1300 Pennsylvania Avenue, NW
Washington, DC 20229

U.S. Customs and
Border Protection

Commissioner

JAN 15 2015

Carolyn N. Lerner
Special Counsel
Office of Special Counsel
1730 M Street, Suite 300
Washington, D.C. 20036-4505

Re: OSC File No. DI-14-0631

Dear Ms. Lerner:

The enclosed report is in response to your referral of allegations that employees of the U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), Office of Border Patrol, Ysleta Border Patrol Station, El Paso, Texas, engaged in conduct that may constitute violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, and an abuse of authority. The Office of Special Counsel (OSC) received these allegations from Adam Stayer, a Border Patrol Agent at the Ysleta Station. Agent Stayer alleged that employees at the Ysleta Station, including supervisors and agents, claim Administrative Uncontrollable Overtime (AUO), but fail to perform duties that qualify for AUO. He also alleged that supervisors at the Ysleta Station authorize the use of AUO to compensate injured agents that are assigned to administrative duties and are not working overtime hours.

I am the designated official responsible for providing your office with the Department's report pursuant to 5 U.S.C. § 1213. On December 19, 2013, OSC referred the above allegations and a request for an investigation to DHS Acting Secretary Rand Beers. The DHS Office of Inspector General (OIG) received these allegations and completed the investigation on November 4, 2014.

The investigation revealed that the station did not have sufficient AUO documentation and/or records that specifically identified a violation of law, rule, or regulation. Most of the 24 border patrol agents interviewed said they received some form of informal AUO guidance, including on-the-job training, such as oral instructions on how to fill out relevant forms. However, the investigation concluded that most activities which second-line supervisory border patrol agents performed during AUO hours and some activities that first-line supervisory agents and nonsupervisory agents performed appear to have been administratively controllable. As to nonsupervisory agents, the investigation showed that the majority of the forms reviewed included descriptions of activities that

appeared to be related to law enforcement duties, with approximately one quarter of the responses containing descriptions of activities that may be administratively controllable. The investigation further found no evidence to substantiate that Ysleta Station agents who sustained work-related injuries were paid AUO improperly.

The findings are included in the enclosed report. I issued a memorandum on August 20, 2014, in which I indicated CBP is assuring the appropriate use and payment of AUO, including the de-authorization of AUO where it is determined that AUO is not the appropriate means of overtime compensation. Effective September 7, 2014, HRM decertified supervisory border patrol agents deemed ineligible for AUO.

If you require further information regarding this matter, please contact Philip Carpio in the Office of Chief Counsel at 202-344-2940.

Sincerely,

R. Gil Kerlikowske
Commissioner

Enclosures

cc: Secretary, Department of Homeland Security
Deputy Secretary, Department of Homeland Security
Chief Human Capital Officer, Department of Homeland Security
General Counsel, Department of Homeland Security

OFFICE OF INSPECTOR GENERAL

Evaluation of Alleged AUO Misuse at U.S. Border Patrol, Ysleta Station (OSC File No. DI-14-0631)

Homeland Security

November 04, 2014

OIG-15-07

HIGHLIGHTS

Evaluation of Alleged AUO Misuse at U.S. Border Patrol, Ysleta Station (OSC File No. DI-14-0631)

November 04, 2014

Why We Did This

The U.S. Office of Special Counsel (OSC) received a whistleblower disclosure concerning U.S. Customs and Border Protection's Ysleta Border Patrol Station (Ysleta Station) in El Paso, Texas. The whistleblower alleged that supervisors and border patrol agents at the Ysleta Station claim administratively uncontrollable overtime (AUO), but fail to perform duties that qualify for AUO. The whistleblower also alleged that supervisors at the Ysleta Station authorize AUO to compensate injured agents who are assigned administrative duties and are not working overtime hours.

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 Ysleta Station in El Paso, Texas. We will issue 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.

Ysleta Station did not have sufficient AUO documentation to allow us to specifically identify a violation of law, rule, or regulation. However, most activities that second-line supervisory border patrol agents performed during AUO hours and some activities that first-line supervisory agents and nonsupervisory agents performed appear to have been administratively controllable. We did not find evidence to substantiate that Ysleta Station agents who sustained work-related injuries were paid AUO improperly.

This report contains no recommendations.

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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

November 4, 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. Border Patrol, Ysleta Station (OSC File No. DI-14-0631)*

The U.S. Office of Special Counsel (OSC) received a whistleblower disclosure concerning agents in U.S. Customs and Border Protection's (CBP) Ysleta Border Patrol Station (Ysleta Station) in El Paso, Texas. The whistleblower alleged that supervisors and border patrol agents at the Ysleta Station claim administratively uncontrollable overtime (AUO), but fail to perform duties that qualify for AUO. The whistleblower also alleged that supervisors at the Ysleta Station authorize AUO to compensate injured agents who are assigned administrative duties and are not working overtime hours.

On December 19, 2013, OSC referred this allegation to Department of Homeland Security (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 fiscal year (FY) 2013 would yield the most useful results.

