

**Evaluation of Alleged AUO
Misuse at U.S. Customs
and Border Protection's
National Targeting Center
(OSC File No. DI-14-0581)
(Revised)**





HIGHLIGHTS

Evaluation of Alleged AUO Misuse at U.S. Customs and Border Protection's National Targeting Center (OSC File No. DI-14-0581)

December 2, 2014

Why We Did This

The U.S. Office of Special Counsel (OSC) received a whistleblower disclosure concerning employees at U.S. Customs and Border Protection's (CBP) National Targeting Center–Cargo, in Herndon, Virginia and the National Targeting Center–Passenger, in Reston, Virginia. The whistleblower alleged that employees in both locations regularly claim administratively uncontrollable overtime (AUO), but fail to perform duties that qualify for AUO.

OSC referred this allegation to DHS Acting Secretary Rand Beers. The Department subsequently requested our assistance with this allegation and several other AUO-related allegations from other DHS components. We assembled a taskforce of auditors, program analysts, investigators, and attorneys to review these allegations.

This report contains the results of our evaluation on the alleged misuse of AUO at the National Targeting Centers in Herndon and Reston, Virginia. We issued the results of our evaluations of the alleged misuse of AUO at other components in separate reports.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

Federal regulations allow agencies to pay AUO annually to employees in positions that require substantial amounts of irregular or occasional overtime work and in which the hours of duty cannot be controlled administratively.

The National Targeting Center did not have sufficient AUO documentation to allow us to specifically identify a violation of law, rule, or regulation. However, most of the tasks employees performed during AUO hours appear to have been administratively controllable.

This report contains no recommendations.



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Department of Homeland Security

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

December 2, 2014

MEMORANDUM FOR: The Honorable Stevan E. Bunnell
General Counsel
Department of Homeland Security

FROM: John Roth 
Inspector General

SUBJECT: *Evaluation of Alleged AUO Misuse at U.S.
Customs and Border Protection's National
Targeting Center (OSC File No. DI-14-0581)*

Attached for your information is our revised final report, *Evaluation of Alleged AUO Misuse at U.S. Customs and Border Protection's National Targeting Center (OSC File No. DI-14-0581), OIG-15-11*. We reissued the report to make a correction to page 9. Please see the attached errata page for details.

On December 20, 2013, OSC referred this allegation to DHS Acting Secretary Rand Beers. The Department subsequently requested our assistance with this allegation and several other AUO-related allegations from other DHS components. We assembled a taskforce of auditors, program analysts, investigators, and attorneys to review these allegations. Given time constraints and limited resources, we determined that a limited-scope review of the components' use of AUO in 2013 and 2014 would yield the most useful results.

The attached report contains the results of our evaluation on the alleged misuse of AUO at CBP's National Targeting Center (NTC). We intend to publish this report on our website within 90 days of the date of this memorandum. We will issue the results of our evaluations of the alleged misuse of AUO at other components in separate reports.

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

Errata page for OIG-15-11

Evaluation of Alleged AUO Misuse at U.S. Customs and Border Protection's National Targeting Center (OSC File No. DI-14-0581)

Page 9: The phrase “including NTC’s two executive directors” was removed from the second sentence of the Review of AUO Percentage Rates section (see below):

Changed from: However, according to data provided by CBP in February 2014, about 37 percent of OFO program managers, including NTC’s two executive directors, earned AUO at the 25 percent rate.

Changed to: However, according to data provided by CBP in February 2014, about 37 percent of OFO program managers earned AUO at the 25 percent rate.



Summary of Results

NTC did not have sufficient AUO documentation to allow us to specifically identify a violation of law, rule, or regulation. However, most of the tasks employees performed during AUO hours appear to have been administratively controllable.

Background

A former employee of CBP Commissioner's Situation Room provided a list of 96 NTC employees who allegedly abused AUO. According to the whistleblower, 29 of the 96 employees were GS-13 border patrol agents and 67 were GS-14 watch commanders or GS-15 chief watch commanders. The whistleblower disclosed that, although the majority of the NTC workforce comprised targeting officers who did not receive AUO, there were border patrol agents, watch commanders, and chief watch commanders who received AUO at the 25 percent rate.

