



**OFFICE OF INSPECTOR GENERAL**  
**AUDIT OF THE COLLECTION OF CIVIL PENALTIES**

**Issued: August 4, 2015**



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

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Date: August 3, 2015

TO : Elliot F. Kaye, Chairman  
Robert S. Adler, Commissioner  
Marietta S. Robinson, Commissioner  
Ann Marie Buerkle, Commissioner  
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FROM : Christopher W. Dentel, Inspector General

SUBJECT : Audit of the CPSC's Civil Penalty Collection Program

The Office of Inspector General has completed its audit of the CPSC's Civil Penalty Collection Program. A copy of the report is attached.

As detailed in the report, we found that the CPSC had a functioning Civil Penalty Collection Program, but the program had several internal control weaknesses. In addition, we discovered that the program did not comply with certain contract provisions.

Management, the Division of Financial Management Services (FMFS) and the Office of General Counsel (OGC), has been briefed regarding the findings and recommendations of this audit and given an opportunity to respond to them. Management generally concurred with the findings and either agreed to implement corrective actions regarding these findings or indicated that corrective action had already been taken. OGC's written response can be found in its entirety as an attachment to the report.

If you have any questions about this report or wish to discuss it, please feel free to contact me at 301-504-7644 or [cdentel@cpsc.gov](mailto:cdentel@cpsc.gov).

  
Christopher W. Dentel  
Inspector General

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## **EXECUTIVE SUMMARY**

### **BACKGROUND**

The U.S. Consumer Product Safety Commission (CPSC) Office of Inspector General (OIG) conducted an audit over the CPSC's collection of civil penalties. The CPSC holds violators accountable for hazardous consumer products by using its enforcement authorities. The Consumer Product Safety Improvement Act of 2008 (CPSIA) provides the CPSC with significant new regulatory and enforcement tools as part of amending and enhancing several CPSC statutes, including the Consumer Product Safety Act of 1972. The CPSIA included provisions addressing, among other things, lead, phthalates, toy safety, durable infant or toddler products, third-party testing and certification, tracking labels, imports, ATVs, civil and criminal penalties, and [www.SaferProducts.gov](http://www.SaferProducts.gov), a publically-searchable database of reports of harm. When companies knowingly fail to report potentially hazardous products, as required, the CPSC can seek civil penalties.

The OIG conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Our audit covered civil penalty collection transactions at the CPSC during the period from October 1, 2011 through September 30, 2014. This included reviewing applicable documents to understand the financial and legal operations of the CPSC's civil penalties collection process and related internal controls. Furthermore, we performed procedures over the agency's compliance with identified applicable laws, regulations, policies, and contractual provisions.

### **RESULTS OF EVALUATION AND FINDINGS**

This report covers our audit of the CPSC Civil Penalties Collection Program for Fiscal Years (FY) 2012 through 2014. Overall, we found that the CPSC has a functioning Civil Penalties Collection Program; however, we did identify instances of weaknesses in internal control and non-compliance with contract provisions. In summary, our findings include:

#### **1. Lack of Policies and Procedures**

The Office of General Counsel (OGC) does not have policies and procedures documented in an agency Directive or Standard Operating Procedures (SOP) to address the responsibilities and internal controls established by OGC over civil penalty collections. We specifically noted the lack of policies and procedures in the following areas:

- Tracking of Civil Penalties Assessed
- Final Settlement Agreement Payment Terms
- Communication of the Final Settlement Agreements

Lack of  
Policies and  
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2. **Lack of Communication/Understanding of CPSC Policies and Procedures**  
The Division of Financial Management Services (FMFS) has an SOP in place to monitor and record civil penalty collections. The process detailed in the SOP requires the OGC to verify the validation report as a confirmation over the initial balances; however, OGC has not received the proper training to allow them to carry out the duties expected of them and described in the SOP.

Lack of  
Communication  
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3. **Ineffective Internal Controls**  
We identified instances of ineffective internal controls over the civil penalties collection process within FMFS. We found that:
- Provisional Settlement Agreements (not Final Settlement Agreements) had been sent to the CPSC's accounting service provider, Enterprise Service Center (ESC), to initiate the recording of the collection
  - Interest penalties for delinquent collections were not properly billed by the CPSC

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### **MANAGEMENT RESPONSE**

Overall, based on the written responses provided by FMFS and OGC management, we have concluded that management concurs with our findings and recommendations. Management was given an opportunity to formally respond to this report in writing. The OGC provided a response located at Appendix D. Although FMFS concurred with the findings and recommendations in this report, and has performed corrective action, they did not provide a formal written response.

