

U.S. CONSUMER PRODUCT SAFETY COMMISSION



OFFICE OF THE INSPECTOR GENERAL

SEMIANNUAL REPORT TO CONGRESS

October 1, 2010 - March 31, 2011

## EXECUTIVE SUMMARY

This semiannual report summarizes the major activities performed by the Office of the Inspector General during the reporting period, October 1, 2010 through March 31, 2011. During the reporting period, this office worked on seven audits or reviews. At the end of the reporting period, three audits or reviews and three investigations were in progress.

The Office of the Inspector General received four complaints during the reporting period, each of which resulted in the initiation of a formal investigation. Six investigations were closed or transferred during the reporting period. Management officials acted on the recommendations made in the completed investigations from the previous reporting period.

The Office of the Inspector General 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 regulatory agency created in 1972, under the provisions of the Consumer Product Safety Act (P.L. 92-573) to protect the public against unreasonable risks of injuries associated with consumer products. Under the Consumer Product Safety Act and the Consumer Product Safety Improvement Act, 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 \$113.8 million and 530 authorized full-time equivalent positions for FY 2011.

### **OFFICE OF THE INSPECTOR GENERAL**

The Office of the Inspector General 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 related to the administration of CPSC programs and operations and the need for progress or corrective action.

The Office of the Inspector General 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 concerned individuals. The objective of this program is to ensure the integrity of the CPSC and guarantee individuals fair, impartial, and independent investigations.

The Office of the Inspector General also reviews existing and proposed legislation and regulations related 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 Office of the Inspector General was authorized seven full-time equivalent positions for FY 2011: the Inspector General, a Deputy Inspector General for Audits, an office manager, an Information Technology auditor, and three line auditors.

## AUDIT PROGRAM

During this period, the Office of the Inspector General worked on seven audits and reviews. A summary of each follows:

### AUDIT OF FINANCIAL STATEMENTS

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 was performed to meet this statutory requirement.

The objectives of this audit were to ensure that the CPSC was meeting its responsibilities for: (1) preparing the financial statements in conformity with generally accepted accounting principles; (2) establishing, maintaining, and assessing internal control 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.

In our audit of the CPSC's financial statements for fiscal year 2010, we found that:

- we were unable to give an opinion on the fiscal year of 2010 financial statements of the U.S. Consumer Product Safety Commission because of limitations on the scope of our work. Thus, the financial statements may be materially misstated.
- we were unable to give an opinion on the effectiveness of internal control for fiscal year 2010 because of the limitation on the scope of our work.
- we were unable to test compliance with laws and regulations for fiscal year 2010 because of limitations on the scope of our work.

The CPSC implemented a new financial accounting system in December 2009. As a result of the new system, the Commission encountered a number of posting, reconciliation, and reporting issues that hindered its ability to assure the accuracy and completeness of financial statement balances and provide data necessary for audit testing. We noted specific issues in accounting for obligations, monitoring budget execution, and control, reconciling payment information with the U.S. Treasury, and resolving posting errors. We noted that reports needed for management, internal control, and audit purposes were not available following system deployment.

As a result of the implementation of the new accounting system, we identified issues with internal control regarding financial management and financial reporting that precluded the Commission from preparing its FY 2010 financial statements and supporting documentation in a timely manner. Due primarily to the implementation of the new accounting system, the Commission was unable to develop adequate reporting and other internal controls essential to the deployment of the new system. Because of this limitation on the scope of our work, we were unable to offer an opinion on internal control.

We were unable to test for compliance with the laws we considered necessary; accordingly, we were unable to report on the CPSC's compliance with laws and regulations.

Because of the significance of the limitations on the scope of our work, we were unable to and did not perform our audit of internal control in accordance with U.S. generally accepted government auditing standards and Office of Management and Budget (OMB) audit guidance. We considered the limitation on the scope of our work in forming our conclusion and in testing the financial statements.

The CPSC's management concurred with the facts and conclusions cited in our report. The CPSC has begun work on implementing our recommendations.