The attached final report contains the results of our evaluation on the alleged misuse of AUO at the Ysleta Station in El Paso, Texas. 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

Summary of Results

The Ysleta Station did not have sufficient AUO documentation to allow us to specifically identify a violation of law, rule, or regulation. However, most activities that second-line supervisory border patrol agents performed during AUO hours and some activities that first-line supervisory agents and nonsupervisory agents performed appear to have been administratively controllable. We did not find evidence to substantiate that Ysleta Station agents who sustained work-related injuries were paid AUO improperly.

Background

A border patrol agent assigned to the Ysleta Station alleged that supervisory and nonsupervisory agents are improperly receiving AUO. According to the whistleblower, between 60 and 70 supervisory agents "routinely claim two hours of AUO at the end of every day, earning premium pay equal to 20 to 25 percent of their rate of basic pay. However, many of these supervisory agents are in positions with only administrative duties and are claiming AUO while performing work that is administrative, optional, and controllable and thus, does not justify the receipt of AUO." The whistleblower disclosed that "agents assigned to work in the field are receiving AUO for routine shift-change activities," as well as "performing maintenance on vehicles, filling out timesheets, and completing online training."

In addition, the whistleblower alleged that Ysleta Station management allows injured agents assigned to administrative duties, who are not working overtime hours, to continue to receive AUO. OSC concluded, "there is a substantial likelihood that the information the whistleblower provided to OSC discloses a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, and an abuse of authority."

The Ysleta Border Patrol Station (Ysleta Station) is in El Paso, Texas, and is part of the El Paso Sector. Ysleta Station is responsible for "linewatch" operations along 16.7 miles of the International Boundary along the Rio Grande and checkpoint operations at the Ysleta port of entry. Ysleta agents conduct linewatch operations to prevent the illegal entry and smuggling of aliens into the United States and intercept those who enter illegally, before they can escape from border areas. Ysleta Station's linewatch operations are conducted in three 8-hour shifts each day. Checkpoint operations at the Ysleta port of entry include immigration

inspections of people entering the United States, as well as the examination of cargo and agriculture products. Ysleta Station's checkpoint operations are conducted in four 6-hour shifts.

According to data provided by CBP, Ysleta Station's border patrol agents received about $5 million in AUO pay in FY 2013.

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 border patrol agent and first-line supervisory border patrol agent positions in U.S. Border Patrol sectors and stations are eligible for AUO. In contrast, HRM determined that second-line supervisory border patrol agent positions, including field operations supervisors, watch commanders, patrol agents in charge, and deputy patrol agents in charge, are ineligible for AUO. According to HRM, the circumstances requiring these employees to work beyond their scheduled hours of duty could be anticipated and managed administratively.

Relevant Regulations

According to 5 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."

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 (INS) *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 3 but not more than 5 hours a week of irregular or occasional overtime work – 10 percent;
- an average of over 5 but not more than 7 hours a week – 15 percent;
- an average of over 7 but not more than 9 hours a week – 20 percent; and
- an average of over 9 hours a week – 25 percent.

The weekly average of AUO hours is based on the number of AUO hours worked by each employee during a "computation period," which spans 12 pay periods.

According to U.S. Border Patrol guidance, employees are to use *Record of AUO Hours Worked* forms (G-1012 forms) to record and describe the tasks they perform during AUO duty hours; supervisors are to ensure that employees are performing AUO eligible work by reviewing the G-1012 forms every pay period. (Appendix A contains the G-1012 template.)

The CBP Overtime Scheduling System (COSS) is used to record the number of AUO hours employees work each pay period. Appendix B shows the percentage of time recorded for each potential AUO increment (e.g., 1 hour, 1.5 hours, and 2 hours) in COSS.

Finding

Ysleta Station did not have sufficient AUO documentation to allow us to identify a specific violation of law, rule, or regulation. Based on our review of AUO documentation and our interviews with agents, most activities that second-line supervisory agents performed during AUO hours appear to have been "administrative" and "controllable," as alleged by the whistleblower. Some of the activities that first-line supervisory agents and nonsupervisory agents performed during AUO hours also appear to have been administratively controllable. We did not find evidence to substantiate the allegation that Ysleta Station agents who sustained work-related injuries were improperly paid AUO between January 2013 and March 2014.

Summary of Evidence Obtained

Summary of AUO Documentation Forms and Agent Interviews

G-1012 Forms

We reviewed 511 G-1012 forms that 204 agents completed. Each G-1012 form corresponds to a 2-week pay period. Agents record the number of AUO hours and the activities performed during those hours each day. The G-1012 forms we reviewed often contained brief or vague descriptions of activities performed during AUO hours, such as "supervisory duties" or "patrol border/signcutting."[1] Appendix C contains examples of activities described on the 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 G-1012 forms we reviewed contained enough detail for an independent reviewer to determine whether the agent would have been negligent if he or she had not stayed beyond regular duty hours to complete the task. Therefore, the G-1012 forms could not serve as a basis for determining whether an activity that appeared to justify AUO, such as signcutting, actually met all the AUO eligibility requirements. For example, based on the forms, we could not determine whether at the end of a shift, an agent needed to continue following a trail left by a suspected illegal border

[1] Signcutting is the detection and the interpretation of any disturbances in natural terrain conditions that indicate the presence or passage of people, animals, or vehicles.

crosser, or the agent chose to begin checking a road for signs of illegal entry instead of going home.

