



Audit Report



OIG-24-026

REVENUE COLLECTION

CBP Needs to Enhance its Monitoring and Tracking of the Outcomes of Investigations into the Underpayment of Duties

March 26, 2024

Office of Inspector General
Department of the Treasury

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Contents

Audit Report

- Results in Brief3
- Background.....9
 - EAPA.....9
 - e-Allegations..... 13
 - Referrals to ICE HSI 15
 - Referrals to DOJ 18
- Audit Results.....22
 - Number and Outcome of Investigations into the Underpayment of Duties.....22
 - Accountability and Performance Measures.....26
 - Training.....29
- Finding 1 The Status and Outcome of e-Allegations Cases Were Not Recorded Accurately Nor Completely, Nor Monitored31
 - Status of e-Allegations Data Was Not Accurate Nor Complete Within the System of Record.....31
 - OROB Did Not Track the Recovery of Underpayments of Duties from Confirmed e-Allegations.....32
 - OROB Did Not Monitor e-Allegations After Assignment33
 - Recommendations34
- Finding 2 CBP Did Not Adequately Monitor Referrals Forwarded to ICE HSI36
 - CBP Did Not Use Established CEAR SOP Mechanisms to Monitor Referrals to ICE HSI.....36
 - Recommendations41
- Finding 3 Procedures for Processing Delinquent Duty, Liquidated Damage, and Penalty Cases Were Not Documented43
 - Recommendation.....45
- Appendix 1: Objectives, Scope, and Methodology.....47
- Appendix 2: Management Response.....58
- Appendix 3: Major Contributors to This Report63

Abbreviations

ACC-Indianapolis	Assistant Chief Counsel – Indianapolis, Indiana
ACE	Automated Commercial Environment
AD/CVD	Antidumping and Countervailing Duties
ARM	Analysis and Referral Management
CARS	Commercial Allegation Recording System
CBP	U.S. Customs and Border Protection
CEAR	Commercial Enforcement Analysis and Response
Center	Center for Excellence and Expertise
CFR	Code of Federal Regulations
CIT	Court of International Trade
DHS	Department of Homeland Security
DOJ	Department of Justice
EAPA	Enforce and Protect Act
EOD	Enforcement Operations Division
EPB	Enforcement Policy Branch
FY	fiscal year
GAO	Government Accountability Office
ICE HSI	Immigration and Customs Enforcement Homeland Security Investigations
IPR	Intellectual Property Rights
IRS-NG	Intelligence Reporting System – Next Generation
NIL	National Impact Level
NTAC	National Threat Analysis Center
NTAD	National Threat Analysis Division
OCC	Office of Chief Counsel
OFO	Office of Field Operations
OIG	Office of Inspector General
OT	Office of Trade
OROB	Operations Reporting and Outreach Branch
RAAAS	Regulatory Audit and Agency Advisory Services
SOP	standard operating procedures
TEC	Trade Enforcement Coordinator
TFTEA	Trade Facilitation and Trade Enforcement Act of 2015
TRLED	Trade Remedy Law Enforcement Directorate
Treasury	Department of the Treasury
USAO	U.S. Attorney’s Office
U.S.C.	U.S. Code



Audit Report

March 26, 2024

Troy Miller
Acting Commissioner
U.S. Customs and Border Protection

This report presents the results of our audit of the U.S. Department of Homeland Security (DHS), Customs and Border Protection's (CBP) investigations into the underpayment of duties. We performed this audit to meet biennial reporting requirements of Section 112 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which identifies specific areas relating to CBP's effectiveness of protecting revenue for the Department of the Treasury's (Treasury) Office of Inspector General (OIG) to review.^{1,2} The statute required Treasury OIG to first report no later than June 30, 2016, and then to report biennially, starting in March 2018. Treasury OIG provided letters to Congress to satisfy the first several reporting requirements, which focused on

¹ P.L. 114–125, Trade Facilitation and Trade Enforcement Act of 2015 (February 24, 2016)

² Section 112 of the TFTEA requires Treasury OIG to submit to the Senate Committee on Finance and House Committee on Ways and Means reports assessing (1) the effectiveness of measures taken by CBP with respect to protection of revenue, including the collection of antidumping and countervailing duties (AD/CVD); the assessment, collection, and mitigation of commercial fines and penalties; the use of bonds to secure that revenue; and the adequacy of CBP policies with respect to the monitoring and tracking of merchandise transported in bond and collecting duties, as appropriate; (2) the effectiveness of actions taken by CBP to measure accountability and performance with respect to protection of revenue; (3) the number and outcome of investigations instituted by CBP with respect to the underpayment of duties; and (4) the effectiveness of training with respect to the collection of duties for personnel of the CBP. AD/CVD address unfair trade practices by providing relief to U.S. industries and workers that are materially injured, or threatened with injury, due to imports of like products sold in the U.S. market at less than fair value, or subsidized by a foreign government or public entity.

Treasury's Customs revenue functions.³ Treasury OIG also reviewed the adequacy of CBP's policies with respect to the monitoring and tracking of merchandise transported in-bond and collection of respective duties as part of its requirement to assess the effectiveness of measures taken by CBP to protect revenue.⁴ Treasury OIG reported the results of that review in our March 31, 2022 audit report. We used that report to meet our March 2022 audit mandate.⁵ This report continues our reporting on CBP's protection of revenue as part of our audit mandate.

The overall objective of our audit was to assess the effectiveness of CBP's protection of revenue in accordance with Section 112 of TFTEA. As part of this audit, we assessed the number and outcome of investigations instituted by CBP into the underpayment of duties. In addition, we assessed: (1) the effectiveness of actions taken by CBP to measure accountability and performance, and (2) the effectiveness of training, with respect to investigations into the underpayment of duties.

To accomplish this objective, we interviewed CBP officials and staff from CBP Headquarters and field offices and reviewed relevant CBP documentation during audit fieldwork conducted from October 2020 through December 2021, with follow-up requests in January and February 2022 and October 2023. The scope of our review covered October 1, 2018 through September 30, 2020 (fiscal years (FY) 2019 and 2020) and included the following investigative areas: (1) Enforce and Protect Act (EAPA)⁶ allegations cases, (2) e-Allegations cases, (3) cases referred to U.S. Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI), and (4) cases referred to the Department

³ The Homeland Security Act of 2002 established DHS and dissolved the legacy U.S. Customs Service in Treasury while transferring all of its functions from Treasury to DHS, except the Customs revenue functions which were to be retained by Treasury. Section 412 of the Homeland Security Act of 2002 stated that Treasury, at its discretion, could delegate—but not transfer—its Customs revenue functions to DHS and retain any duties that were not delegated.

⁴ An in-bond allows cargo to transit through the United States without paying duties before making entry into another port. Duties are also not paid if the cargo transits through the United States and is exported, or the cargo is immediately exported upon entry.

⁵ Treasury OIG, *Revenue Collection: The U.S. Customs and Border Protection's Oversight of the Merchandise Transported In-Bond Program Needs Improvement to Better Ensure the Protection of Revenue*, OIG-22-033 (March 31, 2022)

⁶ Title IV of TFTEA is commonly referred to as EAPA

of Justice (DOJ). Appendix 1 contains a more detailed description of our objectives, scope, and methodology.

Results in Brief

We assessed the number and outcomes of investigations into the underpayment of duties with respect to the four investigative areas reviewed, including EAPA Allegations, e-Allegations, referrals to ICE HSI, and referrals to DOJ, which are summarized as follows:

- EAPA established formal requirements for submitting and administratively investigating allegations of Antidumping and Countervailing Duties (AD/CVD) evasion against U.S. importers.⁷ There were 278 EAPA allegations submitted to CBP during FYs 2019 and 2020 resulting in 83 affirmed allegations protecting nearly \$298 million in revenue.
- An e-Allegation is reported to CBP through an electronic portal for any suspected violations of trade laws or regulations related to the importation of goods into the United States. CBP received and reviewed 934 new underpayment of duty e-Allegations during FYs 2019 and 2020 and confirmed 68 of the e-Allegations. The revenue associated with the 68 confirmed e-Allegations totaled more than \$65 million.
- The Commercial Enforcement Analysis and Response (CEAR) process establishes coordination between CBP and ICE HSI when commercial fraud violations are detected and ensures violations are addressed. CBP can also make referrals to ICE HSI through the EAPA allegation and e-Allegations processes. CBP referred 75 commercial fraud penalty cases, e-Allegations, and EAPA allegations to ICE HSI during FYs 2019 and 2020 resulting in ICE HSI opening 22 cases based on those referrals. In our October 2023 update, ICE HSI reported that 11 cases were closed and 11 cases were open. These cases resulted in various actions taken by ICE

⁷ AD/CVD address unfair trade practices by providing relief to U.S. industries and workers that are materially injured, or threatened with injury, due to imports of like products sold in the U.S. market at less than fair value, or subsidized by a foreign government or public entity.

HSI, including seizures, arrests, indictments, and search warrants.

- Upon referral from a CBP component office, CBP's Office of Chief Counsel (OCC) is responsible for providing legal assistance to CBP with respect to delinquent duty, liquidated damage, and penalty cases and determining the legally available courses of correct collection action against the debtor, including potential referrals to DOJ.⁸ OCC has both a headquarters and field structure. The headquarters office is divided into three functional areas: Ethics, Labor and Employment; Enforcement and Operations; and Trade and Finance. The field structure consists of Associate and Assistant Chief Counsels located in major cities across the country who advise CBP field managers in their geographic areas. CBP referred 21 delinquent duty, liquidated damage, and penalty cases to DOJ during FYs 2019 and 2020 resulting in the recovery of over \$1.5 million in duties, liquidated damages, and penalties.

We found that CBP needs to enhance its monitoring and tracking of e-Allegations and ICE HSI referrals. We also found that CBP lacked policies and procedures for referring delinquent duty, liquidated damage, and penalty cases to DOJ. Accordingly, we are making six recommendations to CBP to improve its monitoring and tracking of outcomes; and to update or establish policies and procedures.

Specifically, as further discussed in Finding 1, we found the statuses and outcomes of e-Allegations were not recorded accurately nor completely in the Commercial Allegations Recording System (CARS), including many e-Allegations that CBP closed before the outcome of the review was completed.⁹ We also found the Trade Remedy Law Enforcement Directorate's (TRLED) Operations Reporting and Outreach Branch (OROB), responsible for overseeing the e-Allegations program, did not monitor the statuses of e-Allegations referred and that monitoring of the e-Allegations program needed improvement. Additionally, we found that OROB did not track the monetary impact of e-Allegations investigations and could not report if any revenue associated with a confirmed e-

⁸ A claim for liquidated damages occurs when there is a breach of the terms and conditions of a bond that protects CBP from revenue loss when importers fail to fulfill their financial obligations.

⁹ In May 2021, CBP replaced CARS with the Analysis and Referral Management (ARM) system.

Allegation was recovered or lost.¹⁰ CBP could potentially overlook an e-Allegation, resulting in the failure to identify underpayments of duties, if e-Allegation data is incorrect or closed prior to the outcome being known.

We recommend that the CBP Commissioner ensures:

1. TRLED officials enhance procedures to ensure that the statuses of e-Allegations cases are timely, accurate, and complete in its information system, Analysis and Referral Management (ARM) system; monitor those procedures to ensure that they are working as intended; and assess the need for related training.
2. TRLED staff coordinates with appropriate internal offices to track revenue recovered from the e-Allegations program and uses the information to evaluate the program's performance in achieving objectives.

The CEAR process exists at each of the Office of Field Operations' (OFO) 10 Centers for Excellence and Expertise (Centers) and the San Juan Field Office.¹¹ Office of Trade (OT) and OFO are responsible for monitoring, evaluating, modifying, and enforcing the CEAR process. As further discussed in Finding 2, CBP did not adequately monitor referrals forwarded to ICE HSI or use mechanisms established in its standard operating procedures (SOP) to monitor those referrals. CBP's main mechanism to monitor referrals is through CEAR meeting minutes. However, we found the CEAR meeting minute reports were not consistent, and using them to identify the cases that CBP referred to ICE HSI, or their status, was difficult. Without proper monitoring of referrals to ICE HSI, cases could potentially exceed their statute of limitations and become unenforceable.

¹⁰ A confirmed allegation is one where an allegation is referred to a Center, action is taken by the Center to investigate the allegation, and the Center confirms the allegation is true.

¹¹ There are 10 Centers that apply trade expertise to a single industry using account-based principles and operational skills to facilitate trade. The Centers serve as resources to the broader trade community and to CBP's U.S. government partners. Center personnel are strategically located at the ports of entry across the nation to perform post-summary processing of entry summaries, answer questions, provide information and develop comprehensive trade facilitation strategies to address uniformity and compliance concerns.

We recommend that the CBP Commissioner ensures:

3. OT and OFO officials responsible for oversight of the CEAR process monitor referrals made to ICE HSI and ensure established mechanisms to track ICE HSI referrals are followed.
4. OT and OFO officials responsible for oversight of the CEAR process review and update the CEAR SOPs to ensure the SOPs continue to be relevant and effective in meeting objectives and addressing risks.
5. OT and OFO officials assess the need for performance metrics once the CEAR SOPs are updated, as recommended above in item 4.

As further discussed in Finding 3, OCC offices responsible for providing legal assistance in connection with processing delinquent duty, liquidated damage, and penalty cases lacked documented policies and procedures for attorneys on processing those cases. The lack of policies and procedures could result in inconsistent practices for receiving, processing, and monitoring those cases, among the different offices across the country.

