

Department of Homeland Security **Office of Inspector General**

U.S. Customs and Border Protection's Penalty Process
– Statute of Limitations





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

SEP 27 2012

MEMORANDUM FOR: Allen Gina
Assistant Commissioner
Office of International Trade
U.S. Customs and Border Protection

Kevin K. McAleenan
Acting Assistant Commissioner
Office of Field Operations
U.S. Customs and Border Protection

FROM: Anne L. Richards 
Assistant Inspector General for Audits

SUBJECT: *U.S. Customs and Border Protection's Penalty Process – Statute of Limitations*

Attached for your action is our final report, *U.S. Customs and Border Protection's Penalty Process – Statute of Limitations*. We incorporated the formal comments from the U.S. Customs and Border Protection's Offices of International Trade and Field Operations in the final report.

The report contains two recommendations aimed at improving the management and oversight of the penalties process. Your office concurred with all of the recommendations. Based on information provided in your response to the draft report, we consider the recommendations resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact John E. McCoy II, Deputy Assistant Inspector General for Audits, at (202) 254-4100.

Attachment



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Abbreviations

CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
FP&F	Fines, Penalties, and Forfeitures
HQ	Headquarters
OFO	Office of Field Operations
OIG	Office of Inspector General
SAMEPH	<i>Seized Asset Management and Enforcement Procedures Handbook</i>
SEACATS	Seized Asset and Case Tracking System
SOL	statute of limitations



Executive Summary

U. S. Customs and Border Protection (CBP) is responsible for collecting revenues and enforcing trade compliance. In fiscal year 2010, CBP processed about \$2 trillion in trade imports and collected approximately \$29 billion in duties, fees, taxes, fines, and penalties. In fiscal year 2010, the Department of Homeland Security (DHS) received correspondence from Senator Charles Grassley expressing concerns about alleged deficiencies in CBP's revenue collection program, including non-collection of penalties. We initiated a series of audits, including this audit, to address Senator Grassley's concerns.

The objective of our audit was to determine whether CBP had effective processes in place to ensure that assessed penalties cases did not expire due to the statute of limitations. We reviewed CBP's management and oversight of the penalties process as it pertains to penalty case statute of limitations.

CBP has not fully established key management controls for the penalties process. Its Fines, Penalties, and Forfeitures field offices do not consistently follow policies and procedures, and Headquarters Office of Field Operations does not have effective oversight and enforcement authority. As a result, CBP cannot ensure that penalties cases do not expire due to the statute of limitations.

We recommended that CBP perform an organizational assessment to determine whether resources are appropriately allocated to ensure effective penalty case management. We also recommended CBP develop and implement a Headquarters oversight plan to ensure the office responsible for oversight of penalty case management has authority to monitor field offices' compliance with CBP guidance. CBP concurred with both of our recommendations.



Background

CBP is responsible for managing and securing our Nation’s borders while facilitating legal travel and trade. CBP is also responsible for collecting revenues such as duties, taxes, fees, fines, and penalties. In fiscal year 2010, CBP collected approximately \$29 billion in duties, user fees, and excise taxes, which included \$61 million in fines and penalties.

When CBP discovers a violation of law, it has the authority to assess fines and penalties. Penalties can be assessed on commercial and noncommercial imports. Penalties serve as a trade enforcement tool intended to deter noncompliance with trade laws. The Office of International Trade’s Commercial Enforcement Policy Division develops national policy for commercial penalties. The Office of Field Operations (OFO), Fines, Penalties, and Forfeitures (FP&F) Division, implements the policy for commercial penalties, and also develops and implements policy for noncommercial penalties.

There are 42 FP&F field offices operating under the OFO oversight authority. The OFO, FP&F Division, has oversight responsibility; however, Directors of Field Operations, Port Directors, and frontline supervisors are responsible for enforcing policies and procedures. FP&F field offices adjust resources to develop, adjudicate, and monitor all penalty cases, as well as manage other enforcement processes, which include liquidated damages and seizures (see table 1).

Table 1: Breakdown of CBP’s FP&F Field Offices’ Enforcement Workload

Case Types	Percentage of Overall Caseload
Penalty Cases	11
Liquidated Damages	20
Seizures	69

Source: FP&F, Carrier Fines and Seized Property Assessment, October 2011

From October 1, 2008, through March 31, 2011, CBP closed 1,567 penalty cases that expired because of the statute of limitations (SOL) with assessed penalties totaling \$758 million. We reviewed 42 of these cases, which totaled \$415 million.