AUO Guidance and Completion of G-1012 Forms

To determine their understanding of AUO and how they completed G-1012 forms, we interviewed 24 border patrol agents at the Ysleta Station — 3 second-line supervisory agents, 9 first-line supervisory agents, and 12 nonsupervisory agents.[2] Most of the 24 border patrol agents we interviewed said they received some form of informal AUO guidance; only 6 of the 24 said they received formal guidance. The informal guidance included on-the-job training, such as oral instructions on how to fill out the G-1012 forms; although as one agent pointed out, there was no "paper saying what you can and cannot claim."
Several agents said they were orally instructed to be more specific when documenting their AUO time. For instance, one agent indicated he could no longer write "Continuation of Operations" on his G-1012 forms because it was not specific enough. Another agent said he was told to refer to specific events and case numbers rather than including generic activities such as "looking out for the area."
Supervisors told us they might return a G-1012 form to an agent for correction if the descriptions of tasks were too ambiguous. According to several nonsupervisory and supervisory agents, the G-1012 forms do not provide enough space for a detailed description of AUO activities. For example, one agent said the description "signcutting" could include when a rancher called border patrol agents to his ranch in the middle of the night because he saw a person outside with a flashlight.

Specific Allegations

Allegation 1: Supervisory Agents Claim AUO for Administrative Duties

The whistleblower alleged that many supervisory agents at the Ysleta Station, "routinely claim two hours of AUO at the end of every day … However, many of these supervisory agents are in positions with only administrative duties and are claiming AUO while performing work that is administrative, optional, and controllable."

[2] According to data provided by CBP in February 2014, Ysleta Station employed 41 supervisory agents and 231 nonsupervisory agents.

We reviewed 237 supervisory G-1012 forms completed by Ysleta Station's 41 supervisory agents, and we interviewed 3 second-line supervisory agents and 9 first-line supervisory agents.

Second-line Supervisory Agents

Based on our review of second-line supervisory agents' G-1012 forms and interviews, we agree with HRM's finding that the circumstances requiring these agents to work beyond their scheduled hours of duty could be anticipated and managed administratively. The G-1012 forms we reviewed included descriptions of administrative duties, such as "coordinating the launch of annual inventory," "muster briefs," "staffing meeting," and "addressing facility issues." During interviews, second-line supervisors described AUO activities as any urgent situation requiring immediate action, such as responding to requests from local police or waiting for paperwork on an undocumented alien. The Patrol Agent in Charge of the Ysleta Station said he has reports or other data requests that have deadlines, but that duties during the day prevent him from completing them during his shift. He added that sometimes meetings with the U.S. Attorney will also take him past his regular hours.

According to HRM's June 2014, *Report of Review and Findings* on CBP's Use of AUO, the requirements of second-line supervisory border patrol agent positions necessitated overtime in some cases; however, these positions, "were primarily performing managerial, coordination, and liaison functions, such as attending meetings, conducting briefings, and reporting information."

First-line Supervisory Agents

Although HRM determined that first-line supervisory agents are eligible for AUO, we found that some activities described by first-line supervisors on G-1012 forms and during interviews appear to have been administratively controllable. G-1012 forms included descriptions such as "completed required reports," briefing for the evening shift," "hiring boards," and "vehicle maintenance." Other activities documented on the G-1012 forms appeared to be related to law enforcement, such as "monitored Southside traffic/cut sign," "intel development," "monitored sensors," and "checkpoint operations." However, the G-1012 forms did not contain sufficient detail for us to determine whether there was a compelling reason for first-line supervisors to perform these activities.

In interviews, first-line supervisors described AUO activities such as preparing shift reports, ensuring agents return to the station, recapping events and activities, tracking and processing illegal entries, writing memos, and listening to the communications radio. A supervisor responsible for overseeing training at the station added that he used AUO for post-training activities such as cleaning training mats and weapons.

Allegation 2: Nonsupervisory Agents Receive AUO for Shift Change and Other Controllable Activities

The whistleblower alleged that "agents assigned to work in the field are receiving AUO for routine shift-change activities." According to the whistleblower, agents are also "waiting for relief in the field, returning to the station, performing maintenance on vehicles, filling out timesheets, and completing online training" during AUO hours.

On G-1012 forms and during interviews, nonsupervisory agents who perform checkpoint and linewatch operations described some of the activities highlighted by the whistleblower, such as waiting for relief, returning to the station, and performing maintenance on vehicles, that appear to be administratively controllable. Nevertheless, most activities recorded on the G-1012 forms and described during interviews appear to be related to law enforcement. We could not determine whether AUO was justified for activities undertaken during shift changes, e.g., while waiting for relief to arrive, because the descriptions on the forms were insufficient to determine whether there were compelling circumstances for conducting those tasks after agents' scheduled shifts.