We recommend that the CBP Commissioner ensures:

6. OCC establishes documented policies for processing delinquent duty, liquidated damage, and penalty cases, and include its organization structure, roles and responsibilities, and delegations of authority.

We also assessed the effectiveness of actions taken by CBP to measure accountability and performance with respect to the investigations into the underpayment of duties and found the performance metrics, where required, were appropriate. Additionally, we assessed the effectiveness of training with respect to investigations into the underpayment of duties. While we did not find issues with CBP's current training for the investigative areas we reviewed, CBP should reevaluate the need for training once it has addressed our recommendations related to e-Allegations, referrals to ICE HSI, and referrals to DOJ.

As part of our reporting process, we provided a draft of this report to CBP to obtain management's views and comments.

Management concurred with the recommendations. We have summarized management's response in the recommendations section of this report. Management's written response, in its entirety, is included in appendix 2 of this report.

Management stated that it is committed to its enduring mission priority of facilitating lawful trade and protecting revenue by building strong collaboration with partnering agencies, enhancing enforcement tools to strengthen trade compliance, and improving trade programs and policies for timelier CBP enforcement. For example, on December 5, 2022, CBP's OT began an extensive assessment to identify trade enforcement programs that can be improved upon to meet CBP's enforcement goals, to include ongoing improvement efforts such as re-designing the CEAR program to focus on front-end research to support case development, implementing an HSI referral monitoring and tracking system, and continuing to review the e-Allegation program for system enhancements and procedural training.

Regarding finding 1 and in response to recommendation numbers 1 and 2, management stated that CBP's OT TRLED re-assigned the e-Allegations program oversight from OROB to the Enforcement Policy Branch (EPB), effective June 2023. EPB is reviewing, and will update accordingly, the SOP guidance to assess e-Allegation referral oversight challenges within the ARM system. EPB is also working with internal ARM users within OT to improve monitoring procedures and create reporting requirements to determine mission standards are being met. Regarding additional training, management stated that EPB improves the quality of allegor submissions by providing quarterly web-based virtual training sessions to the trade community on making credible e-Allegations. The training is intended to reduce submission rejection and increase the accuracy of information. In addition, EPB is working with TRLED to determine if the assigned units need additional training regarding e-Allegation processing roles and responsibilities.

Additionally, to ensure management tracks revenue recovered from the e-Allegations program and uses the information to evaluate the program's performance in achieving objectives, management is reviewing, and will update accordingly, the ARM SOP guidance to assess e-Allegation referrals oversight within the ARM system, which was developed to capture the actual loss of revenue

recovered from e-Allegation cases. EPB is also working with internal ARM users within OT to improve revenue monitoring procedures by creating requirements to assess and capture final enforcement actions and actual revenue collected before the e-Allegation case is closed. The estimated date of completion of the SOPs and the training requirements is August 30, 2024.

Regarding finding 2 and in response to recommendation numbers 3, 4, and 5, management is working to enhance CBP's CEAR procedures for oversight of referrals made to ICE HSI and tracking and updating trade enforcement actions. Once these enhancements are complete, CBP OFO will enter referrals into the Repository for Analytics in a Virtualized Environment. Also, CBP OT TRLED will update CEAR SOPs, as appropriate, to ensure the SOPs continue to be relevant and effective in meeting objectives and addressing risks following pre-deployment of CEAR 2.0 on January 25, 2024, which will have a 120-day evaluation period focusing on timelier and complete trade enforcement actions while meeting mission objectives of assessing violation risk. Management concurs to assess the need for performance metrics once the CEAR SOPs are updated. The estimated completion date for these actions is July 31, 2024.

Regarding finding 3 and in response to recommendation number 6, management stated it will include its organizational chart as well as additional information related to duty bills and liquidated damages in the "OCC Attorney Practice Guide", which was revised on June 2, 2023. This updated guide contains additional details on OCC procedures for handling trade enforcement matters such as 19 United States Code (U.S.C) § 1592, "Penalties for fraud, gross negligence, and negligence." Management stated that this updated guide also contains detailed delegations of authority internally within OCC for issuance of penalties, settlement, and decision-making for purposes of litigation as well as hyperlinks to OCC and CBP policies and sample referrals and procedures for submitting these referrals to the Department of Justice. The estimated completion date for making additional revisions to the "OCC Attorney Practice Guide" is December 31, 2024.

Management's response and planned and taken corrective actions meet the intent of our recommendations. Management will need to track the implementation of its corrective actions.

Background

EAPA

AD/CVD address unfair trade practices by providing relief to U.S. industries and workers that are materially injured, or threatened with injury, due to imports of like products sold in the U.S. market at less than fair value, or subsidized by a foreign government or public entity. Title IV of TFTEA, commonly referred to as EAPA, established formal requirements for submitting and administratively investigating allegations of AD/CVD evasion against U.S. importers.¹² On August 22, 2016, CBP published an interim final rule in the Federal Register, which was effective immediately, establishing the program and procedures for administratively investigating claims of evasion of AD/CVD orders.¹³

TFTEA also established TRLED within CBP's OT.¹⁴ TRLED is responsible for overseeing the EAPA investigations. Specifically, the Enforcement Operations Division (EOD), within TRLED, leads and oversees the administrative proceedings for EAPA investigations, including coordinating all investigations and making key decisions regarding the investigation. Within EOD, International Trade Specialists assigned to two EAPA investigations branches are responsible for carrying out the responsibilities for EAPA investigations.

An allegation is an accusation received from a member of the trade community that claims a person has entered covered merchandise into the Customs territory of the United States through evasion and is filed with CBP by an interested party and accompanied by

¹² Per 19 U.S.C 1517(a)(5), evasion refers to entering merchandise covered by an AD/CVD order into the Customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable AD/CVD being reduced or not being applied with respect to the merchandise.

¹³ 19 Code of Federal Regulations (CFR) 165

¹⁴ 19 United States Code (U.S.C.) 4371, *Trade Remedy Law Enforcement Division*

information reasonably available to the allegor.¹⁵ EOD has 15 business days after it takes official receipt of the allegation to determine whether to initiate an investigation based on if the information provided in the allegation reasonably suggests the covered merchandise has entered into the customs territory of the United States through evasion.^{16,17} Allegations in which EOD does not initiate an investigation are “non-qualifying.”

If EOD decides to initiate an investigation, the date on which they make this determination is the date that officially begins the investigation and is the basis for deadlines as the investigation proceeds. Table 1 shows a timeline of the EAPA allegation investigation process.

¹⁵ EAPA allegations can be submitted by a foreign manufacturer, producer, or exporter; or a U.S. manufacturer, producer, wholesaler, or importer, of covered merchandise or domestic like product; a trade or business association of which a majority of the members are manufacturers, producers, exporters, importers, or wholesalers of covered merchandise or a domestic like product; a certified union or recognized union or group of workers that is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product; and a coalition or trade association if the covered merchandise is a processed agricultural product that is representative of processors, processors and producers, or processors and growers.

¹⁶ 19 U.S.C. 1517(b)

¹⁷ The legal standard of "reasonably suggests" means that a person could make a logical association that the allegation is true.

Table 1. EAPA Allegation Investigation Timeline

Day	Event
0 Days	Initiation of the investigation
No later than 90 calendar days	CBP reaches determination of reasonable suspicion of evasion and issuance of interim measures
5 business days after interim measures are taken	CBP issues notice of decision on whether to initiate an investigation and whether interim measures were taken
200 calendar days*	Deadline for parties to voluntarily submit factual information ¹⁸
230 calendar days*	Deadline for parties to submit written arguments
15 calendar days after a written argument was filed*	Deadline for parties to submit responses to the written argument
No later than 300 calendar days	CBP reaches determination as to evasion or issues notice of extension of time.
No later than 360 calendar days	CBP reaches determination as to evasion if the investigation is extraordinary complicated
5 business days after determination	Notice of CBP's determination as to evasion issued to the parties

Source: Table based on timeline published in CBP Publication #0590-1116, *Enforce and Protect Act of 2015 Overview of the Investigation Process*.

* These administrative milestone dates allow parties to the investigation a chance to submit information and arguments related to the investigation. CBP may, for good cause, extend any regulatory time limit if a party requests an extension.

EOD determines by day 90 of the investigation if there is reasonable suspicion of evasion.¹⁹ If there is reasonable suspicion of evasion, EOD will notify the parties to the investigation via a “Notice of Initiation of Investigation (and Interim Measures)” within

¹⁸ Parties to the investigation are those that filed an allegation or those that are alleged to have entered covered merchandise through evasion.

¹⁹ 19 U.S.C. 1517(e)

5 business days after the determination.^{20,21} At this time, the Center will take interim measures to protect the revenue, including adjusting liquidation for all entries subject to the investigation; requiring importers to provide a single transaction bond, additional security, or post a cash deposit for the merchandise; requiring a “live entry” for all incoming imports, which requires proper documentation and all duties prior to release; and taking any additional measure, as necessary, to protect Customs revenue.^{22,23} If CBP cannot determine whether merchandise described in an allegation is within the scope of an AD/CVD order at any point after receipt of the allegation, a scope referral is required to be made to the Department of Commerce.²⁴

EOD is required to make a determination as to evasion based on substantial evidence by the 300th calendar day from the initiation of the investigation; however, EOD may extend this timeline by no more than 60 calendar days under specific circumstances.²⁵ EOD is required to notify the parties to the investigation no later than 5 business days after the determination decision.²⁶ If EOD makes a final affirmative determination, it will request the Centers to continue to adjust liquidation of entries subject to the investigation, continue to require cash deposits for additional entries, and to initiate 19 U.S.C. 1592 (Penalties for fraud, gross negligence, and negligence) penalties, if applicable.^{27,28}

²⁰ 19 CFR Part 165.24

²¹ If EOD is not able to determine a reasonable suspicion of evasion by the 90th calendar day, EOD may continue the investigation and issue a “Notice of Initiation of Investigation” to the parties to the investigation within 95 calendar days of the initiation.

²² Liquidation is the final computation or ascertainment of duties on entries for consumption. (19 CFR 159.1) The Centers ensure that the entries do not liquidate prior to the conclusion of the investigation.

²³ Single transaction bonds secure a one-time importation and are generally for the value of the merchandise plus duties, taxes, and fees.

²⁴ The time period required for any referral and determination by the Department of Commerce will not be counted toward the deadlines for CBP to decide on whether to initiate an investigation or the deadline to issue a determination as to evasion.

²⁵ 19 U.S.C. 1517(c)(1)

²⁶ 19 U.S.C. 1517(c)(4)

²⁷ 19 U.S.C. 1592 provides for penalties against anyone who enters or attempts to enter, or introduces or attempts to introduce, merchandise into the United States by means of a material false statement, act, or omission.

²⁸ If EOD is not able to make a determination as to evasion based on substantial evidence, it will issue a negative final determination.

Following a determination as to evasion, parties to the investigation have the option to challenge EOD's determination through an administrative review process within 30 business days after CBP makes a notification of its determination as to evasion. The Penalties Branch in the OT Regulations and Rulings Directorate conducts the review and applies a de novo standard of review,²⁹ meaning it will review the facts on the administrative record from the beginning without deferring to the decision made by EOD. The review determination will either affirm or reverse in full or in part EOD's determination. The Penalties Branch has 60 business days to complete the administrative review.³⁰

Once the administrative review is complete, parties to the investigation have up to 30 business days to seek judicial review at the U.S. Court of International Trade (CIT).³¹ EOD is responsible for initiating appropriate actions and communicating those actions to other offices based on the Penalties Branch and CIT's rulings.

e-Allegations

e-Allegations is an electronic portal developed to provide the trade community and the general public a tool to report to CBP any suspected violations of trade laws or regulations related to the importation of goods into the United States. CBP established the e-Allegations program in June 2008 to establish a central location for the public to report allegations of trade law violations.

OROB, within TRLED's EOD, oversees the e-Allegations program including triaging, recording, and prioritizing e-Allegations before assigning them to an appropriate CBP office. OROB will process e-Allegations from intake to assignment by using a series of decisions to determine which office will most effectively analyze and address the allegation. At the time of our audit, CBP used CARS, a web-based SharePoint portal to receive, review, manage, and track all trade allegations.

OROB analysts review each allegation to determine if the information is sufficient for investigation by CBP. During this initial

²⁹ 19 U.S.C. 1517(f)(1)

³⁰ 19 U.S.C. 1517(f)(2)

³¹ 19 U.S.C. 1517(g)(1)

review, OROB determines if the allegation is a duplicate, and will contact the alleger for additional information, if needed. If the allegation is a duplicate or the alleger fails to provide additional information, OROB will close the allegation.³²

OROB analysts will assign the allegation to a specific office for action. OROB analysts can assign the allegation to internal offices and external stakeholders for final analysis and potential enforcement action.³³ OROB's goal is to assign an allegation to an investigating office within 5 business days of its receipt.

OROB analysts assign a large number of allegations to a National Threat Analysis Center (NTAC), and send nearly every allegation that is revenue-centric to a NTAC for analysis. There are six NTACs under the National Threat Analysis Division (NTAD) that is under TRLED. The Washington, DC NTAC supports EPA investigations and national strategic priorities. Each of the remaining five NTACs aligns with two of the 10 Centers and provides integrated all-threats analytical, targeting, and enforcement support (including e-Allegations) to those Centers. To determine the appropriate NTAC to assign an allegation, OROB analysts must determine which Center handles a specific importer named in an allegation (if the importer has a managed account), or the specific commodity associated with the allegation.