## RESULTS AND FINDINGS

### Lack of Policies and Procedures

#### *Lack of Formal Directive or Standard Operating Procedures (SOP)*

The collection of a civil penalty begins after the settlement of the case in OGC. According to the Code of Federal Regulations (CFR) 1118.20(g)(1), upon receiving service of the final Order to the violating company, indicated by the Commission's acceptance of the agreement, FMFS authorizes ESC to record the pending collection in the accounting system, Delphi. This process requires OGC and FMFS to share the responsibility of monitoring and tracking the collection of assessed civil penalties.

The OIG inquired of OGC personnel regarding the policies and procedures that document the responsibilities and internal controls in place to monitor assessed penalties; however, the OGC was unable to provide any formal Directive and/or SOP. The only document to support any existing policies, procedures, and OGC's responsibilities was the "Civil Penalties Tracking" document. Consequently, OGC has not allocated sufficient time and resources to assess internal controls necessary over Civil Penalties Collection Program. Per OMB's Circular A-123, *Management's Responsibility for Internal Control*, "management is responsible for establishing and maintaining internal control to achieve the objectives of effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations." The GAO's *Standards for Internal Control in the Federal Government*, dated 1999, goes further to state "that internal control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system." Thus, if the internal controls are not documented properly and/or not understood, there is risk that the collections are not recorded and reported accurately in the CPSC's accounting records.

We recommend the following:

1. OGC management review the overall process for civil penalties collection to develop and document, in an official directive and/or or SOP, a systematic and consistent method for monitoring and tracking the status of civil penalties assessed.
2. We further recommend that OGC management discuss the program controls with FMFS in order to ensure that those controls that are "inter-office" are properly understood and documented in each office.

#### *Civil Penalty Agreement Payment Terms*

Our audit identified that all legal and binding civil penalty settlement agreements have an initial payment due date of 20 calendar days after the final settlement agreement date. However, the

Delphi accounting system does not have the capability to enter payment terms of 20 days – terms can only be entered as 15, 30 or 60 days. Per FMFS, it is not cost-effective to restructure the accounting system to conform to the 20-day payment period. Therefore, ESC enters the collections with a 30-day payment period (with a 10-day lag) and not 20 days. In order to comply with OMB Circular A-136, *Financial Reporting Requirements*, FMFS should monitor the recording of these payments to ensure that they are being paid on time and interest is being recorded correctly to report accurate and timely financial data. In addition, OMB Circular A-123 requires that FMFS have the proper management controls in place to review the accounting transactions related to payments.

Accordingly, OIG followed-up with OGC, to determine the significance of the 20-day payment term. We were unable to obtain any significant information regarding the reasoning behind the use of the 20-day payment term. Neither the Supervising Attorney (Compliance Division) nor any other OGC personnel were able to determine the origin of the 20 day payment term in the agreement.

The lack of review and understanding over the civil penalty payments terms has led to an unfavorable situation regarding the recording of receivables for collections in the accounting system. In addition, we identified that OGC and FMFS have not communicated appropriately with each other to discuss how civil penalty collections payment terms affect the accounting system recording and subsequent collections. The 10-day lag related to collection terms can lead to potential inaccuracies in collection of interest and financial reporting. The inaccuracies could possibly contribute to misstatements of the reported financial statement amounts, which could lead to significant deficiencies and/or material weaknesses over time.

Thus, we recommend:

3. OGC management change the payment terms in the final settlement agreements to agree with the financial system, Delphi, standard payment terms of 15, 30 or 60 days.
4. We further recommend that OGC management discuss with FMFS management the revised payment terms before placing them into effect in order to ensure agreement with Delphi for accurate recording purposes.

#### *OGC Communication of Final Settlement Agreement*

We found that OGC does not have proper internal controls in place, as set forth in OMB Circular A-123, over the civil penalties process to ensure the timely communication and receipt of final settlement agreements. As previously stated, receiving service of the Final Order between the CPSC and a violating company for an assessed civil penalty initiates the financial recording of the collection in the CPSC's accounting system. However, there is no formal process/systematic method to identify when a final settlement agreement becomes "final." The OGC has tasked a Trial Attorney in the Compliance Division to track civil penalties. The attorney's responsibilities include identifying Final Settlement Agreements. The Trial Attorney reported to us that he generally learns of final settlements through informal office communications or by checking the CPSC public website.

FMFS relies on OGC to communicate and send final settlement agreements for recording in the Accounting System, Delphi. If the communication of an agreement is not timely, there is a risk of the collection not being recorded accurately in Delphi. Further, searching the CPSC internet website and overhearing about a settled case in informal office communications is neither the timeliest nor the most reliable method of determining the settlement of cases.