<u>Nonsupervisory Agents' G-1012 Forms</u>

We reviewed 274 G-1012 forms completed by 163 nonsupervisory checkpoint and linewatch agents. Most of the 274 forms contained multiple types of activities and many listed multiple activities on the same day. The majority of the 274 forms included descriptions of activities that appeared to be related to law enforcement. For example, 41 forms included terms related to linewatch; 55 forms described inspection, enforcement, or alien processing; 72 forms described patrol duties, such as patrolling the border, bike patrol, and roving patrol; and 78 forms contained descriptions of signcutting tasks.

However, 68 of the 274 forms also contained descriptions of activities that appeared to be administratively controllable. Specifically, six forms

included variations of the words "administrative duties," three indicated travel to or from the station, and one description related to time and attendance. Sixteen forms mentioned waiting for relief or included the term "shift change." An additional 19 forms described tasks related to vehicle or other maintenance and preparation. We did not find any descriptions of "online training"; however, 14 forms described other types of training activities. Another nine forms described activities related to the CBP Explorer Program.[3]

Interviews of Nonsupervisory Checkpoint Agents

Four of the 12 nonsupervisory agents we interviewed performed checkpoint operations at the Ysleta port of entry. During AUO hours, nonsupervisory checkpoint agents said they performed activities such as surveillance, checking sensors, assisting local police, signcutting, checking immigration documents, coordinating with other Federal agencies, and referring vehicles to secondary inspection. One agent cited an example of a vehicle that was sent to a secondary inspection at 3 p.m. and was not completely processed until 11 p.m.

According to checkpoint agents, at least three agents must be at the checkpoint at all times; they cannot leave the checkpoint until they are relieved in person. If staffing is sufficient, a checkpoint agent will go to Pinon Road, the only road that can be used to circumvent the checkpoint at the port of entry. Agents are also expected to check for people attempting to circumvent the checkpoint 30 miles south and 50–60 miles north of the port of entry.

Interviews of Nonsupervisory Linewatch Agents

Eight of the 12 nonsupervisory agents we interviewed performed linewatch. These agents described AUO activities such as conducting surveillance, inspecting vehicles, tracking aliens in the desert, responding to local law enforcement requests, waiting for relief to arrive, responding to sensors, transporting prisoners, deterring groups waiting on the other side of the border, checking the fence, assisting with traffic accidents, and returning to the station from remote areas. Many of these activities are performed while waiting for relief to arrive. Agents explained that it is important for linewatch officers to receive AUO because if they leave the area before they are relieved, they could be charged with

[3] The CBP Explorer Program provides opportunities for young men and women ages 14 through 21 to participate in Federal law enforcement-related activities at CBP ports of entry and U.S. Border Patrol sectors.

negligence. According to the agents, they do not want to leave an area open because it is their responsibility.