According to the disclosure letter, the whistleblower periodically worked at NTC offices during his tenure in the Commissioner's Situation Room and based his allegations on "personal observations, review of database records available to all CBP employees, and conversations with approximately a dozen NTC employees, some of whom claim AUO." OSC concluded "there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, and an abuse of authority."

NTC consists of the National Targeting Center – Cargo and the National Targeting Center – Passenger, which work to identify cargo and passengers that potentially threaten our Nation's security. NTC's mission requires the performance of time-sensitive duties and coordination among NTC analysts and managers, commercial carriers, CBP field offices, other U.S. Government agencies, and foreign partner agencies.

NTC operations are conducted in three 8-hour shifts each day by permanent and temporarily detailed personnel from CBP's Office of Field Operations (OFO) and Office of Border Patrol (OBP), as well as other Government agencies. Although not an official job title, nonsupervisory OFO and OBP employees who provide support to personnel in the field are generally referred to as "targeters." OFO and OBP targeters perform the same duties; however, OFO targeters (who were not the subject of the whistleblower allegation) received overtime pay under the *Customs Officer*



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Pay Reform Act and OBP targeters received AUO. The permanent OBP personnel in our sample were classified as “operations officers” by the Office of Personnel Management.

OFO watch commanders and chief watch commanders who work at NTC are classified as program managers (job series code 0340) by the Office of Personnel Management. Watch commanders are first-line supervisors who oversee the targeters and manage operations on the floor. Chief watch commanders are second-line supervisors whose duties include overseeing the watch commanders and targeters on the floor.

According to data provided by CBP, 71 NTC employees received nearly \$1.2 million in AUO pay between January 13, 2013, and January 25, 2014.

On January 27, 2014, DHS Secretary Johnson issued a memorandum suspending the use and payment of AUO for all DHS headquarters employees. Subsequently, NTC suspended AUO and informed its employees that any overtime hours worked after that date would be “paid under the Federal Labor Standards Act or the Federal Employees Pay Act (FEPA).”

On August 20, 2014, CBP Commissioner R. Gil Kerlikowske sent a memorandum, *Use of Administratively Uncontrollable Overtime*, to DHS Deputy Secretary Alejandro Mayorkas. The memorandum presented CBP’s Office of Human Resources Management’s (HRM) *Report of Review and Findings* on CBP’s use of AUO, which was completed in June 2014. HRM determined that the OFO program manager position at NTC and the OBP operations officer position nationwide were ineligible for AUO.

Relevant Regulations

According to Title 5 of the Code of Federal Regulations (CFR) § 550.151, agencies are authorized to pay AUO annually “... to an employee in a position which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty.”

Per 5 CFR § 550.153(a), a typical example of a position meeting the AUO requirement “... is that of an investigator of criminal activities whose hours of duty are governed by what criminals do and when they do it.”



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Further, 5 CFR § 550.153(c) defines what it means in § 550.151 that an employee is “generally responsible for recognizing, without supervision, circumstances which require him to remain on duty:

(1) The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position.

(2) The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.

(3) The requirement that the employee is responsible for recognizing circumstances does not include such clear-cut instances as for example, when an employee must continue working because a relief fails to report as scheduled.”

Relevant Policies

According to the Immigration and Naturalization Service’s *Administrative Manual*, Section 1.3.103, the AUO percentage rate authorized may be 10, 15, 20, or 25 percent of the employee's rate of basic pay for positions that require:

- an average of at least three but not more than five hours a week of irregular or occasional overtime work –10 percent;
- an average of over five but not more than seven hours a week of irregular or occasional overtime work –15 percent;
- an average of over seven but not more than nine hours week of irregular or occasional overtime work – 20 percent; and
- an average of over nine hours a week of irregular or occasional overtime work – 25 percent.