OROB sends a notification of assignment of allegation to the NTAC. NTACs conduct thorough research and analysis on a wide range of allegations to determine whether there is a substantiated trade threat that requires further research, analysis, review, or action.

Based on the NTAC's analysis to determine substantiated risk, the NTAC will make a recommendation to:

- close the allegation due to little/no risk;
- refer the allegation to the Centers for further actions;

³² OROB will also refer intellectual property rights (IPR) violations to the ICE HSI IPR Center and close the allegation. Additionally, OROB will determine if ICE HSI has an open investigation on the importers. If so, they will refer the allegation to ICE HSI and close the allegation.

³³ OROB assigns some allegations to outside CBP agencies. For example, CBP assigns IPR allegations to the ICE HSI IPR Center and assigns identity theft allegations to the Federal Trade Commission.

-
- request help from Regulatory Audit and Agency Advisory Services (RAAAS)³⁴ in reviewing the referral; or
 - refer allegation to an external office.

NTACs make most referrals to the Centers. The Centers work in collaboration with NTACs to further review allegations to determine specific trade targets and initiate enforcement actions. The Center will investigate the allegation and determine the best course of action in consultation with the NTAC. If the Center determines the allegation poses a risk to revenue, then the Center will determine if a violation exists by conducting cargo exams, reviewing revenue documentation, or by requesting information from the alleged violator. The Centers can issue bills to the entities to ensure that revenue is collected, implement enforcement measures and impose civil penalties, or refer to other offices for criminal investigation.

Referrals to ICE HSI

ICE HSI is the largest investigative component of DHS and the principal investigative authority in combating transnational criminal organizations illegally exploiting America's travel, trade, financial, customs, and immigration systems. ICE HSI is also responsible for investigating U.S. importers, companies, or other entities that attempt to evade lawful trade mechanisms, including the payment of required duties. ICE HSI's trade investigation efforts encompass all areas of commercial fraud, including AD/CVD evasion schemes, schemes involving the misdescription and undervaluation and underreporting of imported merchandise, and fraud associated with U.S. free trade agreements and preferential trade legislation.

Information resulting in ICE HSI investigations come from a variety of sources, including confidential informants; CBP leads, including but not limited to, e-Allegations; and tips from industry insiders directly to ICE HSI. Referrals to ICE HSI from CBP come from a variety of sources including the Centers, CBP Officers at the Ports, and RAAAS.

³⁴ CBP is formally in the process of renaming Regulatory Audit and Advisory Services (RAAAS) to Trade Regulatory Audit.

CEAR Process

One of the main methods that CBP uses to refer commercial fraud violations to ICE HSI is CEAR. This process establishes coordination between CBP and ICE HSI at the earliest possible point of an enforcement action. The intent of the CEAR process is to (1) ensure coordination between CBP and ICE HSI when commercial fraud violations are detected that meet National Impact Level 1 (NIL) or egregious criteria; (2) make an early determination of the nature, extent, and impact of the commercial fraud violation; (3) agree upon the responses to remedy the problem; and (4) follow-up on the action to ensure the problem is solved.³⁵

The CEAR process exists at each of the 10 Centers and the San Juan Field Office with representation and support from the ports, to coordinate commercial enforcement activities. The Trade Enforcement Coordinator (TEC) is the central point of contact for referral, research, and coordination of significant commercial fraud violations with other ports and components within CBP and ICE HSI. The TEC's responsibilities include ensuring referrals are properly reviewed, researched, and documented within the appropriate systems of record; ensuring entry-related trade fraud violations are vetted through the CEAR process within 15 working days of discovery; preparing for CEAR meetings and producing CEAR meeting minutes; and coordinating with ICE HSI to ensure that ICE HSI timely communicates referral decisions.

The discovering officer (CBP Officer or Center personnel) initiates the CEAR process upon the first indication of possible significant fraud violations. When the discovering officer detects a NIL 1 or an egregious NIL 2 commercial fraud violation, the officer will notify ICE HSI for immediate coordination rather than wait to refer it at the next monthly CEAR meeting.³⁶

TECs present the violation, accompanied by the analysis, at the CEAR group meeting for a decision on appropriate course of action.

³⁵ NIL 1 violations are those with a revenue loss of \$1 million or more, egregious broker violations that warrant license revocation, or commercial and IPR seizures of \$175,000 or more. NIL 2 violations are those with a revenue loss between \$500,000-\$999,000, initial evidence of criminal conduct or gross negligence, egregious broker violations that warrant a penalty, and commercial and IPR seizures between \$75,000 – \$174,999. NIL 3 are all other commercial violations.

³⁶ NIL 3 violations are not required to be referred to ICE HSI.

The goal of a recommended course of action should be to take appropriate enforcement action in response to the commercial fraud violation and to prevent future violations. When the CEAR group agrees on an appropriate course of action, the TEC will notify the involved CBP personnel of the action taken. Possible courses of action may include:

- referral to ICE HSI for investigation;
- referral to RAAAS;
- civil penalty action;
- increased numbers of examinations;
- implementation of an account-based action plan; or
- Commercial Targeting Referral sent to the appropriate NTAC to address the issues associated with the violation.

For ICE HSI referrals, the TEC will coordinate with ICE HSI to ensure that ICE HSI communicates referral decisions (whether it will take a referral) no later than the CEAR meeting immediately following the meeting at which the formal referral to ICE HSI occurred. If ICE HSI expresses interest in a NIL 1 violation, CBP will continue building a civil case, and should do so in close coordination with ICE HSI. If the violation is a commercial fraud violation, CBP will immediately begin preparing a commercial fraud penalty case or other appropriate civil penalty. ICE HSI will investigate and, when warranted, will refer investigative findings to the local U.S. Attorney's Office (USAO) for criminal prosecution. If ICE HSI declines immediate interest in pursuing the violation, CBP will continue building a civil enforcement case.

EAPA Allegations and e-Allegations

EOD notifies ICE HSI of new EAPA investigations and shares information about the investigation, as requested. After receiving the notification, ICE HSI will notify EOD of any ongoing ICE HSI investigation or intent to initiate an investigation that is relevant to the EAPA case. Once EOD makes a final determination of evasion for a case, EOD notifies ICE HSI of the determination and refers the

EAPA case for criminal investigation, as appropriate.³⁷ On a case-by-case basis, ICE HSI accepts and initiates criminal or civil investigations on these referrals from EOD. ICE HSI refers these cases to the USAO for criminal or civil prosecution based on the evidence gathered throughout the investigation.

For e-Allegations, CBP follows its normal process of vetting the allegation and would make an investigative referral to ICE HSI for potential criminal conduct found. Once ICE HSI receives the referral from CBP, ICE HSI vets the lead to ensure it has merit and meets local prosecutorial criteria, works with CBP to obtain additional import data or other information, works with the Department of Commerce to obtain additional relevant information from Department of Commerce's administrative records, and then begins the normal investigative process for a criminal investigation. ICE HSI would then present the facts of the case to the local USAO for decision on whether to proceed with a criminal prosecution.

Referrals to DOJ

CBP's OCC provides legal advice and representation to CBP Officers in matters relating to the activities and functions of CBP. The office is responsible for reviewing proposed actions to ensure compliance with legal requirements; preparing formal legal opinions; preparing or reviewing responses in all court actions, civil or criminal, involving CBP; and developing, implementing, and evaluating nationwide programs, policies, and procedures within its functional areas.

OCC has both a headquarters and field structure. The headquarters office is divided into three functional areas: Ethics, Labor and Employment; Enforcement and Operations; and Trade and Finance. The field structure consists of Associate and Assistant Chief Counsels located in major cities across the country who advise CBP field managers in their geographic areas.

³⁷ EOD refers cases to ICE HSI when EOD finds or suspects fraudulent activity in relation to AD/CVD evasion, or if EOD has any knowledge of, or reason to suspect that, the covered merchandise poses any health or safety risk to U.S. consumers.

Delinquent Debt and Liquidated Damages

Within OCC's Associate Chief Counsel, Trade and Finance Headquarters office, is the Assistant Chief Counsel located in Indianapolis, Indiana (ACC-Indianapolis). ACC-Indianapolis is currently the OCC office that prepares collection referrals to DOJ for delinquent duty bills referred for legal action by CBP's Revenue Division and liquidated damages referred for legal action by Fines, Penalties, and Forfeitures Offices at the ports where the claims originate.

CBP policy requires full payment of debt upon notification; any other arrangement must be based upon exceptional and justifiable circumstances. The Revenue Division, within CBP's Office of Finance, is responsible for taking aggressive follow-up action on a timely basis to collect certain claims of the United States for money or property arising out of activities of, or referred to, CBP. The Revenue Division is the CBP office primarily responsible for collecting debit vouchers (payments that do not clear the bank) and delinquent supplemental duty bills, including delinquent AD/CVD bills.

CBP's Revenue Division refers debt to OCC if they are unable to collect the debt from the principal or surety and the amount of the debt is over \$1,500. OCC reviews claims for legal sufficiency and makes demands on delinquent entities or refers matters to DOJ for litigation.³⁸

A claim for liquidated damages occurs when there is a breach of the terms and conditions of a bond.³⁹ The claim is eligible for a demand on the surety if the principal fails to respond in a liquidated damages case. The claim is eligible for billing if the surety fails to respond in a liquidated damages claim. All liquidated damages claims are to be promptly referred to ACC-Indianapolis for

³⁸ No statute of limitations exists for duties, taxes, and fees against the original debtor. However, the 6-year statute of limitations would apply to collection of duties from a surety under a CBP bond as distinguished from the importer's obligation under the law.

³⁹ A CBP bond is a performance contract taken out by a party engaging in transactions or activities with CBP to adequately protect the revenue of the United States and to ensure compliance with any pertinent law, regulation, or instruction regarding the conduct of that business. The bond is a contract between the principal and the surety, or an agreement by a principal secured by cash in lieu of surety. CBP is a third-party beneficiary of most CBP bonds.

collection action and potential referral to DOJ once the billing process is complete and payment is not received.⁴⁰

If ACC-Indianapolis receives a referral for collection of duty bill debt or liquidated damages, ACC-Indianapolis will accept the collection referral if a cognizable legal claim exists against a party against whom a judgment could be legally enforced or reject the collection referral if the claim is legally invalid or if additional research is required. If ACC-Indianapolis accepts a collection referral, it will open a collection file. Absent unusual underlying factual circumstances, ACC-Indianapolis will first attempt to collect through its own efforts. Once those efforts are exhausted, ACC-Indianapolis will evaluate whether the facts and evidence are sufficient to make a collection referral to DOJ for litigation action.

ACC-Indianapolis does not have authority to file a collection action in court and relies upon DOJ for doing so. ACC-Indianapolis makes litigation referrals to DOJ through a litigation letter. To refer a case, ACC-Indianapolis must demonstrate there are assets in the United States that DOJ can pursue. ACC-Indianapolis prepares a litigation referral letter, drafts a Complaint, and transmits it to the attorney-in-charge at DOJ's International Trade Field Office.

DOJ makes a determination whether to accept the referral. As to any case referred to DOJ for prosecution, the decision of whether and how to prosecute, defend, compromise, appeal, or abandon prosecution or defense, now exercised by any agency or officer, is transferred to DOJ. If DOJ accepts the referral, the assigned DOJ attorney will directly contact the principal or surety about CBP's claims and attempt to collect the monies due without the need to file suit.⁴¹ This could involve DOJ pursuing collection in full through litigation or, where DOJ deems appropriate, negotiating a settlement with the principal or surety.

ACC-Indianapolis should refer cases to DOJ at least 6 months prior to the statute of limitations expiration date. To monitor and ensure

⁴⁰ The statute of limitation for liquidated damages administered by CBP is 6 years from the date of the breach of the bond.

⁴¹ If DOJ decides not to accept a duty bill collection referral, ACC-Indianapolis typically refers the case back to the Revenue Division to explore further factual development. Unless additional facts or evidence are uncovered, the case ultimately may be referred by the Revenue Division for write-off if DOJ decides not to pursue a case.

timely referrals by ACC-Indianapolis to DOJ, OCC uses case-management software called the Chief Counsel Tracking System, which tracks the statute of limitations for every file referred to ACC-Indianapolis for collection.

Delinquent Penalties

Fines, Penalties, and Forfeitures Offices refer all non-payment/collection actions related to a penalty case to a local Associate or Assistant Chief Counsel. Local Associate or Assistant Chief Counsel offices handle referrals to DOJ for litigation for all penalty cases, whether or not secured by a bond.

In penalties assessed under 19 U.S.C. 1592 (Penalties for fraud, gross negligence, and negligence) the statute of limitations is 5 years from the date of the violation if the level of culpability is negligence or gross negligence, and 5 years from the date of discovery if the level of culpability is fraud. The statute of limitations will continue to run until DOJ files a Complaint in CIT. DOJ requires that CBP refer penalty cases to DOJ no later than 6 months before the statute of limitations expires.

For penalties in cases involving negligence, gross negligence, and fraud in violation of the Commercial Fraud statute, CBP addresses the vast majority of cases through the administrative process. Following completion of the administrative process, OCC may refer cases to DOJ for litigation at the CIT. OCC field counsel offices generally make referrals to DOJ, with OCC Enforcement and Operations attorneys providing coordination and support, as requested. For referrals involving penalties, CBP OCC refers matters to DOJ's Commercial Litigation Branch in the Civil Division.

Delinquent penalty cases are tracked in the Chief Counsel Tracking System that allows attorneys to document the progress of each case, track statute of limitations, include updates, and upload relevant files. Each office requires that cases be recorded in the tracking system.

