraisal and performance rating process were in compliance with CPSC and OPM requirements. However, they found no written policies and procedures at the agency or organization level for how cash awards were to be proportionately allocated based on employee ratings, and they were not provided documentation to support how final allocation decisions were made. Without a documented, consistent approach for allocating cash awards at the organization level, the program is open to the perception of inequity and abuse. Due to this lack of internal controls, the cash awards component of CPSC's Awards Program was found to not be operating effectively.

In connection with the contract, we reviewed WS+B's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, an opinion on the matters contained in the report. However, our review disclosed no instances where WS+B did not comply, in all material respects, with generally accepted government auditing standards.

GOVERNMENT PERFORMANCE AND RESULTS ACT AUDIT (ongoing)

The Government Performance and Results Act of 1993 (GPRA), as amended by the GPRA Modernization Act of 2010 (P.L. 111-352), requires the CPSC to report annual performance data. GPRA is intended to improve the efficiency and effectiveness of Federal Programs through the establishment of specific goals for program performance. Specifically, the act requires the CPSC to prepare multi-year Strategic Plans, Annual Performance Plans, and Annual Performance Reports.

The objectives of this audit are to verify and validate a sample of performance data, published in the CPSC's annual performance reports, used to measure the performance of CPSC's programs. This audit should both ascertain CPSC's compliance with GPRA, as amended, and determine whether the performance data published complies with established guidance, and is reliable.

To conduct this audit, the CPSC OIG contracted with WithumSmith+Brown, an independent certified public accounting firm. The contract requires that the audit be performed in accordance with Generally Accepted Government Auditing Standards.

INFORMATION TECHNOLOGY INVESTMENT MANAGEMENT AUDIT

The Consumer Product Safety Improvement Act (CPSIA) calls for upgrades of the Commission's information technology (IT) architecture and systems and the development of a database of publicly available information on incidents involving injury or death required under section 6A of the Consumer Product Safety Act, as added by section 212 of the CPSIA. It also calls for the Office of Inspector General to review the agency's efforts in these areas.

In order to objectively assess the CPSC's efforts in this area and to help provide the agency with a road map to meet the goals set out in the CPSIA this office chose to employ the Government Accountability Office's (GAO) Information Technology Investment Maturity (ITIM) model framework. The ITIM framework is a maturity model composed of five progressive stages of maturity that an agency can achieve in its IT investment management capabilities. The maturity stages are cumulative; that is, in order to attain a higher stage of maturity, the agency must have institutionalized all of the requirements for that stage in addition to those for all of the lower stages. The framework can be used to assess the maturity of an agency's investment management processes as a tool for organizational improvement.

GAO's ITIM maturity model framework offers organizations a road map for improving their IT investment management processes in a systematic and organized manner. These process improvements are intended to: improve the likelihood that investments will be

completed on time, within budget, and with the expected functionality; promote better understanding and management of related risks; ensure that investments are selected based on their merits by a well-informed decision-making body; implement ideas and innovations to improve process management; and increase the business value and mission performance of investments.

In fiscal year 2011, under a contract monitored by the Office of Inspector General, Withum, Smith & Brown (WS+B), an independent certified public accounting firm, issued an audit report regarding the CPSC's Information Technology (IT) investment management processes, using the Government Accountability Office's (GAO) Information Technology Investment Management (ITIM) framework. This initial ITIM audit found that the CPSC had reached stage 1 of the five-stage IT investment maturity model. WS+B outlined 11 specific actions that in their opinion the CPSC would need to accomplish to achieve maturity Stage 2. In fiscal year 2012 a follow-up ITIM audit was conducted by WS+B which found that the CPSC was still at Stage 1 of the five-stage IT investment maturity model as defined by the GAO. They also found that the CPSC had implemented most of the key practices and critical processes that constitute Stage 2. Based on their assessment, they outlined two specific actions that in their opinion the CPSC needed to perform to achieve maturity Stage 2

Attached please find the second Follow-up Performance Audit of the Information Technology Investment Maturity of the Consumer Product Safety Commission. This audit was also performed by WS+B under a contract monitored by the Office of Inspector General. In connection with the contract, we reviewed WS&B's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, an opinion on the matters contained in the report. However, our review disclosed no instances where WS&B did not comply, in all material respects, with U.S. generally accepted government auditing standards.