CBP has broad authority to remit, mitigate, cancel, or compromise claims for penalties. Its *Seized Asset Management and Enforcement Procedures Handbook* (SAMEPH) provides guidance for penalty case initiation, analysis, monitoring, and management to maximize enforcement and compliance actions. There are three penalties for which the



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statute of limitations varies based on levels of culpability. In penalties assessed under 19 U.S.C. 1592 or 19 U.S.C. 1593a, the statute is five years from the date of the violation when the level of culpability is negligence or gross negligence and five years from the date of discovery when the level of culpability is fraud. In penalties assessed under 19 U.S.C. 1641(d)(4), the statute is five years from the date of the violation when the level of culpability is not fraud and five years from the date of discovery when the level of culpability is fraud.¹

During the 5-year period, FP&F Officers receive and verify the timely and accurate submission of penalty payments, monitor penalty cases, and ensure the accuracy of revenue records prior to closing out penalty cases. CBP uses the Seized Asset and Case Tracking System (SEACATS) as the system of record for enforcement case information. SEACATS also provides a tracking and overdue alert system for managing penalty cases. Monthly SOL reports generated from SEACATS alert FP&F Officers of the length of time remaining on the SOL and if action is required. If less than 2 years remains, the FP&F Officer must solicit a waiver of the SOL and expedite the processing of the case. When the violator grants a waiver, the SOL is extended and CBP can have as much as an additional 2 years to process the penalty case.²

The SAMEPH also requires that Action Due reports be generated and action taken at least weekly. FP&F Officers are accountable for monitoring all outstanding cases and reviewing the Action Due report. This report allows FP&F Officers to—

- Measure work produced;
- Verify office case load and backlog; and
- Track actions required to process the case.

Results of Audit

CBP does not have effective processes in place to ensure that penalty cases do not expire due to the SOLs. According to CBP documents we reviewed, CBP closed 1,567 penalty cases from October 1, 2008, through March 31, 2011 because SOLs expired. Although CBP issued policies and procedures for penalty case management, FP&F field offices did not consistently follow SOL waiver policies and request SOL waivers timely. Available resources limit the frequency of CBP Headquarters' (HQ's) onsite survey visits; the annual field office self-inspections are not validated; and the type of data used for Monthly Assessment Reports is inconsistent from month to month. Moreover, OFO's

¹ 19 United States Code (U.S.C.), Section 1621.

² *Seized Asset Management and Enforcement Procedures Handbook* released in January 2002; SOL Report Memorandum, February 23, 2010.



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FP&F Division is responsible for policy implementation and oversight of FP&F field offices to ensure compliance with policies and procedures, but has limited enforcement authority. Because of these limitations, CBP does not have reasonable assurance that penalty cases are finalized before the SOL expires, or that penalties serve as an effective trade enforcement tool.

FP&F Field Offices’ Consistency in Following SOL Waiver Policy

FP&F field offices do not always request SOL waivers in accordance with established CBP guidance. The SAMEPH requires field offices to monitor SOL reports monthly and to solicit an SOL waiver from the alleged violator(s) when less than 2 years remains before the SOL expires. We reviewed 42 closed penalty cases from five FP&F field offices. FP&F field offices failed to solicit an SOL waiver in a timely manner in nine of those cases. In 13 penalty cases, SOL waiver requests were not required for the following reasons: (1) importers filed for bankruptcy; (2) cases were pending a write-off decision; (3) there was no known address for the violator; or (4) CBP closed the case before the SOL expired.³ The FP&F field offices appropriately requested waivers in the 20 remaining penalty cases (see table 2).

Table 2: Analysis of 42 Penalty Case SOL Waiver Requests

Description of SOL Waivers	Number
SOL Waivers Requested Appropriately	20
SOL Waivers Not Required	13
SOL Waivers Not Requested Timely	9
Total	42

Source: DHS OIG SOL Waiver Analysis. Results are based on review and analysis of 42 closed penalty case samples provided by CBP OFO FP&F Division extracted from SEACATS.