Audit Results

In the following sections, we discuss the number and outcome of investigations instituted by CBP from October 1, 2018 through September 30, 2020 into the underpayment of duties associated with (1) EAPA Allegations, (2) e-Allegations, (3) referrals to ICE HSI, and (4) referrals to DOJ. We also discuss the results of our review of the effectiveness of actions taken by CBP to measure accountability and performance and the effectiveness of training with respect to the four investigative areas as part of our review.

Number and Outcome of Investigations into the Underpayment of Duties

EAPA Allegations

From October 1, 2018 through September 30, 2020, allegers submitted 278 EAPA allegations. In our requested update in October 2023, CBP confirmed that importers had evaded AD/CVD in 83 of those allegations resulting in CBP identifying potential revenue loss of approximately \$298 million. Table 2 below provides a breakdown by outcome of those 278 allegations.

Table 2: EAPA Allegation Outcomes, October 1, 2018 through September 30, 2020

EAPA Allegation Outcome	Number of EAPA Allegations	Percentage of Total EAPA Allegations
Withdrawn ⁴²	124	44.6%
Final Affirmative Determination	83	29.9%
Non-Qualifying	67	24.1%
Final Negative Determination	4	1.4%
Total	278	100%

Source: CBP Publicly Available EAPA Notices (<https://www.cbp.gov/trade/trade-enforcement/tftea/eapa/notices-action>)

⁴² Allegers may elect to withdraw an allegation up to day 90 of the investigation by communicating the request via email to EOD. If the allegation is withdrawn, the investigation is closed.

As previously mentioned, parties to the investigation can request administrative and judicial reviews if they disagree with CBP’s determination as to evasion of AD/CVD. In January 2022 and October 2023, we conducted follow-up work to determine the outcome of outstanding administrative and judicial reviews. Table 3 summarizes the outcomes of those administrative and judicial reviews as of October 1, 2023.

Table 3: EPA Allegation Administrative and Judicial Review Outcomes, October 1, 2018 through September 30, 2020 (As of October 1, 2023)

	Administrative Review	Judicial Review ⁴³
Affirmed	35	11
Reversed	2	3
Pending	4	8
Total	41	22

Source: Data Provided by CBP

e-Allegations

CBP received 934 underpayment of duty e-Allegations from October 1, 2018 through September 30, 2020. Table 4 below provides the outcomes of those e-Allegations.

⁴³ For the 11 allegations affirmed by the CIT, 7 allegations were appealed to the U.S. Court of Federal Appeals for the Federal Circuit. For the three allegations reversed, CBP voluntarily reversed the determination of evasion. Of the eight allegations pending, two of the allegations are currently returned to CBP to apply covered merchandise determination from Department of Commerce and for CBP to consider certain record information previously omitted. Additionally, one of the pending allegations is currently stayed pending the Department of Commerce’s determination as to whether merchandise at issue is covered by the relevant AD/CVD order.

Table 4: Underpayment of Duty e-Allegations Outcomes, October 1, 2018 through September 30, 2020 (As of October 1, 2023)

E-Allegation Outcome	Number of e-Allegations	Percentage of Total e-Allegations
No Action	706	75.6%
Action Taken – Allegation Confirmed	68	7.3%
Disposition Could Not be Determined ⁴⁴	67	7.2%
Action Taken – Allegation Not Confirmed	60	6.4%
Referred to Center	26	2.8%
Referred to Other Office ⁴⁵	6	0.5%
Assigned to NTAC	1	0.2%
Total	934	100%

Source: e-Allegation data provided by CBP

The reasons for “No Action” on the 706 e-Allegations varied, including: no violations found (38.2 percent), duplicate allegations (30.5 percent), insufficient information submitted (16.9 percent), or CBP deemed the allegation low risk/value (9.1 percent).⁴⁶

The 68 e-Allegations the Centers acted upon and that resulted in a confirmed allegation had a potential loss of revenue totaling approximately \$65 million. As discussed in Finding 1 below, TRLED could not tell us how much of the \$65 million was collected or lost.

Referrals to ICE HSI

CEAR meeting minutes from October 1, 2018 through September 30, 2020 identified 39 potential ICE HSI referrals from

⁴⁴ We could not determine the reason these allegations were closed because of a cleanup effort conducted in ARM that closed the cases without explanations.

⁴⁵ OROB assigns some allegations to other internal offices and outside agencies. For example, CBP referred e-Allegations to ICE HSI IPR Center, CBP’s RAAAS, OT Headquarters, and other government agencies.

⁴⁶ CBP closed the remaining 38 allegations (5.3 percent) due to various reasons that did not fit into the four categories mentioned above.

the 10 Centers and San Juan Field Office. CBP referred 37 of those 39 referrals to ICE HSI, along with an additional 35 not identified in the CEAR meeting minutes for a total of 72 referrals to ICE HSI. Of those 72 referrals, CBP reported that 44 (61 percent) had been rejected by ICE HSI. According to the Centers, the remaining 28 cases were either accepted or were pending ICE HSI decision as of August 2021. We also found that CBP referred one EAPA Allegation and two e-Allegations to ICE HSI.

As discussed further in Finding 2 below, we found that CBP did not track the outcome of referrals made to ICE HSI; and was unable to provide us with the outcome of any referrals made to ICE HSI. We inquired with ICE HSI about the outcome of the 75 referrals CBP submitted to ICE HSI that we identified through review of the CEAR meeting minutes, EAPA allegations, and e-Allegations. On January 26, 2022, ICE HSI informed us that 22 (29.3 percent) of the 75 referrals had become ICE HSI cases. In our requested update in October 2023, ICE HSI reported that 11 referrals were closed and 11 referrals were open. These referrals resulted in various actions taken by ICE HSI, including seizures, arrests, indictments, and search warrants.

Referrals to DOJ

Commercial Fraud Penalty Referrals

From October 1, 2018 through September 30, 2020, CBP referred 12 commercial fraud cases to DOJ. Of the 12 referrals, 8 involved the evasion of trade duties including AD/CVD and 4 involved the evasion of Alcohol and Tobacco Tax and Trade Bureau Federal Excise Tax. The amount of uncollected duties associated with these referrals totaled approximately \$12.6 million. CBP assessed approximately \$1.05 million in commercial fraud penalties.

In our requested update in October 2023, CBP reported that DOJ and CBP collected \$1.5 million of the \$12.6 million (12.1 percent) in uncollected duties, and \$20,000 of the \$1.05 million (1.9 percent) in penalties assessed. Additionally, CBP reported, 2 of the 12 referrals were pending final disposition, with potentially \$5.8 million of the \$12.6 million (46 percent) identified as uncollected duties to be collected.

Delinquent Debt and Liquidated Damage Referrals

From October 1, 2018 through September 30, 2020, CBP referred to DOJ 9 cases seeking collection of duty bills or in-bond claims. Of the 9 referrals, 8 involved AD/CVD consumption entries made by an importer and 1 involved in-bond transportation entries made by the carrier.

The amount of uncollected duties associated with the 9 referrals to DOJ totaled approximately \$24.9 million. In our requested update in October 2023, CBP reported that all 9 of the referrals were still pending.

Accountability and Performance Measures

EAPA Allegations

We found that CBP had appropriate performance metrics for measuring EAPA program accountability and performance. Specifically, TRLED had the following two measures to gauge EAPA program performance against regulatory and statutory requirements established in 19 U.S.C. 1517 and 19 CFR 165 for FYs 2019 and 2020:

- percentage of cases in which interim measures were issued no later than 90 calendar days from case initiation, and
- percentage of cases whereby the final determination was rendered no later than 300 days from case initiation, or no later than 360 days from case initiation if the case was extended under specific circumstances.

As part of our review, we reviewed CBP's adherence to all EAPA statutory and regulatory timeframes. CBP reported they met these two measures 100 percent of the time for FYs 2019 and 2020, which we verified as part of our review of actual performance. We believe the performance metrics established were effective at measuring accountability and performance for the EAPA program.

CBP also had the following performance indicators to monitor the EAPA program in addition to the two mentioned above:

-
- number of EAPA allegations received,^{47,48}
 - number of EAPA allegations submitted,⁴⁹
 - number of EAPA cases pending receipt,⁵⁰
 - average number of days between submission and receipt,
 - total number of active cases,⁵¹
 - number of EAPA allegations by violation type,⁵² and
 - amount of revenue protected via EAPA.

e-Allegations

We found that TRLED did not have adequate performance metrics for e-Allegations during our FYs 2019 and 2020 period of review. We found that TRLED's two performance indicators, actual number of e-Allegations referred⁵³ and average variance in the number of e-Allegations by type, only measured trends in e-Allegations and not actual performance.⁵⁴

However, in FY 2021, TRLED established a performance metric that improved TRLED's effectiveness in measuring accountability and performance of the e-Allegations program. The EOD Director told us that they created an additional performance measure to measure the OROB's assignment time of e-Allegations. TRLED established this performance metric in October 2020, which was outside the scope of our review. The OROB Chief told us that OROB's goal was to assign e-Allegations within 5 business days of

⁴⁷ EOD is responsible for processing all submitted EAPA allegations and ensuring the allegation is complete and qualifies as a proper EAPA allegation for which EOD can officially accept receipt. EOD assesses whether the allegation satisfies minimum criteria using a "Receipt Checklist" to guide and document its assessment.

⁴⁸ This metric depicts the growth/decline of the workload and could indicate the success of the program and EOD's Outreach efforts focused on improving the quality of allegations submitted.

⁴⁹ When assessed against the number of cases received, this could inform CBP on the quality of the submissions and direct outreach efforts focused at educating the trade on the requirements for an allegation to be received by CBP.

⁵⁰ This metric indicates the workload of cases staff are evaluating to determine if they meet EAPA receipt criteria.

⁵¹ This metric indicates the actual number of cases received that are still active.

⁵² This metric may help CBP identify how companies are evading.

⁵³ This metric measures workload and quality of e-allegations received and may alert EOD of the need to further efforts to ensure the submission of better-quality referrals.

⁵⁴ The metric may indicate an emerging e-Allegations trend that should be further researched.

CBP receiving the allegation. Based on our review of e-Allegations, we found that 90 percent of e-Allegations were assigned or closed within 5 business days. OROB averaged just over 4 days to assign or close an allegation during FYs 2019 and 2020. We believe this new performance metric should keep OROB accountable in meeting its assignment goal and objective of protecting the economy from unfair trade practices by timely assigning allegations to the appropriate office.

OROB assigns allegations to the NTACs who conduct thorough research and analysis on the allegation to determine whether to close the case or to further assign the allegation to an office to take action. We found that the NTACs were also tracking their performance related to analyzing e-Allegations assigned to their office. The NTAD Director told us that they track various performance indicators including the average time to complete an analysis for an allegation case to ensure timeliness. We attempted to review the timeliness of NTAC's analyses of assigned e-Allegations using CARS data; however, as discussed in Finding 1, CARS data was not complete and only included the date an e-Allegation was closed and not the date assigned if the NTAC assigned an e-Allegation to a Center.

As discussed in Finding 1 below, we found that TRLED was not tracking the monetary impact the e-Allegations program has with respect to recovering lost revenue. We recommend that TRLED coordinate with the appropriate internal offices to ensure they are tracking revenue recovered with respect to the e-Allegations program to evaluate the program's performance in meeting objectives.

Referrals to ICE HSI

CBP did not establish performance metrics for referrals to ICE HSI or the CEAR process. A Center Director told us that it would be difficult to articulate performance measures with the CEAR process as there are different ways to perform analysis on cases and gather results. Because of the nature of the CEAR process and the changing dynamic of the CEAR process, we agree with CBP that performance metrics for referrals to ICE HSI would be difficult to articulate. As discussed in Finding 2 below, CBP is in the process

of updating its CEAR SOP. Once CBP has updated its processes, CBP should determine if performance metrics are appropriate.

Referrals to DOJ

CBP did not establish performance metrics specific to referrals to DOJ. OCC officials believed it would be difficult, if not impossible, to define a specific collection goal or metric that would apply uniformly to all attorneys doing these types of collection work. OCC attorneys do receive an annual performance appraisal per OCC's performance metrics, which includes the attorney's work related to DOJ referrals. Due to the limited number of referrals to DOJ, we agree that an effective universal performance metric specific to referrals to DOJ may be difficult to define and that OCC attorney's individual performance appraisals are sufficient for evaluating the handling of referrals to DOJ.

Training

EAPA Allegations

We found that TRLED established an EAPA SOP and provided formalized training or was planning to provide formalized training to CBP personnel involved in the EAPA process. Based on our review of the EAPA program, we believe that TRLED is effectively providing guidance and training to CBP personnel on the processing of EAPA allegations.

Specifically, TRLED established the EAPA SOP in October 2020 to guide CBP employees through the EAPA process. Before the SOP was established, TRLED used a draft handbook to guide employees. In addition to the SOP, TRLED provided multiple trainings to those offices who were part of the investigative team during our audit scope period, including:

- training five new TRLED employees on the EAPA program;
- training to the Centers in FY 2019;
- webinars, internal trainings, and presentations to RAAAS; and
- training to ICE HSI in FY 2020.

NTACs did not receive EAPA specific training during FYs 2019 and 2020; however, CBP planned training for the NTACs during FY 2021.

e-Allegations

Training for e-Allegations was provided through the October 2020 e-Allegations SOP and by on-the-job training guiding OROB personnel how to handle allegations. NTACs and Centers told us that there is no specific training for NTACs and Center employees on e-Allegations, but e-Allegations are treated like any other action those offices may face during their everyday work.