## FEDERAL INFORMATION SECURITY MANAGEMENT ACT

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 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 the OMB to strengthen information system security.

This review was completed in accordance with the Quality Standards for Inspections issued by the Council of Inspectors General on Integrity and Efficiency's (CIGIE) Inspection and Evaluation Committee.

This year's FISMA evaluation found that although much work has been done by the CPSC, much work remains to be done. The IT challenges facing the CPSC are particularly relevant at the present time as the agency deals with both the implementation of the Consumer Product Safety Improvement Act in general, and with the CPSIA's specific impacts on the agency's IT operations and the implementation of the public facing database.

In addition to the findings made directly by the OIG, management made us aware of a number of other weaknesses in the CPSC's information security program. These weaknesses were brought to light as a result of the CPSC's FY 2010 Security Test and Evaluation Plan, Risk Assessment, and the development of the CPSC's System Security Plan. These weaknesses, in large part, resulted from deficiencies in the CPSC's policies and procedures governing information security. These weaknesses were further aggravated by the CPSC's lack of adequate software tools to facilitate the required information system reporting. Although many of the

policies in question have been improved recently, which has resulted in a number of the procedures in question becoming more effective, many more improvements are still needed to bring the CPSC fully into compliance with federal information security requirements.

A number of remediation strategies are being considered by the CPSC to address known vulnerabilities. However, the CPSC is in the early phases of remediation, and the full mitigation of these risks will require a significant amount of additional time and effort.

#### **PURCHASE CARD AUDIT**

The purchase card program was created as a way for agencies to streamline federal acquisition processes by providing a low-cost, efficient vehicle for obtaining goods and services directly from vendors. The purchase card can be used for simplified acquisitions, including micropurchases (historically defined as purchases of \$2,500 or less), as well as to place orders and make payments on contract activities. The Federal Acquisition Regulation (FAR) designated the purchase card as the preferred method of making micropurchases.

The General Services Administration (GSA) administers the federal government's contracts in support of agencies' purchase card programs. GSA contracts with commercial banks to issue purchase cards to federal employees. These cards are only to be used to make official government purchases. Unlike the government travel card program, purchase cards are not issued in the name of the employee who holds them, and they are paid directly by the agency.

Approximately 148 CPSC employees have purchase cards. From December 2008 through December 2009, there were a total of 5,237 purchase card transactions totaling \$1.4 million. The majority of these purchases were subject to the CPSC's micropurchase single purchase limit of \$2,500.<sup>1</sup>

Under a contract monitored by the Office of Inspector General, Withum, Smith + Brown (WS+B), an independent certified public accounting firm, performed an audit of the CPSC's purchase card

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<sup>1</sup> The CPSC has continued to use the historical \$2,500 threshold, although the absolute maximum across the federal government has risen to \$3,000.



program. This audit was intended to assess the adequacy of the program's internal controls<sup>2</sup> and to provide the agency with recommendations to improve its program. The contract required that the audit be performed in accordance with generally accepted government auditing standards.

In general, WS+B found that the CPSC's internal controls over the purchase card program were inadequate. WS+B further determined that the CPSC had developed adequate written policies and procedures but that these policies and procedures had not been effectively implemented. Reasons for the CPSC's lack of effective implementation of its policies and procedures included a lack of centralized oversight of the purchase card program and a lack of management enforcement of the agency's policies.

WS+B recommended that: the Chief Financial Officer ensure that an annual review of the purchase card program be conducted using GSA's Blueprint for Success Oversight Guide; that cardholders and approving officials receive periodic training in the purchase card procurement process and implementation; that appropriate disciplinary action for purchase violations be enforced; and that additional agency-wide monitoring procedures be implemented to reduce the risk of program noncompliance.

In addition to the recommendations made by WS+B, the CPSC's OIG recommended that the CPSC adopt the recommendation made by the Government Accountability Office (GAO) in "GAO-08-333, Government Wide Purchase Cards: Actions Needed to Strengthen Internal Controls to Reduce Fraudulent, Improper, and Abusive Purchases," that certifying officials be required to reimburse the government whenever they certify payment of a purchase card billing statement that includes improper purchase card transactions.