Each pay period, NTC employees record the number of AUO hours they work either on a *Record of AUO Hours Worked* form (CBP G-1012 form) or on an *Administratively Uncontrollable Overtime Report* form (CBP 203 form). OBP employees used CBP G-1012 forms and the OFO employees we interviewed used CBP 203 forms. (Appendices A and B contain templates of CBP G-1012 form and CBP 203 form, respectively.)

NTC employees also record the number of AUO hours they work each pay period in the CBP Overtime Scheduling System (COSS). Appendix C



shows the percentage of time recorded for each potential AUO increment (e.g., 1 hour, 1.25 hours, and 1.5 hours) in COSS.

Finding

NTC did not have sufficient AUO documentation to allow us to specifically identify a violation of law, rule, or regulation. However, based on our review of AUO documentation and employee interviews, most of the activities performed by watch commanders, chief watch commanders, and OBP targeters appear to have been administratively controllable.

Summary of Evidence Obtained

Summary of AUO Documentation Forms and Employee Interviews

AUO Documentation (CBP 203 Forms and G-1012 Forms)

We reviewed 30 CBP 203 and G-1012 forms that 17 employees named in the whistleblower disclosure letter completed between January 13, 2013, and December 28, 2013. The CBP 203 and G-1012 forms we reviewed often contained brief or vague descriptions of activities performed during AUO hours, such as “continuation of supervisor duties,” “WC floor coverage,” or “run record checks.” Appendix D contains examples of activities described on the CBP 203 and G-1012 forms.

According to 5 CFR § 550.153(c), the “employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.” None of the CBP 203 or G-1012 forms we reviewed contained enough detail for an independent reviewer to determine whether the employee would have been negligent if he or she had not stayed beyond regular duty hours to complete the task. For example, the description “run record checks” does not demonstrate why employees would have to stay beyond the end of their scheduled shift to complete record checks rather than have their relief on the next shift complete the task.

AUO Guidance

We interviewed 13 OFO program managers (3 chief watch commanders, 9 watch commanders, and 1 nonsupervisory program manager) and 4



OBP targeters to determine their understanding of AUO.¹

Although all the OFO program managers we interviewed said they received some form of written or verbal guidance on AUO, their knowledge of AUO requirements appeared to vary. For instance, one watch commander was not sure which activities were acceptable for AUO; another said he did not fully understand the criteria for AUO. Others provided accurate examples of AUO requirements, such as overtime that cannot be scheduled ahead of time for tasks that cannot be completed the next day.

Most of the OBP targeters we interviewed said they received some form of initial or on-the-job training on AUO, but no written guidance. One targeter said any updates to guidance were generally provided verbally, although another said “nothing has really changed for 18 years.” When asked about the requirements for earning AUO, some targeters appeared to understand better than others what qualified for AUO. For example, one aptly described AUO as unforeseen overtime that is not scheduled in advance, cannot be passed to another targeter, and does not require supervisory approval. Another OBP targeter indicated that he understood AUO to be any nonadministrative work that “puts the employee over 8 hours.”

OFO Program Managers’ AUO Activities

Based on our review of chief watch commanders and watch commanders’ (program managers) CBP 203 forms and interviews, we agree with HRM’s finding that “the NTC Program Manager (Watch Commander) position performs duties that are primarily administrative and recurring in nature.” The CBP 203 forms we reviewed included descriptions of recurring or administrative activities such as shift changes, shift reports, “shift prep,” “IC badge at NAC,” “DEA synergy meeting,” and “CBP ICE MOU.”

We also interviewed the 13 OFO program managers (chief watch commanders, watch commanders, and the nonsupervisory program manager) to determine the duties they typically performed during AUO hours. During interviews, the chief watch commanders and watch commanders described AUO activities, such as relieving personnel or covering a shift, handling national events and incidents, conducting research, writing and reviewing incident reports and issue papers, and

¹ The nonsupervisory program manager oversees floor operations, but has no direct reports; he is not a “targeter.”