Officials in one of the FP&F field offices we visited explained that they might not always request waivers in a timely manner because they strive to facilitate cooperative relationships with attorneys, who they know will not sign a waiver until a month or so before the SOL expires. When FP&F field offices do not request SOL waivers in time, CBP is at a higher risk of losing penalty cases because the SOL has expired.

³ A CBP FP&F Officer said, “If a penalty was already closed prior to the SOL and opened and reclosed to take ‘administrative action,’ the SEACATS system will show the latest closure date and the case will show up as an expired SOL penalty case.”



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At three of the seven FP&F field offices we visited, personnel said that they lacked resources. An FP&F Officer said that it was common for Paralegal Specialists to have caseloads of approximately 1,000 cases at any given time. These caseloads typically consist of penalties, liquidated damages, and seizures. The FP&F Officer provided printouts showing that liquidated damages and seizures made up the majority of the caseloads and indicated that working on penalties was not the top priority.

We reviewed two documents from a workforce analysis study conducted by the OFO to determine the proper grade for the FP&F Officer position and to evaluate the organizational structure at the FP&F field offices. The documents showed that penalty caseloads increased by 52 percent from 2001 through 2007. The OFO developed three alternative organizational structures to support its proposed upgrade of the FP&F Officer. According to a CBP official, the FP&F Officer positions were upgraded, but the recommended organizational changes were not implemented. The authority to make staffing and organizational changes to FP&F field offices resides with the Port Directors, who report to the Directors of Field Operations, within OFO. As a result, FP&F field offices may not have adequate resources or the appropriate organizational structure to ensure that penalty cases do not expire because of the SOL.

HQ Office of Field Operations Oversight

CBP's HQ OFO oversight of the FP&F field offices needs improvement. CBP officials said that they provide oversight of field offices using several methods, including onsite surveys, self-inspections, and Monthly Assessment Reports. The frequency and number of onsite survey visits are limited due to resource constraints; annual field office self-inspections are not validated by OFO, and the type of data used for Monthly Assessment Reports is inconsistent from month to month. Additionally, CBP HQ's OFO, FP&F Division, does not have enforcement authority to require FP&F field offices to adhere to policies and procedures and manage penalty cases effectively.

Onsite Field Office Surveys

According to OFO's FP&F Division personnel, onsite FP&F field office surveys are the most effective oversight method because they allow for a direct assessment of FP&F field office operations. Since January 2010, the FP&F Division has surveyed eight FP&F Offices out of 42, or 19 percent. OFO officials said that limited resources prevented additional onsite surveys.



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FP&F Field Office Self-Inspection Reports

OFO also uses annual self-inspection reports to provide oversight of FP&F field offices. Self-inspection reports assess field office compliance with enforcement case processing standards, which include penalties. When asked whether OFO verifies the accuracy and completeness of the self-inspection reports, an OFO official said that it takes the reports at face value.

Monthly Assessment Reports

A third oversight method that the OFO uses is the FP&F field offices' Monthly Assessment Reports. The OFO creates and analyzes Assessment Reports to determine FP&F field offices' compliance with CBP guidance. Although the Monthly Assessment Reports add value to CBP's oversight ability, in some instances the data reported in the Reports are inconsistent. For example, we looked at Monthly Assessment Reports for the month of October for 2009, 2010, and 2011. The reports contained data on the current workload of the FP&F field offices, outstanding penalties at each FP&F field office, and penalty amounts collected in the prior month. Some of the Monthly Assessment Reports did not contain data for all 42 FP&F field offices. In addition, there were inconsistencies in the type of data reported in each Monthly Assessment Report. For example, two of the reports contained data on SOL expirations but one of them did not. CBP guidance requires FP&F field offices to monitor case SOL expirations monthly, and HQ uses this information to improve management of the penalty process. A CBP official said that the Monthly Assessment Reports are a work in progress and that they are always being modified. In addition, the official said that due to system upgrades, some of the data might have been lost and not captured in the Monthly Assessment Report.

Enforcement Authority

The OFO's organizational structure does not support effective management of the penalty program. Port Directors and Directors of Field Operations have primary responsibility for enforcing policies at the FP&F field offices; however, OFO has oversight responsibility for the field offices. As a result, OFO is limited in its ability to require FP&F field offices to adhere to CBP policies and procedures.