Based on our review of the e-Allegations program, we believe OROB, NTACs, and Centers are effectively processing e-Allegations; however, as discussed in Finding 1, we found that the recording of e-Allegation statuses in the CARS system was not accurate. We are recommending that CBP improve processes to ensure that the system is accurate and timely updated. Further, once TRLED has fully implemented new processes for ARM, TRLED management should assess the need for training, in addition to enhanced SOPs, for those offices responsible for updating the statuses of those e-Allegations as recommended in Finding 1 below.

Referrals to ICE HSI

To guide employees through referring cases to ICE HSI, CBP had SOPs for the CEAR, EAPA allegations, and e-Allegations processes. However, as discussed in Finding 2 below, we found that CBP is not monitoring referrals to ICE HSI, and that the CEAR SOP is outdated. CBP told us that they are working on making updates to the CEAR process and are updating their SOPs.

Referrals to DOJ

Training for OCC attorneys responsible for DOJ referrals is provided through mentorships and trainings focused on best practices for considering legal and litigation risk when reviewing cases. OCC attorneys also attend annual trainings where best practices are shared. The Attorney Practice Guide provides basic direction to attorneys on processing penalty and liquidated damage cases. The guide also provides standardized templates for referrals of

penalties, liquidated damages, and duty collection. As discussed in Finding 3 below, we also found that OCC has not established policies and procedures for its processing of delinquent duty, liquidated duty, and penalty cases to DOJ. We are recommending OCC establish these policies and procedures. The SOPs may also help OCC with its training efforts.

Finding 1

The Status and Outcome of e-Allegations Cases Were Not Recorded Accurately Nor Completely, Nor Monitored

As described further below, CARS, the e-Allegations program system of record at the time of our audit, did not accurately reflect the status of cases, with many of the cases shown as closed by the NTACs before review of the e-Allegation had been completed. Additionally, OROB did not track whether identified underpayment of duties associated with confirmed e-Allegations was recovered. Furthermore, we noted that OROB, the office responsible for the e-Allegations program, did not monitor referred allegation statuses once the cases were assigned. CBP could potentially overlook an e-Allegation, resulting in the failure to identify underpayment of duties, if e-Allegation data is incorrect or closed prior to the outcome being known.

Status of e-Allegations Data Was Not Accurate Nor Complete Within the System of Record

We reviewed all 934 e-allegations submitted from October 1, 2018 through September 30, 2020 concerning the underpayment of duties identified in CARS to determine the status and outcome of those cases. We found 116 instances (12.4 percent) where cases had been closed but should have remained open because the outcomes of the cases were not known or documented. Of these instances, 85 allegations had been closed while the Centers were still reviewing the allegation, 1 allegation had been presented to the CEAR, 1 allegation had been referred to the NTAC, and 1 allegation had been referred to RAAAS. We could not determine through the CARS data the outcomes of the remaining 28 cases that had been closed.

As to why NTACs closed these cases before the outcomes were known, TRLED told us that prior to the October 2020 SOP, internal stakeholders were responsible for developing their own internal e-Allegations processing procedures. In addition, as previously discussed, NTACs told us that there is no specific training for NTAC employees on e-Allegations, but e-Allegations are treated like any other action they may face during their everyday work. TRLED officials told us that it was the practice of a few NTACs to close the record when a referral for action is made. For many of those closed records, the NTAC made follow-up entries to CARS providing updates to those closed cases. TRLED personnel also told us that NTACs tracked the cases separately in its own tracking system, the Analysis Management Portal, which is separate from CARS, the system of record for the e-Allegations program.

With that said, TRLED issued guidance to NTAD and OROB personnel communicating that cases should not be closed until the outcome of the investigation is known and all actions are complete in the ARM system, which CBP launched in May 2021.⁵⁵ This new system is to be the sole system used by OROB and NTACs to track e-Allegations. ARM only allows the assigned CBP office to adjust the allegation status. TRLED officials told us they are in the process of reviewing all close out status codes in ARM to determine if the most efficient list of status codes is available. The review is to reduce confusion and more accurately reflect the final close out status.

OROB Did Not Track the Recovery of Underpayments of Duties from Confirmed e-Allegations

CBP was not tracking whether lost revenue confirmed with the allegation was recovered. From our analysis of 934 e-Allegations, we found 68 allegations where CBP took action on and confirmed the allegation. Case notes associated with these 68 confirmed allegations disclosed underpayment amounts totaling approximately \$65 million. We asked TRLED if CBP recovered this revenue or if it had been lost. TRLED officials told us that they do not actually bill or recover revenue from importers associated with enforcement actions and do not track actual payment information received in

⁵⁵ Our audit period ended in 2020; therefore, we reviewed CARS data. CARS was replaced by the ARM system in May 2021.

connection with an e-Allegation.⁵⁶ TRLED personnel told us that CBP's Office of Finance is responsible for final collection of revenue and that TRLED does not track this information as it is not always readily available. It may take several years for enforcement actions to be processed.

OROB Did Not Monitor e-Allegations After Assignment

Per CBP's October 2020 e-Allegations SOP, OROB is responsible for overseeing the e-Allegations program, including reviewing and assigning new allegations. During our November 2020 meeting with TRLED, the OROB Chief told us that monitoring the status of allegations was something OROB needed to improve on and that OROB has taken steps to better monitor the outcomes of the allegation cases, something that has not always been done in the past. The OROB Chief told us that the reason for the lack of monitoring was CARS was outdated. The Chief told us that CBP was working on ARM, a replacement to CARS, that should enable CBP to better track the outcomes of an investigation. At the time of our November 2020 meeting, the OROB Chief told us that CBP was in the process of designing the new system to be more capable of recording allegation statuses and results.

The OROB Chief told us that the CBP office to which OROB assigns an allegation is responsible for updating the CARS record to reflect the most recent status of the allegation. OROB is responsible for ensuring the CBP office assigned an allegation updates the CARS record in a timely manner to reflect the status of the allegation and to close out the allegation. To do this, the e-Allegations SOP specifies OROB will conduct outreach to the specific CBP office if an allegation has been open longer than 90 days without a status update to ensure the assigned office is still investigating, or if the office should close the allegation.

The OROB Chief told us that OROB does actively track allegation cases to ensure they are being pursued or closed when necessary. However, the TRLED Executive Director explained that to know the complete outcome of the investigation, they would have to obtain

⁵⁶ While TRLED does not bill importers, the Centers will bill importers for any lost revenue, if discovered. Once the Centers issue a bill, the Revenue Division within Office of Finance is responsible for pursuing the debt.

that information from the Centers as opposed to obtaining it from CARS.

Principle 16 of the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* states that management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.⁵⁷ Management performs ongoing monitoring of the design of the operating effectiveness of the internal control as part of the normal course of operations. Ongoing monitoring includes regular management, supervisory activities, and reconciliations.

Principle 13 of the GAO *Standards for Internal Control in the Federal Government* states that management should use quality information to achieve the entity's objectives. Management obtains relevant data from reliable internal and external sources in a timely manner. Quality information is used to make informed decisions and evaluate the entity's performance in achieving key objectives and addressing risks.⁵⁸

Lack of monitoring procedures may result in incomplete or inaccurate e-Allegation status information used by TRLED to review e-Allegations. Additionally, CBP could overlook an e-Allegation, resulting in the potential failure to identify underpayment of duties, if e-Allegation data is incorrect and closed prior to the outcome being known. Furthermore, without tracking the recovery of duties identified through the e-Allegation investigations, underpayments of duties may not be collected resulting in a loss to the Government and a decrease in the performance of achieving the program objectives.

Recommendations

We recommend that the CBP Commissioner ensures:

1. TRLED officials enhance procedures to ensure that the statuses of e-Allegations cases are timely, accurate, and complete in its information system, ARM; monitor those procedures to ensure

⁵⁷ GAO, *Standards for Internal Control in the Federal Government* (Sept. 2014) p. 65

⁵⁸ GAO, *Standards for Internal Control in the Federal Government* (Sept. 2014) pp. 59, 60

that they are working as intended; and assess the need for related training.

Management Response

Management concurred with our recommendation. Management stated that CBP's OT TRLED re-assigned the e-Allegations program oversight from the OROB to the EPB, effective June 2023. During the transition, OROB was in the final stages of updating the e-Allegations SOP to improve user processing efficiency. EPB is continuing those efforts by evaluating the e-Allegations lifecycle to determine where additional improvements are needed to support end-to-end processing.

EPB is reviewing, and will update accordingly, the SOP guidance to assess e-Allegation referral oversight challenges within the ARM system and is working with internal ARM users within OT to improve monitoring procedures and create reporting requirements to determine mission standards are being met. In addition, EPB is working with TRLED to determine if the assigned units—Civil Enforcement Operations, NTAD, Force Labor Directorate, and EOD—need additional training regarding e-Allegation processing roles and responsibilities. Management expects to close this recommendation by August 30, 2024.

OIG Comment

Management's response and planned corrective action meet the intent of our recommendation.

2. TRLED staff coordinates with appropriate internal offices to track revenue recovered from the e-Allegations program and uses the information to evaluate the program's performance in achieving objectives.

Management Response

Management concurred with our recommendation. Management stated, as previously noted, that EPB is reviewing, and will update accordingly, the ARM SOP guidance to assess e-Allegation referrals oversight within the ARM system, which was developed to capture the actual loss of revenue recovered from e-Allegation cases. EPB is also working with internal ARM

users within OT to improve revenue monitoring procedures by creating requirements to assess and capture final enforcement actions and actual revenue collected before the e-Allegation case is closed. Management expects to close this recommendation by August 30, 2024.

OIG Comment

Management's response and planned corrective action meet the intent of our recommendation.

Finding 2

CBP Did Not Adequately Monitor Referrals Forwarded to ICE HSI

CBP did not centrally monitor referrals to ICE HSI nor did it use mechanisms established in its CEAR SOP to monitor referrals. We found most Centers tracked ICE HSI referrals and the main mechanism used to monitor referrals was the CEAR meeting minutes. However, we found the CEAR meeting minutes were not consistent among the Centers, and their use to determine which cases had been referred to ICE HSI, and their status, was challenging. Additionally, Centers could not provide us with evidence they were meeting monthly as required by the CEAR SOP. Lack of monitoring of referrals to ICE HSI could result in cases exceeding their statute of limitations expiration and becoming unenforceable. In turn, this could result in underpayments of duties not being collected, resulting in a loss to the Government and a decrease in the performance of achieving the program objectives.

CBP Did Not Use Established CEAR SOP Mechanisms to Monitor Referrals to ICE HSI

As previously mentioned, CBP refers significant commercial violations to ICE HSI either upon discovery or at monthly CEAR group meetings. For cases that are referred to ICE HSI, the TEC coordinates with ICE HSI to ensure that ICE HSI communicates referral decisions (whether it will take a referral) no later than the CEAR meeting immediately following the meeting at which the formal referral to ICE HSI occurred.

The CEAR SOP provides mechanisms that can be used to monitor ICE HSI referrals including CARS, CEAR meeting minutes, TECS

MOD/Intelligence Reporting System - Next Generation (IRS-NG), and the Automated Commercial Environment (ACE).^{59,60} However, as further explained below, we found CBP did not use these potential mechanisms.

CARS Was Not Used to Monitor Referrals

Center and San Juan Field Office personnel informed us that the offices are not using CARS to monitor referrals. Per the CEAR SOP, if the TEC presents the referral to the CEAR group, the TEC will input revenue-based referrals into CARS and assign the appropriate NIL. Center personnel told us CARS can be used to track and monitor cases; however, the Centers use their electronic files to keep emails, notes, and timelines. With that said, there is not a central repository for case documentation.

CEAR Meeting Minutes Were Not Reliable in Monitoring Referrals

We found the CEAR meeting minutes were not reliable and, therefore, not an effective mechanism for monitoring ICE HSI referrals and determining their status. We reviewed 125 CEAR meeting minutes covering FYs 2019 and 2020 and identified 39 cases potentially referred to ICE HSI; however, we could not determine the status of those referrals using those minutes. We inquired with the Centers to determine if CBP personnel had referred the cases to ICE HSI and if they could determine the referral outcomes. CBP personnel informed us that 72 cases had been referred to ICE HSI through the CEAR, nearly twice the number we identified from our review of the CEAR meeting minutes, but the CBP personnel could not identify the status of those referrals and referred us to ICE HSI.

The Civil Enforcement Division Director told us that ICE HSI referrals are tracked through monthly CEAR meeting minutes as required by the CEAR SOP; however, we found through our analysis of monthly CEAR meeting minutes that the Centers are not conducting monthly CEAR meetings or they could not provide

⁵⁹ IRS-NG, which replaced TECS MOD for documenting commercial trade encounters, is a web-based platform that collects data and facilitates collaboration and uniform enforcement action across DHS components.

⁶⁰ ACE is the commercial trade processing system that provides a single, centralized way to connect CBP, the international trade community, and partner government agencies.

documentation that the monthly meetings are being held. The 10 Centers and San Juan Field Office provided us with 125 CEAR meeting minutes for FYs 2019 and 2020. Had those offices conducted a CEAR meeting every month, 264 meeting minutes should exist. Additionally, we reviewed the 125 CEAR meeting minutes and found that only 49 (39 percent) used the CEAR meeting minute report template outlined in the CEAR SOP.