We recommend:

5. That OGC develop a process that relies on the Civil Penalty Final Acceptance Letters, sent out by the Office of the Secretary (GCOS), to identify and communicate the final settlement over civil penalties cases. A process using the letter provides the highest level of assurance for the timely and accurate communication of details regarding the final settlement of cases.
6. We further recommend that this process be documented in a formal SOP or Directive.

### **Lack of Communication/Understanding to CPSC Policies and Procedures**

#### *Reconciliation Review*

As previously mentioned, OGC shares with FMFS the responsibility for monitoring the collections of penalties assessed. As such, FMFS has a SOP in place for reporting and reviewing the status of civil penalties, SOP #FR.14.v1, *Civil Fines and Penalties Validation*. The SOP requires that FMFS perform quarterly reconciliation/validation of civil penalty collection activity, which conforms to the requirements set forth in OMB Circular A-123 and GAO's *Standards for Internal Control in the Federal Government*, dated 1999. However, there is an apparent lack of communication and understanding between OGC and FMFS regarding the requirements necessary to monitor civil penalty collections properly. Per discussion with the Trial Attorney, OGC performs a review over the reconciliation/validation report that FMFS prepares and sends for verification of the collection transaction activity. However, upon our inquiry about the discrepancies in amounts identified and two write-offs totaling \$14,838.03 in the reconciliation dated 9/30/13, the Trial Attorney could not explain the discrepancies or why the write-offs had occurred. Ultimately, the Trial Attorney had deemed the reconciliation accurate, by confirming with FMFS via email that reconciliation "matches" the OGC records. However, there were no details or notes provided to OIG to support the review.

In a follow-up discussion with FMFS, it was clarified that OGC had received instruction over how to perform this process. OGC should be only confirming the "initial" recording of the civil penalty collection amounts, by comparing the amount of final settlement agreement (documentation obtained and maintained by OGC) against the amount ultimately recorded in financial system (as indicated in the FMFS prepared reconciliation). However, this process contradicts the evidence provided by OGC, and it appears that OGC does not understand their responsibilities regarding how to perform the required financial review, which according to FMFS should only include the independent reconciling of the initial recorded civil penalty amount for collection to OGC documentation, in order to ensure accuracy. Not performing the

reconciliation/validation review as required could contribute to significant misstatements and inaccuracies of collections reported in financial statement amounts, which could lead to significant deficiencies and/or material weaknesses in internal controls over time.

We recommend:

7. That FMFS review and revise Standard Operating Procedure # FR.14.v1; *Civil Fines and Penalties Validation*, to determine whether it is still appropriate for OGC to verify the reconciliation/validation report. Based on the exceptions noted and the relevant skill sets of the two offices involved, we recommend that the revised SOP have the entire reconciliation/validation process performed by a FMFS accountant, who has the necessary skill set to perform the process properly.
8. However, if the revised SOP still includes that OGC “verify” the validation report completed by FMFS, FMFS should revise the SOP cited to state clearly what OGC is verifying – the initial receivable amount to be collected. In this case, it may also be beneficial for FMFS to send OGC a condensed version of the validation/reconciliation report to include only the items needing verification by OGC.
9. Further, we recommend that FMFS communicate to and either appropriately re-train or ensure that appropriate training is provided to OGC staff. This is necessary to ensure the complete performance of the reconciliation/validation, so that financial reporting objectives are met.

## **Ineffective Internal Controls**

### *Recording Receivables Using Provisional Settlement Agreements*

As previously discussed, FMFS is responsible for the recording of civil penalties assessed and the subsequent collections for inclusion into the accounting system and financial reports. Therefore, we performed audit procedures over sampled civil penalty collections transactions to determine whether internal controls in place were operating effectively and in accordance with OMB Circular A-123; as well as to determine whether the civil penalty collection balance was complete and accurate. A key control we identified was the use of final settlement agreements (signed by the CPSC’s Director of the GCOS) to authorize and initiate the recording of the collections. From our sampling, we found that FMFS did not always send the accounting service provider, ESC, the final settlement agreements for recording the receivable for civil penalties. Specifically, we identified several civil penalty cases (specifically, C-11-00011, 12-C-0007, and 12-C-0008) in which provisional agreements were sent and used for recording, instead of final agreements. These agreements covered multiple transactions within the civil penalty collection balance in which the final settlement agreements were ultimately not recoverable during the audit.