When OFO found FP&F field offices to be noncompliant with policies and procedures for managing penalty cases, it issued recommendations to the Directors of Field Operations, who were responsible for taking corrective action.



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Conclusion

Although CBP has established policies and procedures for managing penalty cases, FP&F field offices are not consistent in following them. Because of limited resources and enforcement authority, CBP HQ needs to identify alternatives to onsite surveys and self-inspections to improve oversight and penalty case management. If not, CBP risks losing penalty cases because of expired SOLs and cannot ensure that penalties serve as an effective trade enforcement tool.

Recommendations

We recommend that CBP's Assistant Commissioners for Office of International Trade and Office of Field Operations:

Recommendation #1:

Perform an organizational assessment to determine whether resources are appropriately allocated to ensure effective penalty case management at Fines, Penalties, and Forfeitures field offices.

Recommendation #2:

Develop, document, and implement a Headquarters oversight plan to ensure that the office responsible for oversight of penalty case management has the authority to monitor field offices' compliance with CBP guidance and to ensure effective processing of penalty cases. At a minimum, the plan should—

- Ensure that monthly assessment data are consistent;
- Review evaluation standards for onsite visits, to include validation of annual self-inspection reports;
- Develop a schedule of onsite field office oversight visits to ensure that each office has effective management controls; and
- Develop protocols to ensure that Fines, Penalties, and Forfeiture field offices implement program improvements resulting from the Office of Field Operations' oversight efforts.



Management Comments and OIG Analysis

CBP submitted formal comments to our report, and a copy of its response is included as appendix B. CBP also provided technical comments, and we have made changes to the report based on those comments. Additionally, CBP concurred with both our recommendations and our analysis of its concurrence follows.

Recommendation #1:

Perform an organizational assessment to determine whether resources are appropriately allocated to ensure effective penalty case management at Fines, Penalties, and Forfeitures field offices.

CBP Comments to Recommendation #1

CBP concurred with the recommendation. The workload staffing model is under review by DHS. Once approved it will be provided to Congress and will be the basis for the OFO FP&F field office's staffing. OFO estimates to complete required actions by June 1, 2013.

OIG Analysis

We consider this recommendation to be open and resolved until the OIG has received and evaluated the supporting documentation of the workload model and the Resource Allocation Model; and that CBP has determined resources are appropriately allocated at FP&F field offices to ensure effective penalty case management.

Recommendation #2:

Develop, document, and implement a Headquarters oversight plan to ensure that the office responsible for oversight of penalty case management has the authority to monitor field offices' compliance with CBP guidance and to ensure effective processing of penalty cases.

CBP Comments to Recommendation #2

CBP concurred with the recommendation. The OFO FP&F Division is developing, documenting and implementing a headquarters oversight plan to ensure that it has the authority to monitor field office's compliance with CBP guidance and to



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ensure effective processing of penalty cases. CBP indicates that the FP&F Division has taken corrective actions to address this recommendation and expects to implement all corrective actions by January 31, 2013.

OIG Analysis

We consider this recommendation open and resolved because CBP's plan of action and milestones for completion satisfy the intent of the recommendation. However, the recommendation will remain open until we can verify, through a review of supporting documentation, to include, the Dashboard reports from EDW; copies of Monthly Assessment Summary reports provided to FP&F Division senior management; a plan of expected site survey visits for 2013; the results of the FP&F Division's Office of Internal Affairs Management Inspection Division's focused assessment results and recommendations of the FP&F Division's oversight protocols; and the revised Self-Inspection Case Processing worksheet.



Appendix A

Objectives, Scope, and Methodology

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

This report provides the results of our audit to determine whether CBP has an effective process to ensure that penalty cases do not expire because of the SOL.

To determine the existence and implementation of CBP's policies and procedures for oversight of the penalties process, we reviewed the SAMEPH, related CBP memorandums provided to CBP field offices, a workload study for years 2001–2007, FP&F Division site survey reports, and Monthly Assessment Reports.