CEAR groups at the Centers are required to meet as necessary or at least monthly and track all referrals to ICE HSI as outlined in the CEAR meeting minutes report template.⁶¹ CBP personnel told us that the CEAR meeting minutes would be a good place to start to review referral activity of the CEAR meetings and that the meeting minutes, uploaded in CARS, show all referral activity from around the country in the past year. However, OT personnel responsible for overseeing the Headquarters CEAR Board told us that it would be difficult to provide the referrals sent to ICE HSI because they would have to go through each meeting note in CARS to determine if the CEAR group referred the case to ICE HSI.

TECS MOD/IRS-NG Was Not Used to Monitor Referrals

We could not determine the number of cases referred to ICE HSI by reviewing DHS's IRS-NG records because CBP did not monitor or track referrals to ICE HSI through IRS-NG. Multiple times, we asked CBP personnel to provide statistical information regarding the number of cases referred to and investigated by ICE HSI and statistical information regarding NIL 1, 2, and 3 cases. The Strategic Enforcement Chief Branch informed us that ICE HSI, not CBP, holds the statuses of actions taken by ICE HSI on these referrals.

Per the CEAR SOP, the discovering officer of a commercial fraud violation is responsible for ensuring the recording and the reporting of the issue in TECS MOD in accordance with national guidelines.⁶² TECS MOD was a system used by CBP to track information on suspect individuals, businesses, vehicles, aircraft, and vessels. A discovering officer will prepare a *Commercial Memoranda of*

⁶¹ The CEAR meeting minutes report template includes fields to report the total number of CBP referrals to ICE HSI, total number of pre-CEAR meeting referrals accepted by ICE HSI, number of AD/CVD referrals to ICE HSI, number of IPR rights referrals to ICE HSI, and total FY referrals to ICE HSI.

⁶² CBP Directive 4350-016A, *Trade Enforcement Communications* (April 24, 2001)

Information Received or its successor for the commercial fraud violation.

CBP personnel informed us that TECS MOD was retired and that they are now using IRS-NG, an intelligence reporting system maintained by CBP, to track all NIL 1 referrals.⁶³ In addition, a new policy was issued requiring CBP personnel to document commercial trade encounters in the IRS-NG platform using the *Info Bulletin - Trade* that replaced the *Commercial Memoranda of Information Received* functionality in TECS MOD.⁶⁴ IRS-NG is a web-based platform that collects data and facilitates collaborative and uniform enforcement across DHS components. IRS-NG's *Info Bulletin - Trade* is the exclusive information authoring and publication tool for communicating civil trade violations.

OT's Civil Enforcement Division Director told us that there was currently no field in IRS-NG that describes CBP-referred information to ICE HSI, but that CBP was working to incorporate this feature in the system in the future. Additionally, personnel from only two field offices stated that they use IRS-NG to track ICE HSI referrals.

ACE or Validation Activities Were Not Used to Monitor Cases

The discovering officer of a commercial fraud violation is responsible for ensuring the recording and reporting of the issue in the appropriate system of record. Center personnel told us that their primary system of record is the ACE system for discovery of violations. ACE is the commercial trade processing system that provides a single centralized way to connect CBP partner government agencies and the trade community for the processing of imports and exports. Center personnel confirmed that a validation activity will be created in ACE when developing a case.⁶⁵

When asked about the tracking of ICE HSI referrals, field office personnel informed us about a variety of ways they track ICE HSI referrals but did not list ACE or validation activities as ways to track referrals. Additionally, the Strategic Enforcement Branch

⁶³ NIL 1 or egregious NIL 2 commercial fraud violations are to be reported to ICE HSI.

⁶⁴ CBP Directive 4350-028, *Intelligence Reporting System - Next Generation* replaced CBP Directive 4350-016A.

⁶⁵ When Centers conduct reviews of entries, they enter the determination and finding in a validation activity within ACE.

Chief stated that the system of record for cases was TECS MOD/IRS-NG and that ACE did not have the capability to indicate that a case had been referred to ICE HSI.

CBP Is Making Changes to the CEAR Process

CBP officials informed us that there were many changes to the CEAR process since the last CEAR SOP update in 2017. For example, CBP now has a more centralized focus in place for enforcement activities occurring within the Centers. Additionally, many communications are occurring on an ad hoc basis. Furthermore, CBP officials stated that CBP is replacing many of the mechanisms mentioned in the CEAR SOP with newer ones. CBP personnel told us that they are attempting to address the monitoring of ICE HSI referrals as part of their new processes.

CBP penalty cases are subject to statute of limitations constraints, which makes CBP's tracking and monitoring of ICE HSI referrals critical. When determining a course of action during CEAR meetings, the CEAR group should be aware of the statute of limitations. The Center and ICE HSI should coordinate with one another at the onset of the identification of a commercial fraud violation to determine the procedures to be followed, noting applicable statutory, regulatory, or policy timeframes for enforcement actions, including the statute of limitations. If requested by ICE HSI, CBP may postpone civil enforcement action and should seek regular updates from ICE HSI to ensure any delay is still appropriate. ICE HSI investigations will not prevent CBP from initiating civil enforcement action; however, the two should coordinate any potential civil or administrative actions to reduce risk of jeopardizing any ongoing criminal case or proceedings.

Principle 16 of the GAO *Standards for Internal Control in the Federal Government* states that management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.⁶⁶ Management performs on-going monitoring of the design and operating effectiveness of the internal control system as part of the normal course of operations. On-going monitoring includes regular management and supervisory activities.

⁶⁶ GAO, *Standards for Internal Control in the Federal Government* (Sept. 2014) p. 65

As part of this, CBP management should ensure CBP follows control activities established in documented policies to track and monitor referrals to ICE HSI. If these activities are not followed, there is a risk of lost revenues from underpayments of duties not being collected, resulting in a loss to the Government and a decrease in the performance of achieving the program objectives.

As previously reported, CBP did not establish performance metrics for referrals to ICE HSI or the CEAR process. Because of the nature of the CEAR process and the changing dynamic of the CEAR process, we agree with CBP management that performance metrics for referrals to ICE HSI would be difficult to articulate at this time. Principle 6 of the GAO *Standards for Internal Control in the Federal Government* states management determines whether performance measures are appropriate for evaluating the entity's performance in achieving its objectives.⁶⁷

Recommendations

We recommend that the CBP Commissioner ensures:

3. OT and OFO officials responsible for oversight of the CEAR process monitor referrals made to ICE HSI and ensure established mechanisms to track ICE HSI referrals are followed.

Management Response

Management concurred with our recommendation. Management stated that CBP OT TRLED is currently working to enhance CBP's CEAR procedures for oversight of referrals made to ICE HSI and tracking and updating trade enforcement actions. Once these enhancements are complete, CBP OFO will enter the referral into the Repository for Analytics in a Virtualized Environment, which accommodates all NIL 1 referrals, even if the case is verbally declined by ICE HSI. If NIL 2 or NIL 3 violations are accepted by ICE HSI, those will be entered as well. Management expects to close this recommendation by July 31, 2024.

⁶⁷ GAO, *Standards for Internal Control in the Federal Government* (Sept. 2014) p. 35

OIG Comment

Management's response and planned corrective actions meet the intent of our recommendation.

4. OT and OFO officials responsible for oversight of the CEAR process review and update the CEAR SOPs to ensure the SOPs continue to be relevant and effective in meeting objectives and addressing risks.

Management Response

Management concurred with our recommendation. Management stated that CBP OT TRLED is enhancing the CEAR process to ensure CBP can meet its trade enforcement mission while operating in a virtual environment. CEAR 2.0 was pre-deployed on January 25, 2024, beginning a 120-day period to evaluate CEAR 2.0 changes that focus on timelier, complete trade enforcement actions while meeting mission objectives of assessing violation risk. Once the pre-deployment evaluation is completed, CBP OT TRLED will update CEAR SOPs, as appropriate, to ensure they continue to be relevant and effective in meeting objectives and addressing risks. Management expects to close this recommendation by July 31, 2024.

OIG Comment

Management's response and planned corrective actions meet the intent of our recommendation.

5. OT and OFO officials assess the need for performance metrics once the CEAR SOPs are updated as recommended above in item 4.

Management Response

Management concurred with our recommendation. Management stated that CBP OT TRLED is enhancing the CEAR process to ensure CBP meets the agency's trade enforcement mission. CEAR 2.0 was pre-deployed January 25, 2024, allowing 120 days to evaluate CEAR 2.0 changes that focus on timelier, complete trade enforcement actions and build performance metrics using the associated systems, e.g., Repository for

Analytics in a Virtualized Environment, IRS-NG, and ARM, to help determine CBP's national enforcement impact. Management expects to close this recommendation by July 31, 2024.

OIG Comment

Management's response and planned corrective action meet the intent of our recommendation.

Finding 3 Procedures for Processing Delinquent Duty, Liquidated Damage, and Penalty Cases Were Not Documented

Upon referral from a CBP component office, OCC is responsible for providing legal assistance with respect to delinquent duty, liquidated damage, and penalty cases and determining the legally available courses of collection action against the debtor, including potential referrals to DOJ. We found OCC offices did not have documented policies and procedures for attorneys processing those cases. OCC personnel considered it difficult to standardize policies and procedures for cases presented to OCC because each case was unique. The lack of policies and procedures could result in inconsistent practices for receiving, processing, and monitoring cases, among the different offices across the country.

Through our interviews with OCC Associate and Assistant Chief Counsels, we learned ACC-Indianapolis, the office responsible for providing legal assistance with respect to delinquent debt and liquidated damage cases, and the OCC Associate and Assistant Chief Counsel field offices, the offices serving as legal advisors to the agency on all matters involving enforcement of civil penalties and recovery of monetary claims, had a documented organizational structure, assigned roles and responsibilities, and delegations of authority. However, established policies and procedures for the handling of delinquent duty, liquidated damage, and penalty referrals were not documented.

OCC provided us with excerpts from its Attorney Practice Guide, which provides high-level basic directions for attorneys on processing penalty and liquidated damage cases. The Attorney Practice Guide also provided attorneys with standardized templates

for referral letters and complaints to provide to DOJ for delinquent duty, liquidated damage, and penalty cases. We found the guide lacked a description of the organizational structure, roles and responsibilities, delegations of authority, and control activities that should be documented with an internal control system.

OCC personnel told us that they believe that no set of policies and procedures could be used as a standard for all cases presented to them because of the complexities and uniqueness of cases. An OCC Associate Chief Counsel told us that they need freedom to practice law and, because of the uniqueness of each case, having formal procedures would make it hard for attorneys to adjust to changing circumstances.

We believe procedures for receiving, processing, and monitoring penalty referrals, at a minimum, should be documented to ensure consistency among offices given the many OCC Associate and Assistant Chief Counsels across the country who process delinquent penalty referrals. OCC officials told us that they are currently updating the Attorney Practice Guide. OCC management should use this opportunity to document its internal control system, including the organization structure, roles and responsibilities, delegations of authority, and control activities for the processing of delinquent debt, liquidated damages, and penalties.⁶⁸

Principle 3 of GAO's *Standards for Internal Control in the Federal Government* states that management should establish an organizational structure, assign responsibility, and delegate authority to achieve objectives.⁶⁹ As part of this, management develops and maintains documentation of its internal control system. GAO's *Standards for Internal Control in the Federal Government* goes on to state that documentation provides a means to retain organizational knowledge and mitigate the risk of having that known knowledge limited to a few personnel, as well as a

⁶⁸ Control activities are the actions management established through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity's information system.

⁶⁹ GAO, *Standards for Internal Control in the Federal Government* (Sept. 2014) p. 27

means to communicate that knowledge as needed to external parties, such as external auditors.⁷⁰

Principle 12 of GAO's *Standards for Internal Control in the Federal Government* also states management should implement control activities that are part of internal control system through policies.⁷¹

Recommendation

We recommend that the CBP Commissioner ensures:

6. OCC establishes documented policies for processing delinquent duty, liquidated damage, and penalty cases, and include its organization structure, roles and responsibilities, and delegations of authority.

Management Response

Management concurred with our recommendation. Management stated it is important to note that CBP OCC technically reports to the DHS Office of General Counsel, not the CBP Commissioner. CBP's OCC issued a revised "OCC Attorney Practice Guide" on June 2, 2023 (Guide), which contains additional details on OCC procedures for handling trade enforcement matters such as 19 U.S.C. Section 1592, "Penalties for fraud, gross negligence, and negligence." The updated Guide provides detailed delegations of authority internally within OCC for issuance of penalties, settlement, and decision-making for purposes of litigation. It also includes hyperlinks to OCC and CBP policies related to OCC's responsibilities in the recovery of civil penalties, unpaid duties under 19 U.S.C. Section 1592(d), and liquidated damages. Further, the Guide contains sample referrals to the Department of Justice, as well as OCC's procedures for submitting such referrals.

Lastly, it is important to note that the Guide is a living document, and OCC attorneys are able to submit suggested

⁷⁰ The extent of documentation needed to support the internal control system is a matter of judgement for management; however, some level of documentation is necessary so that the components of internal control can be designed, implemented, and operating effectively.

⁷¹ GAO, *Standards for Internal Control in the Federal Government* (Sept. 2014) p. 56

updates via a hyperlink on OCC's internal website. Consistent with this recommendation, OCC will include its organizational chart in the Guide, as well as additional information related to duty bills and liquidated damages. Management expects to close this recommendation by December 31, 2024.

OIG Comment

Management's response and taken and planned corrective actions meet the intent of our recommendation.

* * * * *

We appreciate the courtesies and cooperation provided to our staff during the audit. If you wish to discuss the report, you may contact me at (857) 221-0581 or Mark Ossinger, Audit Manager, at (857) 241-6088. Major contributors to this report are listed in appendix 3 and a distribution list for this report is provided as appendix 4.