In the current review, WS+B found that during the current audit period, the CPSC had not executed five of the key practices described in Stage 2 that had previously been identified in the previous audit as being executed. The CPSC had also executed one new key practice that was not previously executed. Put another

way, the agency lost ground in some areas, but gained ground in others. However, taken as a whole, the agency was still at the lowest level, maturity Stage 1.

OPPORTUNITIES EXIST TO ENSURE CPSC EMPLOYEES ARE SATISFYING IN GOOD FAITH THEIR JUST FINANCIAL OBLIGATIONS

The U.S. Consumer Product Safety Commission (CPSC) Office of Inspector General (OIG) conducted an evaluation of the CPSC's efforts to ensure its employees are, in good faith, satisfying their financial obligations, especially those of Federal, State or local taxes imposed by law. According to the 2011 *Federal Employee/Retiree Delinquency Initiative Report*, prepared by the Internal Revenue Service (IRS), Federal civilian employees owed \$2,976,279 in back taxes. Included in that amount were 20 CPSC civilian employees, who collectively owed \$194,164 in unpaid tax liabilities.

The OIG conducted this evaluation in accordance with the Quality Standards for Inspection and Evaluation established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) in 2011. We reviewed tax withholdings and garnishment activity of the CPSC's employees during the period between October 1, 2012 and December 31, 2013. This included reviews of the respective employee's 2013 Form W-2 *Wage and Tax Statement* information with the related tax withholdings data and the relevant key internal controls. Finally, we assessed the CPSC's compliance with identified applicable laws, regulations, and provisions.

We identified four employees who had no (\$0) federal income taxes withheld, due to claiming an exempt status. These employees had gross annual wages of \$30,456, \$34,075, \$65,393, and \$65,393, respectively. In addition, we identified 15 employees that did have federal taxes withheld, but claimed an excessive amount of exemptions, ranging from 10 to 99, as a means to curtail the amount of taxes withheld and possibly avoid payment of federal taxes.

We determined that the CPSC Office of Human Resources (EXRM) had not established proper oversight procedures over wage garnishments processed by their service provider, the Interior

Business Center (IBC) of the U.S. Department of the Interior (DOI). As a result, they are unable to implement timely corrective/adverse actions on employees whose failure to meet their financial obligations relating to Federal taxes have resulted in involuntary court orders and salary offsets. EXRM's current process to identify involuntary garnishment or unpaid financial obligation by employees does not rely on any sort of "active monitoring" but instead on infrequent background/suitability investigations which are conducted internally once every five years.

We found that EXRM relies exclusively on DOI's IBC to both perform and ensure the completeness and accuracy of the processing of CPSC's garnishments. While IBC provides services over specific aspects of payroll processing, to include debt management for active federal employees, the CPSC still has the legal responsibility to ensure the accuracy and timeliness of these processes. As previously stated, EXRM has not established proper oversight procedures over wage garnishments processed by IBC. Thus, EXRM is unable to ensure garnishments are processed accurately and timely.

THIRD PARTY LABORATORY ACCREDITATION (Ongoing)

The purpose of this audit is to determine if the CPSC has adequate internal controls, policies, and procedures in place to monitor and manage the accreditation of third party laboratories as required in accordance with the Consumer Product Safety Improvement Act; and if same are functioning in a reasonable manner.

To conduct this audit, the CPSC OIG contracted with Kearney & Company (Kearney), an independent certified public accounting firm. The contract requires that the audit be performed in accordance with Generally Accepted Government Auditing Standards.

**AUDIT OF THE COMMISSION'S COMPLIANCE WITH THE FREEDOM OF
INFORMATION ACT (FOIA) (Ongoing)**

The purpose of this audit is to determine whether the CPSC has developed proper internal controls and policies & procedures to comply with FOIA laws and regulations. To assess the CPSC's compliance with the FOIA, our guidelines will include, but not be limited to: the Freedom of Information Act of 1966; 16 CFR part 1015; Department of Justice FOIA procedure requirements; relevant Office of Management and Budget circulars and memorandums; relevant Executive Orders; and CPSC directives.