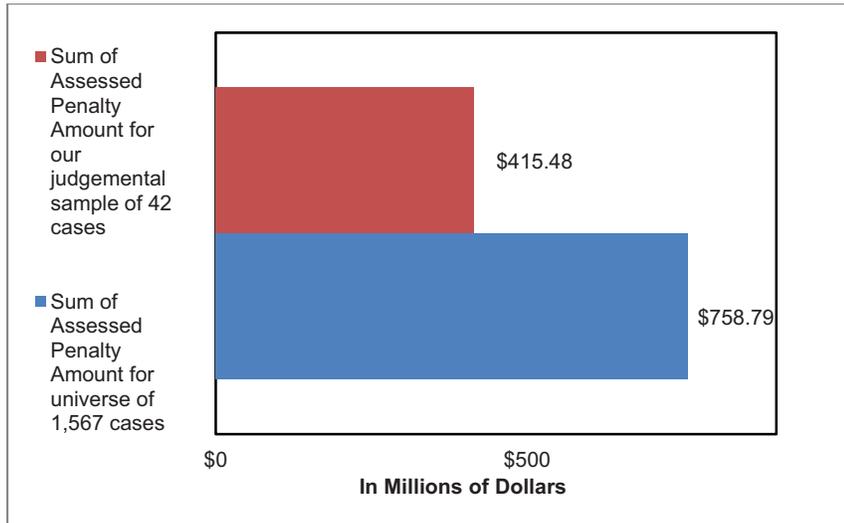
We interviewed personnel responsible for the initiation, implementation, and monitoring of the penalties process at seven out of 42 ports of entry with FP&F field offices. We visited the following field offices: Baltimore, MD; Chicago, IL; El Paso, TX; Milwaukee, WI; Newark, NJ; New York (JFK), NY; and Philadelphia, PA. We interviewed CBP officials involved in the implementation and oversight of the penalties process, including the Office of International Trade, OFO; the Internal Affairs Management Inspections Division at Internal Affairs; the Director of the National Finance Center in Indianapolis, IN; and Assistant Chief Counsels in New York, NY; El Paso, TX; and the National Finance Center in Indianapolis, IN.

We reviewed 42 closed penalty cases with expired SOLs to determine whether field offices processed cases in compliance with the SAMEPH and related CBP guidance. We judgmentally selected the expired cases from the total of 1,567 penalty cases closed by CBP from fiscal year 2009 through the second quarter of fiscal year 2011.

Figure 3 shows the assessed dollar amount of our sample against the approximate assessed penalties total for the fiscal years reviewed.



Figure 3: Closed Expired Penalty Cases for Fiscal Years 2009 Through Second Quarter 2011



Source: Data provided by CBP on closed expired penalty cases for fiscal years 2009 through second quarter fiscal year 2011. DHS OIG analysis of CBP data of assessed penalties and the number of penalty cases for fiscal year 2009 through second quarter fiscal year 2011.

The cases selected accounted for approximately \$415 million of the approximate \$758.8 million in assessed penalties during fiscal year 2009 through the second quarter of fiscal year 2011. We selected cases based on the case status text used to close the case in SEACATS, our planned field office visits, and cases greater than the assessed penalty average (mean) of \$1.37 million. We reviewed penalty case documentation provided by field offices and case information retrieved from SEACATS by CBP HQ personnel. To support our audit objective and ensure the accuracy of SEACATS data, we verified SEACATS data by comparing them with official penalty case files obtained from selected FP&F field offices.

We conducted this performance audit between May 2011 and January 2012 pursuant to the *Inspector General Act of 1978*, as amended, and according to 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 upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Appendix B
Management Comments to the Draft Report

1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

September 12, 2012

Mr. Charles K. Edwards
Acting Inspector General
U.S. Department of Homeland Security
245 Murray Drive, SW, Building 410
Washington, DC 20528

Re: Draft OIG Report, "U.S. Customs and Border Protection's Penalty Process-Statute of Limitations-For Official Use Only" (Project No. 11-026-AUD-CBP)

Dear Mr. Edwards:

Thank you for the opportunity to review and comment on this report. The U.S. Customs and Border Protection (CBP) appreciates the Department of Homeland Security Office of Inspector General's (OIG's) work in planning and conducting its review and issuing this report.

The draft report included two recommendations the CBP Office of International Trade (OT) and Office of Field Operations (OFO) can take to enhance its overall effectiveness. Actions are already underway to implement these recommendations. The Office of Field Operations has been identified as the lead office for each recommendation. CBP concurs with both of the recommendations. To the extent the corrective action plan requires joint action by the Offices of Field Operations and the Office of International Trade, OFO obtained concurrence from the OT, Office of Regulations and Rulings. The recommendations are as follows:

Recommendation #1: Perform an organizational assessment to determine whether resources are appropriately allocated to ensure effective penalty case management at Fines, Penalties, and Forfeitures field offices.