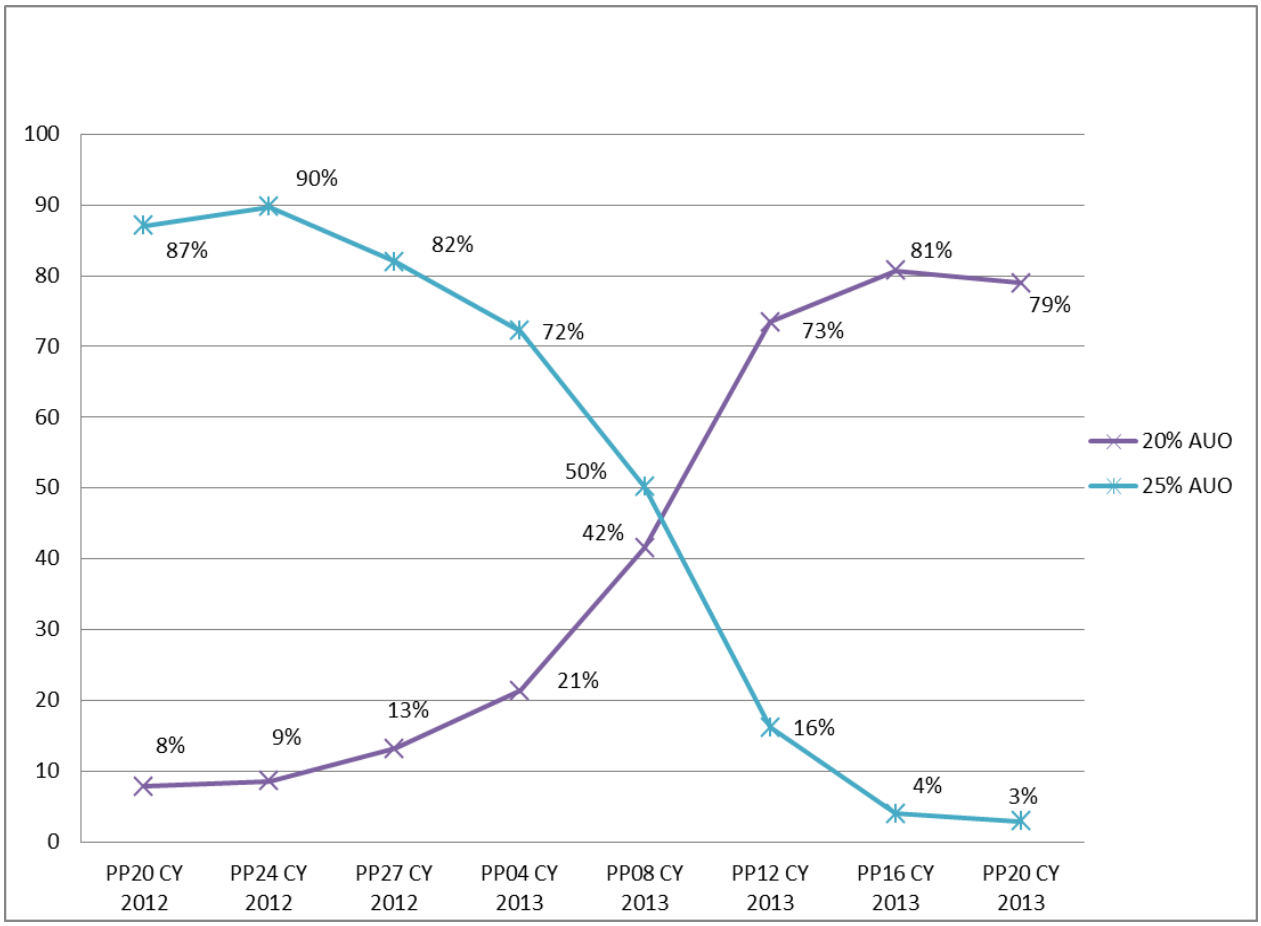
Allegation 3: Reduction of AUO Rate from 25 to 20 Percent

The whistleblower alleged that in response to a May 2013 memorandum from U.S. Border Patrol Chief Michael Fisher, Ysleta Station management told agents "to reduce AUO from 25 to 20 percent." This reduction from 25 percent to 20 percent of basic pay would equate to agents decreasing AUO from an average of 9 hours or more per week to an average of between 7 and 9 hours per week. According to the whistleblower, "Agents were told that if they did not reduce their claims of AUO to 20 percent, management would implement four shifts instead of three, resulting in the loss of AUO altogether." According to OSC's disclosure letter, the whistleblower indicated these actions were further evidence that the AUO activities are administratively controllable.

On May 15, 2013, U.S. Border Patrol Chief Fisher issued a memorandum to all chief patrol agents and division chiefs describing the nearly $600 million reduction in CBP's FY 2013 budget because of sequestration. According to the memo, supervisors and managers were to ensure they managed AUO according to law, regulation, and policy. Chief Fisher wrote, "This includes keeping overtime hours to the minimum amount that is essential to accomplishment of the mission through sound management practices. Even with significant non-pay cuts ($64 million), if the U.S. Border Patrol does not significantly reduce AUO expenditures, we face future pay reductions via furloughs or other impactful cuts."

As shown in table 1, the number of Ysleta Station agents receiving AUO at the 25 percent rate dropped sharply after Chief Fisher's May 2013 memorandum, which was issued in pay period nine. However, the percentage of Ysleta agents earning AUO at 25 percent had already begun to decrease in pay period 27 of 2012, which ended January 12, 2013.

Table 1: Percent of Ysleta Station Agents Receiving AUO at the 25 and 20 Percent Rate in FY 2013



Source: DHS Office of Inspector General (OIG) analysis of CBP-provided data.

In addition, Ysleta checkpoint agents already work in four 6-hour shifts each day, and this has not resulted in a loss of AUO. (Driving time between the Ysleta Station and the checkpoint at the port of entry makes their regular workday 8 hours long.) According to the Patrol Agent in Charge at Ysleta Station, the checkpoint agents work 6-hour shifts because of a court case. The Patrol Agent in Charge also said that switching from three 8-hour linewatch shifts to four 6-hour linewatch shifts would leave the border too vulnerable, given the Ysleta Station's current staffing.

Allegation 4: Ysleta Station Improperly Pays AUO to Injured Agents

The whistleblower alleged that Ysleta Station management "continues to pay 20 to 25 percent AUO to all injured Agents that are assigned to

administrative duty and are not performing duties that qualify for AUO." We interpreted "assigned to administrative duty" to mean agents assigned to "modified duty" while recovering from their injuries.