INVESTIGATIVE PROGRAM

A number of individuals contacted the OIG during the reporting period to discuss their concerns about matters involving CPSC programs and activities. Four of the individuals filed formal complaints, alleging waste, fraud, abuse, or mismanagement of CPSC resources. These complaints resulted in the initiation of 4 investigations. Several matters were transferred to CPSC officials (management or EEOC) or to other government agencies for final disposition after initial investigation indicated that these cases would be dealt with more appropriately outside of IG channels. Several investigations were closed after initial investigation determined that no action was required.

Investigations

	No. of Cases
Beginning of period	5
Opened	4
Closed	6
Transferred/Incorporated into existing investigation	2
End of the period	1

REPORTABLE INVESTIGATIONS

Alleged Misuse of Position by a Management Official - an allegation was received by this office from the Department of Justice (DoJ) that a current management official failed to report a potential 18 USC 207 violation by a former CPSC management official. After initially opening a criminal investigation, the DoJ decided to not prosecute the case criminally but requested that the CPSC OIG initiate an administrative investigation. Investigation determined that it was more likely that not that the alleged misconduct had taken place. The agency accepted this office's recommendations regarding providing additional training to agency officials regarding their obligations to report 18 USC 207 violations in the future, but did not accept this office's recommendation to take disciplinary action against the current management official in question.

Alleged Waste by Agency Management - an allegation was received by this office indicating that agen inappropriately acquiring a testing device, [REDACTED] Preliminary investigation indicated that the being made in accordance with appropriate policies and procedures. The case was closed.

Alleged Misconduct by a Government Employee - an allegation was received indicating that product safety testing conducted involving a number of toys that fired suction cup tipped darts was not conducted correctly. Preliminary investigation indicated that the testing was accomplished in accordance with agency procedures. The case was closed.

Alleged Misconduct by a Government Employee - The agency is in the process of taking administrative action in this case and no details will be releasable until such action is final. The case was initially referred to the Department of Justice (DoJ) for criminal prosecution but the DoJ elected to not initiate criminal proceedings.

Alleged Attempted Fraud - the CPSC's Office of the Secretary reported that it has been contacted by a number of individuals who claimed to have received checks from the CPSC made out to them in an amount of just less than \$2000.00. Preliminary investigation determined that the CPSC had not issued the checks in question and that the Office of the Secretary had failed to retain contact information for any of the individuals in question. The investigation was closed pending any future contact by impacted individuals.

Allegations of Waste, Abuse, and Mismanagement - an allegation was received indicating that a number of CPSC employees involved in the matter captioned "In re: Maxfield and Oberton Holdings, LLC" had made material misrepresentations in the amended complaint filed by the CPSC, retaliated against an American citizen for exercising his First Amendment rights, and failed to comply with the Information Quality Act and the Freedom of Information Act. Preliminary investigation by this office determined that all of the allegations raised had already been the subject of judicial review to one degree or another. Based on: the judicial rulings made on the relevant issues, the settlements reached between the relevant parties, the lack of evidence that any of the named employees acted

outside of the scope of their employment, and the lack of evidence that any of the CPSC employees in question acted in a reckless or malicious manner or had any impermissible motivation for their actions, the investigation was closed.

Allegation of Failure to Engage in Rulemaking - an allegation was received by this office indicating that the CPSC had failed to engage in a rulemaking activity. Specifically, the allegation was from the inventor of a product alleging that the CPSC had failed to pass rules requiring that his product be purchased rather than his competitors. A preliminary investigation determined that this matter was outside the jurisdiction of this office.

Allegation of Improper Hiring Practices - an allegation was received by this office indicating that the employee had been discriminated against in the hiring process. Preliminary investigation determined that this allegation was already the subject of an ongoing EEO Investigation. This complaint was transferred to the EEO Office for further processing.