Based on the control weakness noted above, FMFS accountants did not receive the training required for them to properly understand and review the settlement agreements prior to sending them to ESC. Such weakness creates a risk that ESC is recording receivables related to civil

penalty collections based on agreements not fully executed. This could potentially lead to misstated accounting balances reported the CPSC’s financial accounting records.

We recommend:

10. That FMFS management provides training to accountants over the civil penalty process and provides appropriate guidance related to the proper elements of a settlement agreement to ensure accountants understand the proper documentation to send to ESC.
11. We further recommend that this process and settlement agreement elements be documented in an SOP for accountants to refer to when necessary.

*Interest Penalty Not Being Assessed*

Each Final Settlement Agreement is a legally binding contract, which includes the provision of added interest upon late payment, as follows: “upon the failure to make the forgoing payment when due, interest on the unpaid amount shall accrue and be paid”. As such, FMFS relies on ESC to ensure the billing and collection of interest is appropriate. However, in our review of civil penalty collections recorded, we identified two sample items where no interest penalty was charged on late collections:

Sample #	Sample amount	Interest Rate Per Treasury	Interest Due
18	\$715,000	2.5	49.65
25	\$400,000	1.375	30.56

We conclude that this issue correlates to the previous issue noted related to settlement agreement payment terms, where we noted that the CPSC’s accounting system, Delphi, does not have the capability to accurately record the actual settlement agreement payment terms (see *Civil Penalty Agreement Payment Terms*, pg. 4 for more discussion). Additionally, we identified that the ESC accountants are not properly reviewing the transactions, which is resulting in late payments that are collected without the related interest penalties being assessed.

While the two interest assessments identified would not in and of themselves present a significant misstatement in the financial information reported by the CPSC, the weaknesses identified in the payment recording process could possibly contribute to misstatements and inaccuracies of the reported financial statement amounts, which could lead to significant deficiencies and/or material weaknesses overtime.

We recommend:

12. That FMFS management discuss the period-end review process over account receivable balances and collections related to civil penalties with ESC to understand why late collections are not being assessed interest penalties.

13. As indicated in a previous finding to OGC, for the benefit of recording financial data accurately, the payment terms in settlement agreement should be modified to a time frame that is compatible with the Delphi accounting system capabilities. Thus, we recommend that FMFS Management discuss this change with OGC.

### **CONCLUSION**

Based on the results and findings noted above, we conclude that the CPSC Civil Penalty Collection Program lacks documented policies and procedures for OGC responsibilities and internal controls, which has led to ineffective internal controls in areas of the collection program. We have discussed our findings with management within FMFS and OGC. Management has indicated that they plan to take the proper action to remediate the issues noted and will implement policies and procedures to strengthen the program through corrective actions.

## **APPENDIX A: BACKGROUND**

Preventing hazardous products from entering the marketplace is one of the most effective ways the CPSC can protect consumers. The CPSC participates in the development of new safety standards and educates manufacturers on safety requirements to ensure that safety is built into consumer products at the source. The CPSC participates in the process of developing voluntary standards for consumer products by identifying the need for a voluntary standard based on analysis of consumer product injury data and by providing technical support to the relevant standards development organizations. The CPSC also sets and enforces for hazardous products mandatory standards (or federal rules), which define requirements for consumer products.

The CPSC must determine quickly and accurately which product hazards represent the greatest risks to consumer safety. The CPSC uses a systematic approach that involves improving collection and assessment of hazard data, scanning the marketplace regularly, expanding import surveillance efforts, and increasing surveillance of used consumer products offered for resale. In recent years, the CPSC has been working to become more proactive, rather than reactive, in identifying hazards. With a vision to be the recognized global leader in consumer product safety, the CPSC has been aggressively building new processes and partnerships to better identify consumer product hazards.

The CPSC holds violators accountable for hazardous consumer products on the market by using its enforcement authorities. When companies knowingly fail to report potentially hazardous products, as required, the CPSC can seek civil penalties. The CPSIA raised the maximum penalty to \$100,000 per violation or \$15,150,000 in total.

## APPENDIX B: OBJECTIVES, SCOPE & METHODOLOGY

### OBJECTIVES

The primary purpose of our audit was to determine whether the relevant internal controls, policies, and procedures established over the Civil Penalties program are functioning appropriately and in compliance with laws and regulations. The primary objectives of the audit include:

1. Evaluating the current internal control structure over the Civil Penalties Collection Program within FMFS and OGC to determine whether internal controls are designed, implemented, and operated effectively to ensure that program objectives are met;
2. Determining whether civil penalty collections are properly recorded in the financial statements as reported by the CPSC; and,
3. Evaluating the CPSC's compliance with the federal laws, regulations, and provisions governing the civil penalties program.