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coordinating with field offices and other agencies on significant events. Examples of events and incidents included the Times Square car bombing attempt and the lost Air Malaysia plane. Writing issue papers and incident reports may involve, for instance, researching an individual on the no-fly list who has filed a travel plan or reporting on significant drug seizures. One watch commander explained that his AUO hours were generally a result of staffing needs or shortages. He worked on emerging events that occurred at the end of a shift or reviewed cases that he did not complete during his regular hours. Some watch commanders also described administrative tasks such as answering email, leading tours, and completing daily reports.

The OFO nonsupervisory program manager explained that he works beyond the end of his shift to make sure “events” are completed before handing off the work to the next shift. He also said that multiple watch commanders may be involved if the situation is complex. For example, if NTC received information that the cargo on a flight needed to be reviewed because of a bomb threat, he would remain at work until the targeter finished the event so he could review it. He may also work AUO hours in other situations, such as covering for a sick employee.

Six OFO program managers said some of the duties they performed during AUO hours may have been able to be scheduled in advance or passed on to the oncoming supervisor. However, according to a chief watch commander, “any task or work completed on AUO is something that for various mission essential reasons, need for continuity, efficiency, competing priorities and/or time sensitive issues could not be completed or scheduled during regular hours...The decision on whether or not to de-plane or deny boarding to a mala fide traveler, or to deny/revoke a visa or other benefit needs to be affected and coordinated with multiple law enforcement entities and other vetting partings and is of the utmost importance. This kind of task should not be passed over to someone else, lest we compromise National Security.”

According to HRM’s June 2014 *Report of Review and Findings* on CBP’s use of AUO, “the NTC Program Manager (Watch Commander) position performs duties that are primarily administrative and recurring in nature. These include tasks such as responding to senior management, disseminating information, providing technical support, addressing staffing and scheduling issues, and attending off-site meetings. These position duties and responsibilities can be managed through planning, work scheduling, and other administrative means.”



OBP Targeters' AUO Activities

Based on our review of OBP targeters' G-1012 forms and interviews, we agree with HRM's finding that the circumstances requiring OBP operations officers to work beyond their scheduled hours of duty could be anticipated and managed administratively. Two of the four OBP targeters in our sample were permanently stationed at NTC and were operations officers. The other two were border patrol agents on temporary details to NTC. (The detailed agents returned to their previous posts once their details were finished.)

The G-1012 forms we reviewed included descriptions such as "NTC Prep and closeout", "Disseminated critical information," "Conduct field interviews," "Run record checks," "Complete critical tasking," and "continuation of class instruction."

We interviewed four OBP targeters to determine the duties they typically performed during AUO hours. OBP targeters described AUO activities such as "conducting research to respond to calls from the field," "clearing names on the board," "vetting subjects or referring cargo for inspection based on time sensitive requests," "coordinating with field border patrol agents who may need to expedite a subject's identity for national security threats during a traffic stop," and "coordinating with the Federal Bureau of Investigation." OBP targeters sometimes worked AUO hours because there was a need for the background knowledge they obtained by working on a particular case. One cited management's preference "to have the queue cleared out" before the end of the shift. OBP targeters also said they sometimes continued their targeting activities beyond the end of their shifts because it would take too long to explain ongoing activities to the oncoming person. One OBP targeter noted that he may do administrative tasks, such as time and attendance or paperwork, during AUO hours because there is no time during the regular workday to perform these tasks.

Three of the four OBP targeters we interviewed did not believe that the duties they performed during AUO hours could have been scheduled in advance or passed on to the oncoming shift; one OBP targeter said that it would be possible to schedule some work in advance.