Response: Concur. The Office of Field Operations (OFO) Customs and Border Protection Officer (CBPO) workload staffing model is currently being approved by the Department of Homeland Security for release to Congress. When approved by the Department, this model and its methodology will provide a basis for the OFO Fines, Penalties and Forfeitures (FP&F) Division staffing model design. OFO will integrate efforts to leverage best practices and identify relationships between CBPOs, who create the FP&F case load, and the FP&F specialists who process the cases. To date FP&F has completed the following:

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- Workgroup meeting held to develop new position descriptions (PDs) and update existing PDs for paralegal specialists in support of newly created FP&F office organizational structures.
- Completed a procurement request to obtain contractor supports services to develop a Resource Allocation Model (RAM) for the FP&F Division.
- Newly created and revised PDs were submitted to the OFO, Mission Support (MS) for processing with the Office of Human Resources Management (HRM).

FP&F will distribute the new PDs to the field to be provided to employees once processed by MS and HRM. Additionally, FP&F will continue working with procurement to obtain a contractor to create the RAM for the FP&F Division. Estimated Completion Date (ECD): June 1, 2013.

Recommendation #2: Develop, document, and implement a headquarters oversight plan to ensure that the office responsible for oversight of penalty case management has the authority to monitor field offices' compliance with CBP guidance and to ensure effective processing of penalty cases. At a minimum, the plan should-

- Ensure that monthly assessment data are consistent;
- Review evaluation standards for onsite visits, to include validation of annual self-inspection reports;
- Develop a schedule of onsite field office oversight visits to ensure that each office has effective management controls; and
- Develop protocols to ensure that Fines, Penalties, and Forfeiture field offices implement program improvements resulting from the Office of Field Operations' oversight efforts.

Response: Concur. The OFO FP&F Division is developing, documenting, and implementing a headquarters oversight plan to ensure that it has the authority to monitor field offices' compliance with CBP guidance and to ensure effective processing of penalty cases.

In furtherance, of this oversight plan, to date, the FP&F Division has taken the following action:

1) Developed standardized dashboard reports in Enterprise Data Warehouse (EDW) for use as an oversight tool by all Directors of Field Operations' staff and FP&F officers. These reports ensure consistent data retrieval and bring data reporting requirements in line with headquarters policy. Under this schema, data report parameters are controlled by FP&F Division. Deployed dashboard for testing at Houston and Laredo Field Offices and they continue to be deployed during site surveys and EDW training sessions. Full deployment of dashboards should be completed by October 31, 2012. Monthly Assessment Reporting of FP&F offices has been restructured to be more tightly focused. However, periodically, the report will be readjusted to meet policy requirements and address specific areas of concern. A revised Monthly Assessment Report Summary will be distributed to FP&F Division senior management beginning in September 2012 and will be distributed monthly.



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2) The Office of International Trade, Commercial Enforcement Policy Division (CEPD) has been collaborating with the FP&F Division to provide staff support and budget resources for oversight visits. This will ensure more effective assessment of penalty cases and more frequent evaluation of effective management control of FP&F offices.

- CEPD has already provided funds and staffing to the FP&F Division for field oversight visits for August and September 2012.

3) At the request of the FP&F Division, the Office of Internal Affairs (IA), Management Inspection Division, will be conducting a focused assessment of the FP&F Division's oversight protocols, including providing recommendations for strengthening them. Upon completion of the focused assessment, FP&F will implement IA's recommendations designed to improve their oversight protocols.

4) The FP&F Division has revised its Self-Inspection Case Processing worksheet to reflect more meaningful questions designed to more adequately assess the field's compliance. The new worksheet will be active beginning with the 2013 Self-Inspection Program cycle.

ECD: January 31, 2013

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were provided under separate cover. Please feel free to contact me or Mr. Joseph Westmoreland, Deputy Director, Management Inspections Division, at (202) 325-7556, if you have any questions. We look forward to working with you in the future.

Sincerely,

James F. Tomsheck
Assistant Commissioner
Office of Internal Affairs



Appendix C

Major Contributors to This Report

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Appendix D
Report Distribution

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