CPSC management concurred with all recommendations.

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<sup>2</sup> Internal controls are processes designed to help an organization accomplish specific goals or objectives. They are some of the means by which an organization's resources are directed, monitored, and measured. They play an important role in preventing and detecting fraud and protecting an organization's resources, both physical (funds and property) and intangible (e.g., reputation and legal rights).

## **REVIEW OF FEDERAL TRANSIT BENEFIT PROGRAM**

The Federal Transit Benefit Program (FTBP) offers qualified federal employees a subsidy to use mass transportation. The value of this subsidy is excluded from the taxable wages and compensation of the employees who receive it. In subsidizing the federal employees' cost of using public transportation to commute to and from work, the FTBP sought to reduce federal employees' contribution to traffic congestion and air pollution and to expand their use of public transportation.

The objectives of this review included evaluating whether internal controls were designed adequately and executed properly in the management of the FTBP and determining whether the CPSC complied with the terms of the FTBP partnership agreement between it and the U.S. Department of Transportation (DoT). This review was completed in accordance with the Quality Standards for Inspections issued by the Council of Inspectors General on Integrity and Efficiency's (CIGIE) Inspection and Evaluation Committee.

The Office of Inspector General found that CPSC management did not fulfill its obligations under the 2008 Transit Benefit Program Partnership Agreement with the DoT; nor did it implement internal controls mandated by the OMB; nor did it execute controls and procedures prescribed in CPSC standard operating procedures. The OIG found that the CPSC's overall internal control design for this program was weak in most aspects of the program's management.

The Office of Inspector General made recommendations to address the internal control weaknesses found. CPSC management generally agreed with these recommendations and began work on implementing them.

## **INFORMATION TECHNOLOGY INVESTMENT MANAGEMENT AUDIT**

The Consumer Product Safety Improvement Act (CPSIA) calls for upgrades of the Commission's information technology 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. The CPSIA also calls

for the Office of Inspector General to review the agency's efforts in these areas.

In order to objectively assess the current status of 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 used the Government Accountability Office's (GAO's) Information Technology Investment Maturity (ITIM) model. 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.

The 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 processes 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.

Under a contract monitored by the Office of Inspector General, Withum, Smith & Brown (WS+B), an independent certified public accounting firm, performed an audit of the CPSC's Information Technology (IT) investment management processes, using the GAO's ITIM framework. The contract required that the audit be performed in accordance with generally accepted government auditing standards.

According to WS+B's findings, the current condition of the CPSC's ITIM processes is primarily a function of the length of time that the CPSC has been working to fully develop and implement these processes. In the past year, the CPSC has aggressively begun implementing a structured IT investment management process. The CPSC has taken several key steps,

including the creation of the Investment Review Board and the adoption of its charter; the development of an IT investment portfolio; the creation of a Capital Planning and Investment Control Guide; the creation of a System Development Life Cycle Guide; and the implementation of IT Investment Classification Guidance. As a result of these and other activities, WS+B concluded that the CPSC has reached Stage 1 of the five-stage IT investment maturity model, as defined by GAO. The CPSC has already implemented several of the key practices and critical processes that constitute Stage 2. WS+B have outlined 11 specific actions that the CPSC must perform to achieve Stage 2 maturity. CPSC management agreed with the observations and recommendations made by WS+B.

#### **REVIEW OF THE ADEQUACY OF PROCEDURES FOR ACCREDITING CONFORMITY ASSESSMENT BODIES AND OVERSEEING THIRD PARTY TESTING**

On August 14, 2008, the "Consumer Product Safety Improvement Act of 2008" (CPSIA) was signed into law. The CPSIA constituted a comprehensive overhaul of consumer product safety rules, and it significantly impacted nearly all children's products entering the U.S. market.