According to HRM's June 2014, *Report of Review and Findings on CBP's use of AUO*, certain OBP positions, including operations officers, "... are performing work that does not meet the eligibility criteria for AUO ... In some cases, position requirements necessitated overtime; however, the

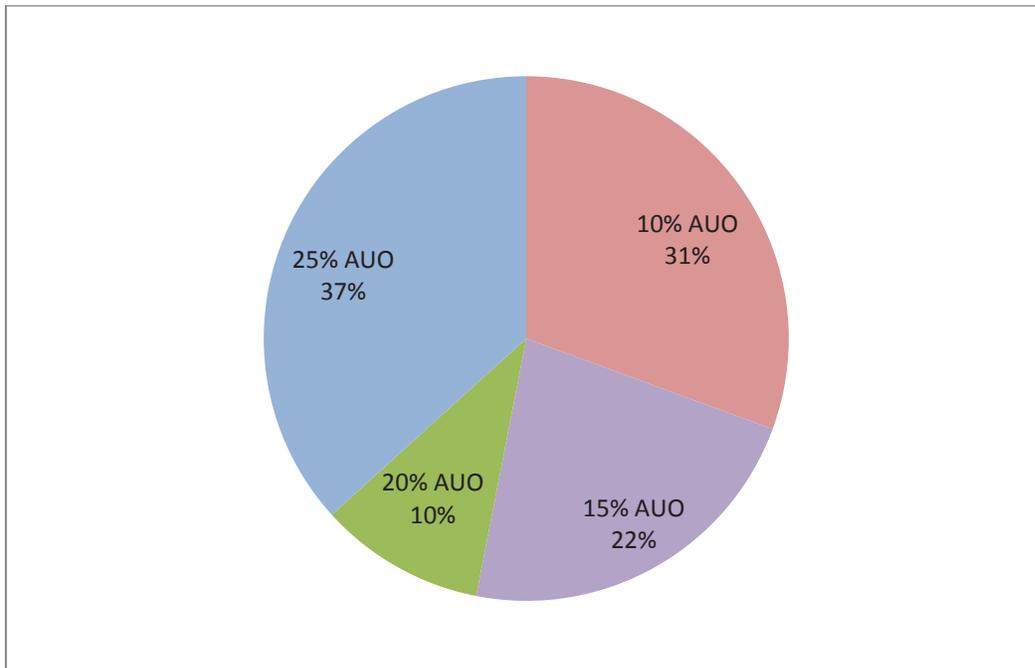


circumstances requiring employees to work beyond their scheduled hours of duty could be anticipated and managed administratively... Employees in positions who are required to work scheduled or unscheduled overtime are eligible to be compensated under other overtime systems, such as FEPA or FLSA, as appropriate.”

Review of AUO Percentage Rates

According to the whistleblower, NTC’s border patrol agents and OFO program managers (watch commanders and chief watch commanders) were earning AUO at the 25 percent rate. However, according to data provided by CBP in February 2014, about 37 percent of OFO program managers earned AUO at the 25 percent rate. Table 1 shows the percentage of OFO program managers who earned AUO at the 10, 15, 20, and 25 percent rate. (OBP targeters were not included in the AUO percentage rate data provided by CBP.)

Table 1: Percentage of OFO Program Managers Receiving AUO at Various Rates



Source: OIG analysis of CBP-provided data



Actions Taken and Planned

NTC permanently suspended AUO in January 2014. According to Commissioner Kerlikowske's August 20, 2014 memorandum, "CBP is pursuing a series of actions to ensure the appropriate use and payment of AUO. These include de-authorizing AUO for those positions it has been determined that AUO is not the appropriate means of overtime compensation."



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Appendix A

CBP G-1012 Form Template

U.S. Department of Homeland Security		Record of AUO Hours Worked			
Customs And Border Protection					
NAME		SSN	PP#	FOR PERIOD FROM:	TO:
POSITION TITLE	% AUO 25	REGION	SECTOR/DISTRICT	STATION/DEPT/PROGRAM	
Date	DAILY TOUR DUTY HRS	AUO HRS WORKED	EXCLUDABLE DAYS	REASON FOR AUO HRS WORKED OR ABSENCE	
Sunday					
Monday					
1/1					
Tuesday					
1/2					
Wednesday					
1/3					
Thursday					
1/4					
Friday					
1/5					
Saturday					
1/6					
Sunday					
1/7					
Monday					
1/8					
Tuesday					
1/9					
Wednesday					
1/10					
Thursday					
1/11					
Friday					
1/12					
Saturday					
1/13					
TOTAL					
Certified True and Correct:			Examined and Approved:		
_____			_____		
Employee Signature			Supervisor Signature		