According to 5 CFR 550.162(f), "Unless an agency discontinues authorization of premium pay under § 550.141 or § 550.151 for all similar positions, it may not discontinue authorization of such premium pay for an individual employee's position—

(1) During a period of paid leave elected by the employee and approved by the agency in lieu of benefits under the *Federal Employees' Compensation Act*, as amended (5 U.S.C. 8101 et seq.), following a job-related injury;

(2) During a period of continuation of pay under the *Federal Employees' Compensation Act*, as amended (5 U.S.C. 8101 et seq.)

(3) During a period of leave without pay, if the employee is in receipt of benefits under the *Federal Employees' Compensation Act*, as amended (5 U.S.C. 8101 et seq.)."

Thus, employees injured on the job who are being paid through the *Federal Employees' Compensation Act* (FECA) are entitled to continue to receive AUO. If employees elect to use paid leave, such as sick or annual leave, in lieu of benefits under FECA, they are entitled to continue to receive AUO while on paid leave. Employees who are on leave without pay, but are receiving FECA benefits, are also entitled to receive AUO.

According to Ysleta Station management, the salaries of agents injured on the job, including the AUO percentage rate, are frozen as of the date of the injury; agents do not lose pay as a result of a work-related injury. If they can do modified duty, such as work in the radio room, they may do so, but until they return to full duty, the Department of Labor pays their salaries, including AUO.

The Ysleta Station maintains weekly status reports of agents who are on leave, continuation of pay (resulting from a FECA claim), or modified duty because of work-related and nonwork-related injury or illness. We reviewed 60 status reports, dated January 7, 2013, through March 10, 2014. From these status reports, we selected all agents with a work-related injury or illness who were on modified duty for at least 3 consecutive weeks to determine whether agents' AUO percentage rates

were adjusted as a result of reduced AUO hours during the corresponding AUO eligibility computation period.

According to INS' *Administrative Manual*, the weekly average of AUO hours, which determines an employee's AUO percentage rate, is based on the number of AUO hours the employee works during 12 pay periods (AUO eligibility computation period). This weekly average of AUO hours establishes the AUO percentage rate for an "eligibility period," which comprises four pay periods. The eligibility period commences three pay periods after the end of a computation period.

According to our review of status reports, between December 30, 2012, and March 8, 2014, 10 border patrol agents (1 supervisory and 9 nonsupervisory) were on modified duty for at least 3 weeks because of work-related injury or illness. Four nonsupervisory agents' AUO percentage rates were reduced during the time period we reviewed because their weekly averages of AUO hours were reduced. The supervisory border patrol agent recorded AUO hours the entire time he was on modified duty and thus, based on the AUO hours worked, the AUO rate was not reduced. (We did not evaluate whether the tasks he performed met all AUO eligibility requirements.) We were unable to determine whether a reduction in AUO pay was warranted for the remaining five agents because the AUO eligibility computation period had not yet been completed at the time of our review.

For the time period we reviewed, (January 7, 2013, through March 10, 2014),we did not find evidence to substantiate that agents at the Ysleta Border Patrol station were improperly paid AUO after being injured on the job. The continuation of AUO pay at the rate established at the time of the injury is authorized for employees receiving benefits under FECA or electing paid leave in lieu of FECA benefits. CBP properly adjusted the AUO percentage rate of injured agents whose weekly average of AUO hours was reduced as a result of modified duty during the time period covered in our review.

According to OSC's disclosure letter, rather than process a workers' compensation claim, Yselta Station management maintained the whistleblower as a 25-percent AUO recipient after a 2011 work-related injury. At the time, the whistleblower was temporarily assigned to an administrative detail in the camera room and was unable to work overtime hours because of the injury. During an interview with DHS OIG, the whistleblower further alleged that Ysleta Station supervisors refused

to accept or file the workers' compensation claim form that the whistleblower had completed for the November 2011 injury.

The El Paso Sector office provided us with a copy of the whistleblower's CA-1 form, *Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation,* which was signed by a supervisor on the whistleblower's behalf on November 7, 2011. The El Paso Sector office also provided a screen shot from the Department of Labor's web-based *AQS Injured Worker Case Query,* which showed that the whistleblower's case was adjudicated on November 16, 2011, for "medical payments only." Thus, the whistleblower's allegation that management did not process a workers' compensation claim for the November 2011 injury was unsubstantiated.

Actions Taken and Planned

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." According to an HRM official, supervisory border patrol agents deemed ineligible for AUO by HRM were decertified effective September 7, 2014.