/s/

Sharon Torosian
Audit Director, Manufacturing and Revenue

Appendix 1: Objectives, Scope, and Methodology

The overall objective of our audit was to assess the effectiveness of U.S. Customs and Border Protection's (CBP) protection of revenue in accordance with Section 112 of the Trade Facilitation and Trade Enforcement Act (TFTEA). As part of this audit, we assessed the number and outcome of investigations instituted by CBP into the underpayment of duties. In addition, we assessed: (1) the effectiveness of actions taken by CBP to measure accountability and performance, and (2) the effectiveness of training, with respect to investigations into the underpayment of duties.⁷²

To determine the focus of our audit, we identified potential CBP investigative areas by reviewing CBP background information, public laws, and previous work performed as part of our March 2020 audit mandate. We determined the scope of our audit would cover the following investigative areas: (1) Enforcement and Protection Act (EAPA) allegations, (2) e-Allegations, (3) CBP cases referred to U.S. Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI), and (4) CBP cases referred to the Department of Justice (DOJ).

Although this audit serves to meet our mandate required for March 2024, this audit was initiated in conjunction with our review of the adequacy of CBP's policies with respect to the monitoring and tracking of merchandise transported in-bond to meet our March 2022 audit mandate. Department of the Treasury (Treasury) Office of Inspector General (OIG) reported the results of the in-bond review in our March 31, 2022 audit report. Due to the importance of CBP investigations related to the underpayment of duties, and the time necessary to complete investigations, we continued the work started for the 2022 mandate. Although Section 112 of TFTEA requires Treasury OIG to submit a report covering two fiscal years (FY) ending on September 30th of the calendar year proceeding the submission of the report, which would include FYs 2020 and 2021 for the March 2022 audit mandate, we selected

⁷² Section 112 of TFTEA requires the Department of the Treasury (Treasury) Office of Inspector General (OIG) to report on the effectiveness of actions taken by CBP to measure accountability and performance with respect to protection of revenue. Additionally, Section 112 requires Treasury OIG to report on the effectiveness of training with respect to the collection of duties provided for CBP personnel.

Appendix 1: Objectives, Scope, and Methodology)

cases originating during FYs 2019 and 2020 because of the time required for CBP to perform and conclude those investigations.

To accomplish our objective, we conducted fieldwork from October 2020 through December 2021, with follow-up requests made in January and February 2022 and October 2023. We primarily based our work on testimonial and documentary evidence. We did not conduct site visits because of the Coronavirus Disease 2019 pandemic.

To determine and assess the number and outcome of investigations into the underpayment of duties associated with each investigative area, we performed the following activities:

- Reviewed information from CBP's website regarding the results and outcomes of investigations, if publicly available.
- Reviewed information related to the four investigative areas from CBP reports.
- Obtained and reviewed investigation information from Office of Trade (OT) personnel to determine the universe of EAPA allegations, e-Allegations and ICE HSI referrals not publicly reported during the audit period under review.
- Obtained and reviewed information from Office of Chief Counsel (OCC) on the number and outcomes of delinquent debt, liquidated damage, and penalty referrals to DOJ.
- Followed up with OT and OCC, as necessary, to clarify the status and outcomes of EAPA allegations, e-Allegations, ICE HSI Referrals, and DOJ referrals.
- Obtained and reviewed Commercial Enforcement Analysis Response (CEAR) meeting minutes to determine the cases referred to ICE HSI.
- Requested additional information on the status and outcomes of e-Allegations and ICE HSI referrals, as necessary, from the Centers for Excellence and Expertise (Centers).
- Requested from ICE HSI the results and outcomes of CBP referrals to ICE HSI.
- Requested updates on cases throughout the audit to ensure we had the most up-to-date results and outcomes of investigations.

Appendix 1: Objectives, Scope, and Methodology)

To determine and assess the accountability and performance measures associated with each investigative area, we performed the following activities:

- Reviewed accountability and performance documents and data related to each investigative area.
- Interviewed CBP personnel in regard to accountability and performance for each investigative area.
- Determined if CBP's accountability and performance measures for each investigative area are appropriate and are working as intended.
- Determined if CBP is meeting its accountability and performance goals for each investigative area.

To determine and assess the training associated with each investigative area, we performed the following activities:

- Identified CBP's training for CBP personnel with respect to each investigative area by requesting and reviewing training documentation from CBP training and holding discussions with CBP personnel regarding training.
- Based on evidence obtained from documents and interviews and our work conducted to evaluate each investigative area, we evaluated the effectiveness of CBP's training for each investigative area.

We interviewed the key CBP and ICE HSI officials and staff to gain an understanding of their processes related to the four investigative areas under review:

- OT Trade Remedy Law Enforcement Directorate (TRLED) to gain an understanding of their roles and responsibilities in overseeing the EAPA and e-Allegations programs, and the CEAR process. Specifically, we interviewed the TRLED Executive Director; TRLED Deputy Executive Director; Enforcement Operations Division (EOD) Director; EAPA Investigations 1 and 2 Branch Chiefs; Operating Reporting and Outreach Branch Chief; National Threat Analysis Division (NTAD) Director; NTAD Assistant Director; Civil Enforcement Division Director; and the Strategic Enforcement Branch Chief.

Appendix 1: Objectives, Scope, and Methodology)

- OT Regulatory Audit and Agency Advisory Services (RAAAS) to gain an understanding of their roles and responsibilities in the EAPA process. Specifically, we interviewed the RAAAS Executive Director; RAAAS Headquarter Branch Chiefs; RAAAS Operating Director; and RAAAS New York Field Office Director.
- Office of Field Operations (OFO) and Centers to gain an understanding of the Centers' roles and responsibilities in the EAPA, e-Allegations, and CEAR processes. Specifically, we interviewed the OFO Cargo, Conveyance and Security Trade Operations Director; Cargo, Conveyance and Security Fines, Penalties, and Forfeitures Director; Base Metals Center Director; Assistant Base Metals Center Director for Enforcement; Assistant Consumer Products and Mass Merchandising Center Director for Enforcement; Industrial and Manufacturing Materials Center Director; and Assistant Industrial and Manufacturing Materials Center Director for Enforcement.
- OT Regulations and Rulings Directorate's Penalties Branch to gain an understanding of their roles and responsibilities in the EAPA administrative review process. Specifically, we interviewed the Regulations and Rulings Executive Director; Deputy Executive Director; and Penalties Branch Chief.
- ICE HSI to gain an understanding of the process when they receive referrals from CBP. We interviewed the ICE HSI Global Trade Investigations Division Commercial Fraud Unit Chief, and Section Chief.
- Assistant Chief Counsel-Indianapolis (ACC-Indianapolis) to gain an understanding of their roles and responsibilities in overseeing delinquent duty and liquidated damage referrals to DOJ. Specifically, we interviewed the Deputy Assistant Chief Counsel-Indianapolis and ACC-Indianapolis Senior Attorneys.
- OCC Enforcement and Operations, and various Associate and Assistant Chief Counsels to gain an understanding of their roles and responsibilities in overseeing penalties referrals to DOJ. Specifically, we interviewed the Miami Associate Chief Counsel; an OCC Enforcement and Operations Senior Attorney; a Chicago Associate Chief Counsel Senior Attorney; a New York Associate Chief Counsel Attorney; Buffalo Assistant Chief Counsel Attorneys; a San Francisco Assistant Chief Counsel Attorney; and an Atlanta Assistant Chief Counsel Attorney.

Appendix 1: Objectives, Scope, and Methodology)

We reviewed and analyzed CBP's policies and procedures related to the four investigative areas under review. We also reviewed applicable laws and regulations, government-wide guidance, CBP directives, prior audit reports of CBP, including:

- 19 United States Code (U.S.C.) 1517, *Procedures for investigating claims of evasion of antidumping and countervailing duty orders*;
- 19 U.S.C. 4371, *Trade Remedy Law Enforcement Division*;
- 19 U.S.C. 4318, *Commercial risk assessment targeting and trade alerts*;
- 19 U.S.C. 1619, *Award of compensation to informers*;
- 19 CFR 165, *Investigation of Claims of Evasion of Antidumping and Countervailing Duties*;
- HB 3640-003, *EAPA Standard Operating Procedure, Version 1.0* (October 2020);
- HB 4300-012, *e-Allegations Online Trade Violations Reporting System Standard Operating Procedure, Version 1.0* (October 2020);
- *Commercial Enforcement Analysis and Response Standard Operating Procedures* (September 2017);
- HB 4400-01B, *Seized Asset Management and Enforcement Procedures Handbook* (July 2011);
- Revenue Division's *Resolution Process for Delinquent Claims, Testing and Reporting Policy and Procedures*;
- *Memorandum for requests for Office of Chief Counsel to take collection action* (Oct. 26, 2017); and
- OCC Attorney Practice Guide.

We assessed the reliability of computer-processed data maintained by CBP for EAPA violations. We used public notices on CBP's website to identify the cases that were initiated by CBP. We requested the status of EAPA allegations that were not initiated by CBP. We found no gaps in the EAPA Case Numbers between the two sets of data we received. Based on these two sets of data, we were able to determine the status of the 278 allegations submitted in FYs 2019 and 2020. We updated these statuses as updates became available from either the CBP website or CBP requests. In

addition, we reconciled the case data provided by CBP to information contained in EAPA public notices. We also determined if CBP's calculations for statutory and regulatory due dates were correct by performing these calculations. Based on our assessment and reconciliation of the data, we found the data used to conduct our analysis of the EAPA program to be reliable.

We assessed the reliability of computer-processed data for e-Allegations maintained in the Commercial Allegation Recording System (CARS). We reviewed to ensure there were no duplicate allegations existing among the 934 e-Allegations we received for FYs 2019 and 2020. We also ensured that all e-Allegations were received during our scope period of FYs 2019 and 2020. We reviewed the Reason Closed status of cases to determine if the status aligned with Assignment Status. While we found that most cases were closed with "No Action", we found closed cases that were referred to various other offices with no clear outcome noted. Many of these cases were referred to the Centers and we had to inquire with the Centers on the outcome of these cases. As documented in Finding 1, e-Allegations were not properly updated in the system; and therefore, the data in the system was not accurate or complete. Based on our assessment of the e-Allegations data, we could not rely on the data in CARS for e-Allegations that were referred to the Centers and closed. However, we were able to obtain data from the Centers on the cases that were referred to determine the outcome of cases. When both sets of data were used together, we could rely on the data to determine the statuses of e-Allegations during our review.

We did not assess reliability of computer processed data for ICE HSI referrals as there was no centralized system in place to track ICE HSI referrals at the time of our audit. We did assess the reliability of Center CEAR Meeting Minutes to identify ICE HSI referrals. To ensure that we identified all cases from the FYs 2019 and 2020 CEAR Meeting Minutes that were referred to ICE HSI, we reached out to the 10 Centers and the San Juan office to ensure that the cases that we identified were referred to ICE HSI and determine if there were any cases that we missed from our review. We identified 37 cases from our review of the CEAR Meeting Minutes while the 10 Centers and San Juan Office identified 72 cases that were referred to ICE HSI. We also found that CBP referred one EAPA Allegation and two e-Allegations to ICE HSI. These 75 referrals were used as our universe of referrals when we

contacted ICE HSI in regard to the outcomes of these referrals. Based on our assessment of CEAR Meeting Minutes and our coordination with the Centers and the San Juan office, we could rely on the information provided to determine the cases that were referred to ICE HSI.

We assessed the reliability of the 21 DOJ referral case data provided by OCC. We ensured that only cases that were referred to DOJ during FYs 2019 and 2020 were included in our review. We followed up with OCC on multiple occasions to receive updates on the cases and to ensure our understanding of the case information was correct. Based on our assessment, we found the data was reliable to determine the status and outcome of cases referred to DOJ.

We identified and assessed potential risks associated with the four investigative areas under review as they relate to the objectives of our audit. We also identified the processes in place to mitigate risks identified. It is important to note that CBP management is responsible for the design, implementation, and operating effectiveness of internal controls. We assessed management's design of internal controls with respect to the four investigative areas under review and audit objectives by conducting interviews and reviewing CBP policies and procedures as well as other applicable documentation. In particular, we determined that the following Government Accountability Office (GAO) *Standards for Internal Controls in the Federal Government* principles were significant to CBP's oversight of the four investigative areas:

- Principle 3: *Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entities objectives.*
- Principle 4: *Management should demonstrate a commitment to recruit, develop, and retain competent individuals.*
- Principle 6: *Management should define objectives clearly to enable the identification of risks and define risk tolerances.*
- Principle 10: *Management should design control activities to achieve objectives and respond to risks.*
- Principle 11: *Management should design the entity's information system and related control activities to achieve objectives and respond to risks.*

Appendix 1: Objectives, Scope, and Methodology)

- Principle 12: *Management should implement control activities through policies.*
- Principle 13: *Management should use quality information to achieve the entity's objectives.*
- Principle 16: *Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.*

We performed tests as necessary on the internal controls to ensure they were effective, as detailed below. Because our review was limited to testimonial and documentary evidence of the design of the internal controls, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Review of the EAPA Allegations Program Controls

We assessed controls for ensuring that EOD monitors EAPA cases, including statutory, regulatory, and internal deadlines by reviewing EAPA standard operating procedures (SOP) and conducting interviews with CBP personnel. We reviewed evidence of the controls identified to ensure CBP used them for all 87 initiated EAPA investigations that were submitted to CBP during FYs 2019 and 2020.