### SCOPE

The scope of this audit included civil penalties collected from October 1, 2011 through September 30, 2014, as recorded and reported by FMFS. Civil Penalties have dates that are stated in the final settlement agreement for when payments are to be made. However, collections can occur throughout the FY or over multiple FYs for installment payments. Therefore, the collections noted below in FYs are totals and could be for cases settled outside the fiscal year:

FY	2012	2013	2014
Collected & Transferred to Treasury	6,099,319	9,067,837	3,749,100

Audit fieldwork took place from November 2014 through March 2015.

### METHODOLOGY

We conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require us to plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To accomplish our audit objectives, we obtained an understanding of the CPSC's administration of the Civil Penalties Collection Program to include the design, implementation, and operating effectiveness of internal controls, compliance with CPSC governing policies and procedures, and compliance with applicable federal laws, regulations, and provisions. We obtained this

understanding through OGC and FMFS personnel, as both offices hold responsibility over the program at various stages. Within each office, we conducted interviews with key management personnel and program coordinators; performed walkthroughs to identify key internal controls and assess the execution of policies and procedures; and, inspected relevant supporting documentation.

Based on the information gathered, we identified specific risks and opportunities for fraudulent, improper, and/or abusive activity related to the program. We also determined what key internal control activities were in place to prevent or detect such occurrences. Additionally, we performed a preliminary assessment of whether the internal controls were likely to be effective and identified any internal control design inefficiencies based on the CPSC's Civil Penalties Program processes. From our preliminary assessment, we designed audit procedures (tests of controls) to assess the internal controls' operating effectiveness, to review specific attributes of the program, and to determine compliance with the identified laws, regulations, and provisions governing the program.

To perform our audit procedures at the transaction level, we obtained a population of Civil Penalty collections from FMFS from the period of October 1, 2011 through September 30, 2014 from the Delphi accounting system, provided by CPSC's accounting provider, ESC. We reviewed: (1) the FY 2012 through FY 2014 Statement of Standards for Attestation Engagements (SSAE) 16 Reports attesting to the operational effectiveness of the ESC internal controls; (2) interviewed CPSC agency officials knowledgeable about the data; and, (3) we further reconciled civil penalty transactional data to the reported CPSC financial statements for scope period, noting no differences. Thus, we determined that the data was sufficiently reliable for purposes of this report.

For sampling procedures, we used a net total of \$18,916,256 of civil penalties collections. To determine which transactions to review, a control sample and statistical substantive sample were used to test the specific key internal controls over the program for efficiency, and then a separate statistical substantive sample to test the completeness and accuracy of collection transactions.

The control sample consisted of 45 collection transactions randomly selected. The substantive sample was determined using a Monetary Unit Sampling approach (MUS) and resulted in a sample of 54 collection transactions (based on a 95 percent confidence level (reliability), and we had an expected error rate of five percent).

We performed further internal control audit procedures over civil penalty reconciliation reports for FY 2012 through FY 2014. Based on the quarterly performance of the internal control and the low risk of misstatement, we randomly sampled one quarter from each fiscal year.

## **APPENDIX C: ACRONYMS & ABBREVIATIONS**

ATDA	Accountability of Tax Dollars Act
CFO ACT	Chief Financial Officers Act
CHAP	Chronic Hazard Advisory Panel
CPSC	Consumer Product Safety Commission
CPSCIA	Consumer Product Safety Commission Improvement Act
ESC	Enterprise Service Center
FMFS	Division of Financial Management Services
FY	Fiscal Year
GAGAS	Generally Accepted Government Auditing Standards
GAO	Government Accountability Office
MUS	Monetary Unit Sampling
OGC	Office of General Counsel
OIG	Office of Inspector General
GCOS	Office of the Secretary
PAR	Performance Accountability Report
SSAE	Statement of Standards for Attestation Engagements
SOP	Standard Operating Procedures

## **APPENDIX D: MANAGEMENT RESPONSE**

The Office of the General Counsel (OGC) has reviewed the findings of the Inspector General contained in the Report on the Audit of the Collection of Civil Penalties. OGC concurs with the findings in the report. Consistent with the recommendations of the report, OGC and the Office of Financial Management and Evaluation (FMFS) have drafted a Directive to establish responsibilities and procedures to effectively control, monitor, and enforce collection of civil penalties. The Directive sets forth procedures to be followed by the OGC, FMFS, and the Office of the Secretary, which govern: (1) the tracking of civil penalty agreements and orders; (2) the communication of Final Settlement Agreements and Orders, and: (3) the timely payment of civil penalties and assessment of interest, if applicable.