Appendix A
CBP G-1012 Form Template

U.S. Department of Homeland Security
Customs And Border Protection

Record of AUO Hours Worked

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				

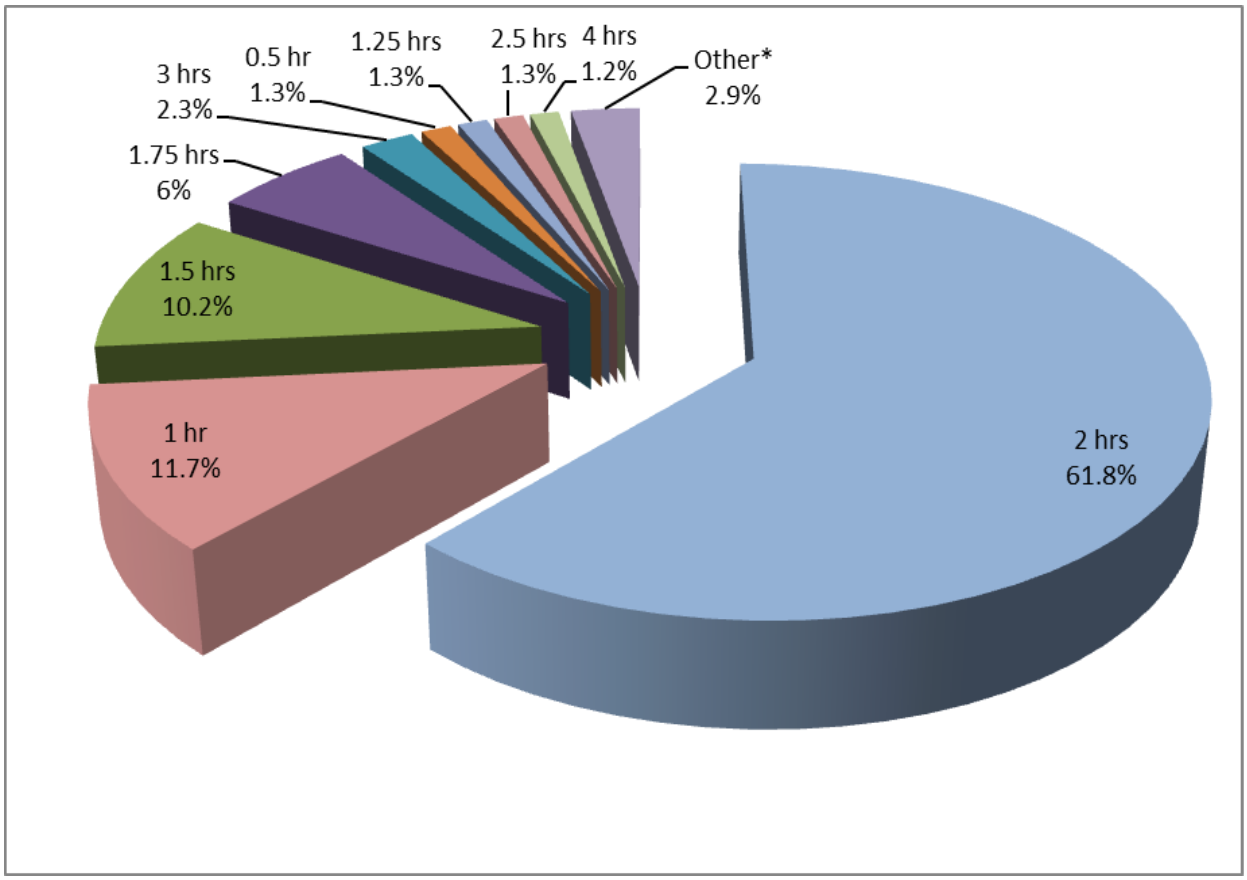
Certified True and Correct:	Examined and Approved:
Employee Signature	Supervisor Signature

Form G-1012 (2/9/99)

Appendix B:
Frequency of AUO Time Increments Recorded

CBP employees record AUO hours in 15-minute increments. The following chart depicts the percentage of time each AUO increment was recorded in COSS for Ysleta Station agents. For example, agents recorded 2 hours of AUO per day about 62 percent of the time.

Increments of AUO Hours Recorded in COSS During FY 2013



*Other: Any increment of AUO hours recorded less than 1 percent of the time.
Source: OIG analysis of CBP-provided data.

Appendix C
Examples of AUO Tasks on G-1012 forms in FY 2013 (Facsimiles)

Nonsupervisors	• admin duties • Roving Patrol Upriver • Casework • Fence check and drag cuts • fleet duties • Clean up mat room/Sanitize mats and equipment • Surveillance • Intelligence Development	• range cleanup • veh prep/ equipment • Bike Patrol • Continuation of FIA duties • DEA Taskforce • Processing • K9 Duties • Processing • Travel to station • patrol border/ signcutting	• traffic check • Checkpoint duties • Firearms Training Duties • Intel development • Patrol Border/ Shift change back up
First-line Supervisors	• Supervising line agents • Intel Development • Monday briefing for evening shift • Target review and update • Camera Capture Review • Supervisory duties • Monitored Sensors	• Continuation of Supervisor Duties • Retrieving Alien Property • (A)WC Completed required reports • Admin SBPA completed end of shift required reports • Vehicle Maintenance	• Briefing for the evening shift • Virtual Processing @ Mattox • Signcutting/ Brief on coming • Checked fence and northside canal for entries • Hiring Boards
Second-line Supervisors	• OPSG meeting • Continuation of supervisory	• Muster Brief(s) • Line	• Staffing meeting • Addressing

	duties • Coordinating the launch of annual inventory • Scheduling Oral/Written replies for Furlough Notices	operations evaluation • Scheduling training w/ op impact • Coordinating the transfer of HP trucks/ trailer/ equipment	facility issues • Coordinating the expansion of ATV unit • Coordinating temporary bike patrol

Appendix D
Conduct of the Review

Whistleblower Interview: On March 4, 2014, we interviewed the whistleblower to obtain additional information relevant to the scope of our evaluation. During the interview, we asked the whistleblower to explain the difference between the number of supervisors alleged to be improperly claiming AUO in the disclosure letter (60 to 70 supervisors) and CBP's payroll data showing that 41 supervisors were employed at the Ysleta Station. The whistleblower said that the other people are in acting roles and have the same authority as the supervisors.