Retaliation for Engaging in Whistle Blower Type Activities - an allegation was received by this office indicating that the complainant has been the subject of retaliation for raising safety concerns to his employer. The complainant also alleged that when the matter was raised with OSHA the officials involved acted improperly. Preliminary investigation determined that this office did not have jurisdiction over the complaint and it was transferred to the Department of Labor Office of Inspector General.

ONGOING INVESTIGATIONS

An investigation was ongoing at the end of the period dealing with allegations of misuse of official time and position by a management official.

OTHER ACTIVITIES

LEGISLATION AND REGULATIONS

The OIG reviews internal and external legislation and regulations that affect the OIG specifically, or the CPSC's programs and activities, generally. Procedures applicable to the following subjects were reviewed and commented upon during the reporting period:

- Whistle Blower Protection Act
- Whistle Blower Protection Enhancement Act
- Federal Transit Benefit Program
- Consumer Product Safety Improvement Act
- Consumer Product Safety Act
- Training of Managers and Supervisors
- Agency Privacy Program
- Hatch Act
- Conflict of Interest
- Federal Information Security Management Act
- Purchase Card Program
- Travel Card Program
- Changes in Agency Financial Management Policies
- Anti-Deficiency Act
- Merit System Principles
- Prohibited Personnel Practices
- Telework Policies
- Improper Payments Elimination and Recover Act
- Inspector General Act
- Government Charge Card Abuse Prevention Act

COUNCIL OF INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

The Inspector General, as a member of the Council of Inspectors General on Integrity and Efficiency (Council), maintains active membership with the Council and its associated activities. The Council identifies, reviews, and discusses issues that are of interest to the entire IG community. The Inspector General attended regular meetings held by the Council and joint meetings of the Council and GAO. The OIG's staff attended seminars and training sessions sponsored or approved by the Council and its associated activities.

COUNCIL OF COUNSELS TO THE INSPECTORS GENERAL

The Counsel to the Inspector General is a member of the Council of Counsels to the Inspectors General. The Council considers legal issues of interest to the Offices of Inspectors General. During the review period, the Council reviewed existing and pending laws affecting the CPSC, in general, and the Office of the Inspector General, specifically. Also, the Council provided additional support to the Inspector General, as needed.

REPORTING REQUIREMENTS SUMMARY

Reporting requirements specified by the Inspector General Act of 1978, as amended, are listed below:

<u>Citation</u>	<u>Reporting Requirements</u>	<u>Page</u>
Section 4(a)(2)	Review of Legislation and Regulations.....	14
Section 5(a)(1)	Significant Problems, Abuses, Deficiencies.....	4-13
Section 5(a)(2)	Recommendations with Respect to Significant Problems, Abuses, and Deficiencies.....	4-13
Section 5(a)(3)	Significant Recommendations Included in Previous Reports On Which Corrective Action Has Not Been Taken.....	11
Section 5(a)(4)	Matters Referred to Prosecutive Authorities.....	12-13
Section 5(a)(5)	Summary of Instances Where Information Was Refused.....	NA
Section 5(a)(6)	Reports Issued.....	4-13
Section 5(a)(7)	Summary of Significant Reports.....	4-13
Section 5(a)(8)	Questioned Costs.....	NA
Section 5(a)(9)	Recommendations That Funds Be Put to Better Use.....	NA
Section 5(a)(10)	Summary of Audit Report Issued Before the Start of the Reporting Period for Which No Management Decision Has Been Made.....	NA
Section 5(a)(11)	Significant Revised Management Decisions.....	NA
Section 5(a)(12)	Management Decisions with Which the Inspector General Is in Disagreement.....	11
Section 845 of The NDAA of 2008	Significant Contract Audit Reports.....	NA

PEER REVIEW RESULTS

The last peer review conducted by another Office of Inspector General on the CPSC's OIG was issued on March 14, 2014, and it is available on the CPSC OIG's Web page. No deficiencies were noted, no recommendations for improvement were made, no letter of comment was issued, and this office received a peer review rating of pass.

The last peer review conducted by the CPSC's OIG on another Office of Inspector General occurred on December 13, 2013, and it involved the National Endowment of the Arts Office of Inspector General (NEA OIG). No deficiencies were noted and no formal recommendations were made in that review. A letter of comment was issued to the NEA OIG.