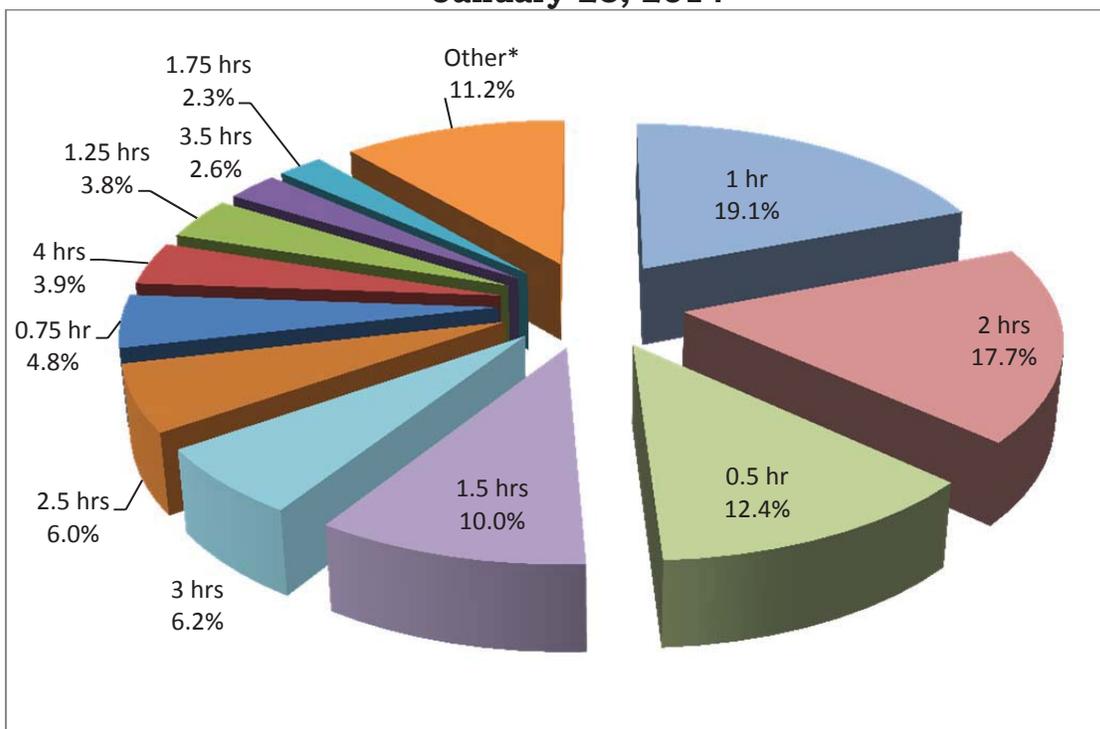
Form G-1012 (2/99)



Appendix C Frequency of AUO Time Increments Recorded

NTC employees record AUO hours in 15-minute increments. The chart below depicts the percentage of time each AUO increment was recorded in COSS. For example, NTC employees recorded 1 hour of AUO per day about 19 percent of the time.

Increments of AUO Hours Recorded in COSS January 1, 2013 – January 25, 2014



*Other: Any increment of AUO hours recorded less than 2 percent of the time.

Source: OIG analysis of CBP-provided data



Appendix D

Examples of AUO Tasks on Fiscal Year 2013 CBP 203 Forms and G-1012 Forms (Facsimiles)

Non-Supervisors (Targeters)	<ul style="list-style-type: none">• NTC Prep and closeout• Disseminated critical information• Conduct field interviews• TRINS-Detailed to BP Academy continuation of class instruction	<ul style="list-style-type: none">• Complete critical tasking• Run record checks• PROCE-Processing agent
Watch Commanders	<ul style="list-style-type: none">• WC Shift Report• Continuation of Supervisory Duties• Issue Paper• Inbound no-fly issue paper• Evac + TSA explosive test	<ul style="list-style-type: none">• WC Shift Change• Review and Finalize Events• DEA/Synergy Meeting• IC Badge at NAC• HSDN cable traffic review
Chief Watch Commanders	<ul style="list-style-type: none">• Emergency Coverage for Floor• Floor ops• Brief on No-Fly• Coordination on TSA vetting	<ul style="list-style-type: none">• CWC Duties• Chief Duties• Outbrief• CBP ICE MOU