In relevant part, the CPSIA imposed a third party testing requirement on all consumer products primarily intended for children 12 years of age or younger. Every manufacturer (including an importer) or private labeler of a children's product must have its product tested by an accredited independent testing laboratory and, based on the testing, must issue a certificate that the product meets all applicable Consumer Product Safety Commission requirements. The CPSC was given the authority to either directly accredit third party conformity assessment bodies (hereafter referred to as "third party laboratories") to do the required testing of children's products or designate independent accrediting organizations to accredit the testing laboratories. The CPSC is required to maintain an up-to-date list of accredited labs on its website. The CPSC has authority to suspend or terminate a laboratory's accreditation in appropriate circumstances and is required to periodically assess whether laboratories should continue to be accredited. The third party testing and certification requirements for children's products are phased in on a rolling

schedule. The statute requires the CPSC to issue laboratory accreditation regimes for a variety of different categories of children's products.

The CPSC quickly determined that it lacked the necessary infrastructure to directly accredit the testing laboratories. Accordingly, to leverage its available resources, the CPSC decided to use an independent accrediting organization to accredit the testing laboratories. CPSC recognition requires a laboratory to be accredited by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). The scope of accreditation must include the test methods required by CPSC laws and regulations; and the laboratory must apply to the CPSC for recognition and also must agree to fulfill the requirements of the CPSC program.

In implementing the CPSIA generally, and the laboratory accreditation program specifically, the CPSC faced challenges created by the requirement that it promulgate rules within mandatory timelines and the complex scientific, technical, and procedural issues surrounding the rules. For example, the first in the series of rules dealing with laboratory accreditation (not a subject traditionally within the CPSC's jurisdiction) had to be promulgated within 30 days of the enactment of the CPSIA.

The CPSIA expanded the authority as well as the responsibilities of the CPSC. Prior to the passage of the CPSIA, the agency had never participated in the accreditation of laboratories, much less been faced with the daunting task of developing a program to accredit laboratories and oversee their testing of certain consumer products. The CPSIA established an aggressive regulatory agenda and set deadlines to ensure that results were achieved in a timely fashion. The vigorous requirements of the CPSIA have had positive and negative effects on the agency. It has spurred a greater degree of regulatory activity than would have existed without the passage of the act. At the same time, it established implementation timelines that required the CPSC to move at a pace that the agency has not always been able to accomplish.

The CPSIA also requires that the CPSC Office of Inspector General (OIG) review the adequacy of procedures that the CPSC has established for accrediting conformity assessment bodies and

overseeing the third party testing required by the CPSIA (henceforth this program will be referred to as "laboratory accreditation").<sup>3</sup>

The review conducted by this office focused on two specific areas. First, it evaluated whether internal controls were designed adequately and executed properly in the management of the laboratory accreditation program. Second, it assessed the CPSC's compliance with the CPSIA in the operation of its conformity assessment program. The OIG completed the review in accordance with the Quality Standards for Inspections issued by the Council of Inspectors General on Integrity and Efficiency's (CIGIE) Inspection and Evaluation Committee.

The OIG found that although CPSC management had done a remarkable job of creating a laboratory accreditation program out of whole cloth at a time when field work was ongoing; there were areas of the program that could be improved. In particular, perhaps because of the rate at which the program was created, written policies and procedures were often lacking; certain aspects of the review process appeared to be subjective; and internal control design was weak in some aspects of the program's management.

CPSC management generally agreed with the recommendations made. The agency began taking aggressive measures to address a number of the findings detailed in this report even before the Office of Inspector General issued the report.

#### **AUDIT OF ON-SITE CONTRACTOR ACTIVITY (ongoing)**

This audit will assess the Commission's policies, procedures, and internal controls over on-site contractors. Over the past decade, the amount of work performed by contractor personnel working on-site in federal facilities has increased. The government's increasing reliance on contractor personnel to perform duties that would otherwise be performed by government personnel creates a number of potential issues. This audit will attempt:

- To determine the adequacy of the training provided to government personnel responsible for ensuring that the contracts

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<sup>3</sup> As authorized by section 14(a)(3) of the Consumer Product Safety Act (CPSA)

are performed in accordance with federal regulations and meet the Commission's needs. These personnel are generally not contracting office personnel and carry out their duties related to contracting as "additional duties" in addition to their regular responsibilities.