The whistleblower did not provide any documentation to substantiate that agents were told by Ysleta Station management to reduce AUO from 25 to 20 percent as a result of U.S. Border Patrol Chief Fisher's May 2013 memorandum. However, the whistleblower provided a copy of a proposed schedule of four 6-hour shifts in the event AUO was de-authorized because of sequestration. The whistleblower did not provide any additional information that was relevant to the scope of our evaluation.

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 Ysleta Station agents did not perform duties justifying their AUO claims and that injured agents improperly received AUO pay. Our objectives included determining: the amount of AUO paid to Ysleta Station border patrol agents, the justifications for receiving AUO pay, and whether Ysleta Station's use of AUO was consistent with Federal regulations. The scope of this evaluation was FY 2013 for the allegation that agents did not perform duties justifying AUO; the scope for the allegation that injured agents improperly received AUO was January 2013, through March 2014. We did not include a determination of the cause or effect of improper use of AUO in the scope.

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

- Customs Directive No. 51550-004A, *Administratively Uncontrollable Overtime (AUO) Pay*,
- INS' *Administrative Manual*, Section 1.3.103 (dated January 2000),
- December 10, 2012 memorandum from Michael J. Fisher, Chief, U.S. Border Patrol, *Administratively Uncontrollable Overtime Guidance*, and

- May 15, 2013 memorandum from Michael J. Fisher, Chief, U.S. Border Patrol, *Minimizing Overtime Expenditures*.

Stratified Sample of *Record of AUO Hours Worked* forms (G-1012 forms): On February 20, 2014, CBP provided a list of 272 Ysleta Station agents who receive AUO. Forty-one agents were supervisory border patrol agents and 231 were nonsupervisory border patrol agents.

Each pay period, Ysleta Station agents record the number of AUO hours they work on G-1012 forms. We selected a random sample of pay periods from FY 2013. We stratified the sample by supervisory and nonsupervisory border patrol agents, using a 90 percent confidence interval with a plus or minus 5 percent margin of error. This generated a total sample of 525 G-1012 forms completed by 210 agents (239 forms from 41 supervisory agents and 286 forms from 169 nonsupervisory agents).

Review of G-1012 Forms: We reviewed 511 G-1012 forms completed by 204 of Ysleta Station's 272 agents (75 percent).This included 237 forms completed by 41 supervisory agents and 274 forms completed by 163 nonsupervisory agents. Fourteen of the 525 G-1012 forms selected in our sample were not available for review.

Interviews of Ysleta Agents: From the list of 210 agents who were part of the statistical sample, we selected 24 agents for interviews (12 nonsupervisory agents, 9 first-line supervisory agents, and 3 second-line supervisory agents). We interviewed these 24 agents at the Ysleta Station between March 11 and March 13, 2014, to determine what activities they typically performed during AUO hours. We asked additional questions to determine the agents' understanding of AUO and how they completed G-1012 forms.

Review of Payroll Records: We determined the total amount of AUO paid to Ysleta Station agents in FY 2013 using data from COSS. We also used data that CBP provided from COSS to create appendix B, the frequency of AUO hours documented by Ysleta Station agents in FY 2013.

We also used CBP data to perform a trend analysis of the percentage of agents receiving AUO at the 20 and 25 percent rate in FY 2013. For the AUO paid in FY 2013, the El Paso Sector office tracked agents' AUO hours based on the timekeepers' input of AUO data each pay period. Every four pay periods, the El Paso Sector produced a report that calculated the average weekly AUO hours during the AUO eligibility

computation period (12 pay periods) for each Ysleta Station agent and indicated the amount of AUO pay each agent should receive.

Review of Ysleta Station's Injury/Illness Status Reports: We reviewed Ysleta Station's weekly status reports of injured or ill agents, dated January 7, 2013, through March 10, 2014. From the status reports, we selected all individuals with a work-related injury or illness who were on modified duty for at least 3 weeks during this time period to determine whether these agents' AUO percentage rates were adjusted as a result of reduced AUO hours during the corresponding AUO eligibility computation period. (Because the AUO eligibility computation period is 12 pay periods and adjustments to the AUO percentage rate are made every 4 pay periods, based on the corresponding computation period, any modified duty of less than 3 weeks (1.5 pay periods) would have had little effect on the average number of AUO hours during the computation period.)

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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