Appendix E Conduct of the Review

Objective and Scope: The objective of this evaluation was to assess, to the extent possible given limited resources, the validity of the whistleblower's allegation that NTC employees did not perform duties justifying their AUO claims. Our objectives included determining the amount of AUO paid to NTC employees, the justifications for receiving AUO pay, and whether NTC's use of AUO was consistent with Federal regulations. The scope of this evaluation was 2013 and 2014. We did not include a determination of the cause or effect of improper use of AUO in the scope.

Whistleblower Interview: On February 24, 2014, we interviewed the whistleblower to obtain additional information about the allegation. The whistleblower did not provide any new information pertinent to the scope of this evaluation.

Regulations and Policies Governing AUO: We reviewed the CFR, specifically 5 CFR § 550.151 and 5 CFR § 550.153(a) and (c), as well as:

- U.S. Border Patrol *Administratively Uncontrollable Overtime Guidance*, OBP 100/10.4.3-C (December 10, 2012),
- Office of Field Operations Standard Operating Procedures, *Administratively Uncontrollable Overtime*, 2011-001 (May 30, 2011), and
- Immigration and Naturalization Service's *Administrative Manual*, section 1.3.103 (dated January 2000).

Sample of NTC *Administratively Uncontrollable Overtime Report and Record of AUO Hours Worked* forms (CBP 203 and G-1012 forms): OSC's disclosure letter contained a list of 96 employees who allegedly misused AUO at the NTC in Herndon and Reston, Virginia. Of the 96 names, 4 were duplicates, 3 had been transferred to another location, 1 was not working at NTC, and 2 were located in headquarters in Washington, DC. CBP had no record of an additional 3 names and suggested they may have been employed by another agency but physically located at NTC. From the remaining list of 83 employees, we randomly selected 17 employees, including 3 chief watch commanders, 9 watch commanders, 1 nonsupervisory program manager, and 4 OBP targeters. We then judgmentally selected two pay periods in 2013 for each person, which resulted in a sample of 34 CBP 203 or G-1012 forms. (We also selected



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one pay period from the first quarter of 2014 after AUO was suspended to confirm that employees were no longer recording overtime hours as AUO. We found that employees ceased completing the CBP 203 and G-1012 forms after AUO was suspended.)

Review of CBP 203 and G-1012 Forms: Of the 34 CBP 203 and G-1012 forms selected for review, 4 were not provided by CBP. We reviewed the remaining 30 forms to determine the duties NTC employees performed while claiming AUO.

Review of Payroll Records and Quarterly AUO Reviews: CBP provided the AUO percentage rates for 49 OFO program managers on February 20, 2014. We used this information to determine the percentage of OFO program managers who earned AUO at the rates of 10, 15, 20, and 25 percent.

We determined the total amount of AUO paid to NTC employees between January 13, 2013, and January 25, 2014, using CBP-provided data from COSS. We also used COSS data to create the frequency of AUO hours documented by NTC employees shown in appendix C. In addition, we reviewed payroll records to confirm that employees were not receiving AUO pay after it was suspended.

Interviews of NTC Employees: We interviewed the same 17 employees whose CBP 203 and G-1012 forms had been selected for review. The interviews took place between April 29, 2014, and June 23, 2014, in Herndon and Reston, Virginia and by phone. We interviewed these employees to determine what duties they typically performed during AUO hours and their understanding of AUO requirements. Not every interviewee answered every question on our prepared list of questions.

Evaluation Standards: We conducted this review under the authority of the *Inspector General Act of 1978*, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency in January 2012.

ADDITIONAL INFORMATION AND COPIES

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