- To determine if on-site contractor personnel are receiving appropriate background checks prior to being granted access to government facilities and whether they are being in-processed and out-processed appropriately at the beginning and end of their on-site service at the CPSC.

- To determine whether the decision to conduct the contract work on-site rather than off-site was appropriate and whether the agency is properly monitoring on-site contractor performance to prevent fraud, waste, and abuse of federal funds.

## INVESTIGATIVE PROGRAM

A number of individuals contacted the Office of the Inspector General 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 four investigations. Several matters were transferred to CPSC officials (management or the Equal Employment Opportunity Commission (EEOC)) or other government agencies for final disposition after initial investigation indicated that these cases would be more appropriately dealt with outside of IG channels. Several investigations were closed after a determination that no action was required.

Investigations	No. of Cases
Beginning of period	5
Opened	4
Closed	4
Transferred/Incorporated into existing investigation	2
End of the period	3

### REPORTABLE INVESTIGATIONS

**Alleged Misconduct by former Government Employee** - case accepted by the U.S. Department of Justice for criminal prosecution. Former employee convicted of conflict of interest and false official statement-type offenses.

**Alleged Misconduct by Government Employee** - Complainant alleged that Subject had misused government time and equipment. Allegation substantiated by available evidence.

**Alleged Misconduct by Government Employee** - Anonymous complaint alleged that employee gave inappropriate access to agency to former government employee who now works as consultant. Available evidence did not substantiate the allegation.



## ONGOING INVESTIGATIONS

Three investigations were ongoing at the end of the period. These cases involve allegations of violations of various agency or federal regulations and/or statutes.

## OTHER ACTIVITIES

### LEGISLATION AND REGULATIONS

The Office of the Inspector General reviews internal and external legislation and regulations that affect the Office of the Inspector General in specific, or the CPSC's programs and activities, in general. The OIG reviewed and commented on procedures applicable to the following subjects during the reporting period:

- Consumer Product Safety Improvement Act,
- Implementation of Inspector General Reform Act,
- Training of Managers and Supervisors,
- Agency Privacy Program,
- Holding of Outside Positions by Employees,
- Conflict of Interest,
- Security Clearance and Background Check Procedures,
- Federal Information Security Management Act,
- Morale of Employees,
- Purchase Card Program,
- Changes in Agency Acquisition Policies,
- Anti-Deficiency Act, and
- Social Media.

## **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 the GAO. The Office of the Inspector General'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 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 in specific and provided other support as needed to the Inspector General.

## 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.....	16
Section 5(a)(1)	Significant Problems, Abuses, Deficiencies.....	4-14
Section 5(a)(2)	Recommendations With Respect to Significant Problems, Abuses, and Deficiencies.....	4-14
Section 5(a)(3)	Significant Recommendations Included in Previous Reports on Which Corrective Action Has Not Been Taken.....	NA
Section 5(a)(4)	Matters Referred to Prosecutive Authorities.....	15
Section 5(a)(5)	Summary of Instances Where Information Was Refused.....	NA
Section 5(a)(6)	Reports Issued.....	4-15
Section 5(a)(7)	Summary of Significant Reports.....	4-15
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.....	NA
Section 845 of The NDAA of 2008	Significant Contract Audit Reports.....	7, 13

## PEER REVIEW RESULTS

The last peer review conducted by another Office of Inspector General on the CPSC's Office of Inspector General was issued on April 28, 2008, and is available on the CPSC OIG's Webpage. All recommendations made in that peer review have been implemented.

The last peer review conducted by the CPSC OIG of another Office of Inspector General occurred on December 9, 2010, and involved the National Endowment for the Humanities Office of Inspector General (NEH OIG). No deficiencies were noted and no formal recommendations were made in that review.