We assessed controls for ensuring that CBP's information systems are sufficient for processing EAPA allegations. In May 2021, CBP launched a new case management system for the EAPA program; however, we did not review the new system because its launch occurred outside the audit period under review.

We assessed controls for ensuring that EOD meets statutory and regulatory requirements for EAPA allegations by reviewing key dates for all 87 previously mentioned EAPA investigations obtained through publicly available case notices and CARS data.

We assessed controls for ensuring that EOD makes the correct determination by reviewing the outcome of 32 issued administrative reviews conducted by the Penalties Branch at the time of our review. Our assessment included determining if the Penalties Branch affirmed or reversed EOD's decision on any of the 87 initiated EAPA investigations that were submitted during FYs 2019 and 2020. We also interviewed Penalties Branch personnel for their perspective on EAPA allegations for which they were

responsible as part of the administrative review process. In an attempt to further test EOD's determinations, we requested the results of all 22 judicial reviews submitted to the Court of International Trade related to the 87 EAPA investigations previously mentioned; however, the results of these reviews were not complete at the time of our review.

We assessed controls for ensuring that EOD maintains documentation supporting its EAPA investigation determinations by reviewing evidence of the documents maintained for all 87 initiated EAPA investigation cases that were submitted to CBP during FYs 2019 and 2020.

We assessed the design of controls for ensuring that additional duties owed as a result of EAPA investigations were collected by reviewing the EAPA SOP. We did not test the collection of antidumping and countervailing (AD/CVD) because AD/CVD was not within the scope of our audit.

We assessed EAPA performance metrics in place during FYs 2019 and 2020. We reviewed the metrics to assess EAPA program performance and tested the accuracy of some of the performance results using data provided by CBP.

We assessed training for the EAPA program during FYs 2019 and 2020 by reviewing EAPA training material provided to offices involved in the EAPA process and reviewing the amount of training provided to those offices.

Review of the e-Allegations Program Controls

We assessed controls for ensuring that CBP reviews allegations in a timely manner by reviewing the e-Allegations SOP and interviewing CBP personnel. We also analyzed all 934 e-Allegations submitted during FYs 2019 and 2020 to assess the time taken by CBP to process e-Allegations.

We assessed controls for ensuring that CBP acts upon valid allegations by reviewing the e-Allegations SOP and interviewing CBP personnel.

We assessed controls for ensuring the sufficiency of CBP's information system by reviewing the e-Allegations SOP and interviewing CBP personnel. CARS was the primary system for

Appendix 1: Objectives, Scope, and Methodology)

processing e-Allegations prior to May 2021, but CBP replaced it with the Analysis and Referral Management system (ARM). We did not review the ARM system because it was not in place during the audit period under review.

We assessed controls for ensuring that CBP tracks e-Allegations by conducting interviews with CBP personnel. We also assessed CARS e-Allegations data related to all 934 e-Allegations submitted during FYs 2019 and 2020 to determine the status and outcome of allegations and if CBP appropriately closed allegations.

We assessed e-Allegation performance metrics in place during fiscal years FYs 2019 and 2020. We reviewed the metrics to assess e-Allegation program performance. One e-Allegation performance metric was created after our scope period; however, we reviewed data associated with that metric for FYs 2019 and 2020. We assessed training for the e-Allegations program during FYs 2019 and 2020 by reviewing established procedures, requesting evidence of training, and through discussions with TRLED personnel.

Review of ICE HSI Referral Controls

We assessed controls for ensuring that cases referred to ICE HSI are tracked and monitored by reviewing the CEAR SOP and interviewing CBP personnel. We also reviewed evidence that ICE HSI referrals were tracked and monitored.

We assessed controls for ensuring that CBP refers cases to ICE HSI by reviewing the CEAR SOP and interviewing CBP personnel. We also reviewed evidence of CBP's documentation of its referrals to ICE HSI by reviewing all CEAR meeting minutes for FYs 2019 and 2020.

We assessed ICE HSI referral performance metrics in place during FYs 2019 and 2020 by requesting performance metrics established for this area and through discussions with OT and OFO personnel.

We assessed training for ICE HSI referrals during FYs 2019 and 2020 by reviewing established procedures, requesting evidence of training, and through discussions with OT and OFO personnel.

Review of DOJ Referral Controls

We assessed controls for ensuring OCC tracks cases referred to DOJ by interviewing OCC personnel. We also reviewed evidence of reports and screenshots from OCC's Chief Counsel Tracking System used to track OCC referrals.

We assessed controls for ensuring that CBP refers cases to DOJ by interviewing OCC personnel, as well as requesting documentation of OCC's processes for referring cases to DOJ.

We assessed controls for ensuring that CBP refers cases to DOJ timely to meet statute of limitations requirements by interviewing OCC personnel. Based on OCC personnel responses, we requested and reviewed evidence of the controls used by OCC to ensure statute of limitations requirements are met. We attempted to assess DOJ referral performance metrics in place during FYs 2019 and 2020 by requesting performance metrics established for this area; however, we found that no performance metrics were established for this area.

We assessed training for DOJ referrals during FYs 2019 and 2020 by reviewing established guidance and reviewing training materials provided to OCC employees, and through discussions with OCC personnel.

We conducted this performance audit in accordance with 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 on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2: Management Response

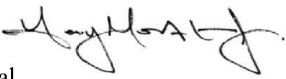
1300 Pennsylvania Avenue, NW
Washington, DC 20229



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

March 20, 2024

MEMORANDUM FOR: Richard K. Delmar
Acting Inspector General
Department of the Treasury
Office of Inspector General

FROM: Henry A. Moak, Jr. 
Senior Component Accountable Official
U.S. Customs and Border Protection

SUBJECT: Management Response to Draft Report: "REVENUE
COLLECTION: CBP Needs to Enhance its Monitoring and
Tracking of the Outcomes of Investigations into the
Underpayment of Duties" (Project No. A-BT-19-044-(C))

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

CBP leadership is pleased to note OIG's acknowledgement of the effectiveness of actions CBP has taken to measure accountability and performance of investigations into the underpayment of duties. OIG also highlighted that performance metrics, where required, were appropriate, and that CBP's Trade Remedy Law Enforcement Directorate (TRLED) effectively provided guidance and training to CBP personnel on the processing of Enforcement and Protection Act Allegations.

CBP is committed to its enduring mission priority of facilitating lawful trade and protecting revenue by building strong collaboration with partnering agencies, enhancing enforcement tools to strengthen trade compliance, and improving trade programs and policies for timelier CBP enforcement. For example, on December 5, 2022, CBP's Office of Trade (OT) began an extensive assessment to identify trade enforcement programs that can be improved upon to meet CBP's enforcement goals, to include ongoing improvement efforts such as re-designing the Commercial Enforcement Analysis and Response (CEAR) program to focus on front-end research to support case development, implementing a U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) referral monitoring and tracking system, and

1

Appendix 2: Management Response

continuing to review the e-Allegation program for system enhancements and procedural training.

The draft report contained six recommendations with which CBP concurs. Enclosed find our detailed response to each recommendation. CBP previously submitted technical comments addressing several accuracy, contextual and other issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Enclosure

Appendix 2: Management Response

Enclosure: Management Response to Recommendations Contained in Treasury OIG A-BT-19-044-(C)

OIG recommended that the CBP Commissioner ensures:

Recommendation 1: TRLED officials enhance procedures to ensure that the statuses of e-Allegations cases are timely, accurate, and complete in its information system, Analysis and Referral Management (ARM) system; monitor those procedures to ensure that they are working as intended; and assess the need for related training.

Response: Concur. The CBP's OT TRLED re-assigned the e-Allegations program oversight from the Operations Reporting and Outreach Branch (OROB) to the Enforcement Policy Branch (EPB), effective June 2023. During the transition, the OROB was in the final stages of updating the e-Allegations standard operation procedures (SOP)¹ to improve user processing efficiency. EPB is continuing those efforts by evaluating the e-Allegations lifecycle to determine where additional improvements are needed to support end-to-end processing.

Specifically, EPB improves the quality of allegor submissions by providing quarterly web-based virtual training sessions to the Trade community on making credible e-Allegations. The training is intended to reduce submission rejection and increase the accuracy of information. EPB is also reviewing, and will update accordingly, the SOP guidance to assess e-Allegation referral oversight challenges within the ARM system. EPB is also working with internal ARM users within OT to improve monitoring procedures and create reporting requirements to determine mission standards are being met. In addition, EPB is working with TRLED to determine if the assigned units—Civil Enforcement Operations (CED), National Threat Analysis Division (NTAD), Force Labor Directorate (FLD), and Enforcement Operations Directorate (EOD)—need additional training regarding e-Allegation processing roles and responsibilities. Estimated Completion Date (ECD): August 30, 2024.

Recommendation 2: TRLED staff coordinates with appropriate internal offices to track revenue recovered from the e-Allegations program and uses the information to evaluate the program's performance in achieving objectives.

Response: Concur. As previously noted, CBP OT TRLED EPB is reviewing, and will update accordingly, the ARM SOP guidance to assess e-Allegation referrals oversight within the ARM system, which was developed to capture the actual loss of revenue recovered from e-Allegation cases. EPB is also working with internal ARM users within

¹ e-Allegations Standard Operating Procedure, Office of Trade, Trade Remedy Law Enforcement Directorate, Version 3.0, Handbook 4300-017, dated September 2023

Appendix 2: Management Response

OT to improve revenue monitoring procedures by creating requirements to assess and capture final enforcement actions and actual revenue collected before the e-Allegation case is closed. Specifically, EPB and TRLED management are evaluating whether the assigned units, CED, NTAD, FLD, and EOD, fully understand the e-Allegation processing roles and responsibilities to determine training requirements, and will take action based on the results of that evaluation, as appropriate. ECD: August 30, 2024.

Recommendation 3: OT and OFO [Office of Field Operations] officials responsible for oversight of the CEAR process monitor referrals made to ICE HSI and ensure established mechanisms to track ICE HSI referrals are followed.

Response: Concur. CBP OT TRLED is currently working to enhance CBP's CEAR procedures for oversight of referrals made to ICE HSI and tracking and updating trade enforcement actions. Once these enhancements are complete, CBP OFO will enter the referral into the Repository for Analytics in a Virtualized Environment (RAVEN), which accommodates all National Impact Level (NIL) 1 referrals,² even if the case is verbally declined by ICE HSI. If NIL 2 or NIL 3 violations are accepted by ICE HSI, those will be entered as well. ECD: July 31, 2024.

Recommendation 4: OT and OFO officials responsible for oversight of the CEAR process review and update the CEAR SOPs to ensure the SOPs continue to be relevant and effective in meeting objectives and addressing risks.

Response: Concur. CBP OT TRLED is enhancing the CEAR process to ensure CBP can meet its trade enforcement mission while operating in a virtual environment. CEAR 2.0 was pre-deployed on January 25, 2024, beginning a 120-day period to evaluate CEAR 2.0 changes that focus on timelier, complete trade enforcement actions while meeting mission objectives of assessing violation risk. Once the pre-deployment evaluation is completed CBP OT TRLED will update CEAR SOPs, as appropriate, to ensure they continue to be relevant and effective in meeting objectives and addressing risks. ECD: July 31, 2024.

Recommendation 5: OT and OFO officials assess the need for performance metrics once the CEAR SOPs are updated, as recommended above in item 4.

Response: Concur. CBP OT TRLED is enhancing the CEAR process to ensure CBP meets the agency's trade enforcement mission. CEAR 2.0 was pre-deployed January 25, 2024, allowing 120 days to evaluate CEAR 2.0 changes that focus on timelier, complete trade enforcement actions and build performance metrics using the associated systems,

² **Level 1 – High Impact.** Those commercial violations that have the highest level of impact on domestic industry, public health and safety, and/or protection of the revenue and, consequently, warrant the highest degree of enforcement response.

Appendix 2: Management Response

e.g., RAVEN, Intelligence Reporting System-Nex Generation, and ARM, to help determine CBP's national enforcement impact. ECD: July 31, 2024.

Recommendation 6: OCC [Office of Chief Counsel] establishes documented policies for processing delinquent duty, liquidated damage, and penalty cases, and include its organization structure, roles and responsibilities, and delegations of authority.

Response: Concur. However, it is important to note that CBP OCC technically reports to the DHS Office of General Counsel, not the CBP Commissioner. CBP's OCC issued a revised "OCC Attorney Practice Guide" on June 2, 2023 (Guide), which contains additional details on OCC procedures for handling trade enforcement matters such as 19 United States Code (U.S.C). § 1592, "Penalties for fraud, gross negligence, and negligence." The updated Guide provides detailed delegations of authority internally within OCC for issuance of penalties, settlement, and decision-making for purposes of litigation. It also includes hyperlinks to OCC and CBP policies related to OCC's responsibilities in the recovery of civil penalties, unpaid duties under 19 U.S.C. § 1592(d), and liquidated damages. Further, the Guide contains sample referrals to the Department of Justice, as well as OCC's procedures for submitting such referrals. Lastly, it is important to note that the Guide is a living document, and OCC attorneys are able to submit suggested updates via a hyperlink on OCC's internal website. Consistent with this recommendation, OCC will include its organizational chart in the Guide, as well as additional information related to duty bills and liquidated damages. ECD: December 31, 2024.

Appendix 3: Major Contributors to This Report

Mark Ossinger, Audit Manager
Patrick Arnold, Auditor-in-Charge
James Shepard, Auditor
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Chris Culbreath, Referencer

Appendix 4: Report Distribution

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