Description of document:	Copy of the Report of Investigation, Closing Memo, and Final Report for 28 Department of Commerce Office of Inspector General (OIG) investigations, 2006-2011
Requested date:	2012
Released date:	07-August-2012
Posted date:	08-October-2012
Source of document:	FOIA Officer Office of Inspector General US Department of Commerce 1401 Constitution Avenue, NW, Room 7892 Washington, DC 20230 Fax: 202.501.7335 Email: FOIA@oig.doc.gov Online FOIA Request Form

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

August 7, 2012

This is in response to your Freedom of Information Act (FOIA) request to the Office of Inspector General (OIG), in which you seek a copy of the Report of Investigation, Closing Memo, and Final Report for the DOC OIG investigations listed below. If none of these documents exist, then you requested a referral letter associated with the investigation.

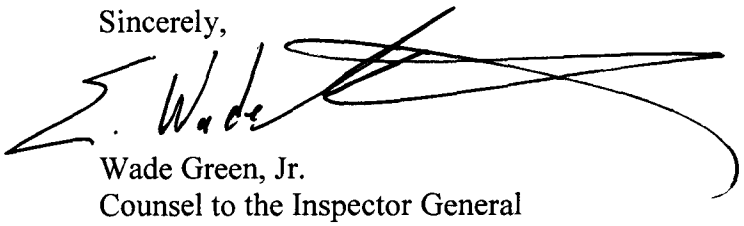
- 18603
- 18305
- 10-0005
- 10-0003
- 10-0002
- 10-0075
- 10-0097
- 10-0125
- 10-0072
- 10-0076
- 10-0014
- 10-0940
- 10-0122
- 10-0391
- 10-0177
- 10-0317
- 10-1046
- 10-0021
- 10-0023
- 10-0039
- 10-0129
- 10-0133
- 10-0207
- 10-0260
- 10-0405
- 10-1311
- 10-1331
- 11-0560

A search of records maintained by the OIG has located 131 pages that are responsive to your request. We have reviewed these pages under the terms of FOIA and have determined that seven pages may be released in their entirety. One hundred twenty four (124) pages must be partially withheld under FOIA exemption (b)(7)(C), which protects information compiled for law enforcement purposes, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C). Seven (7) pages must also be partially withheld under FOIA exemption (b)(7)(E), which protects information that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would

disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. One page must also be partially withheld under FOIA exemption (b)(6), which protects information in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6). Copies of these 131 pages are enclosed, with the relevant redactions noted.

Your administrative appeal rights are explained in Appendix A, should you wish to request a review of this partial denial. If you have any questions, please contact Meghan Chapman at (202) 482-5992.

Sincerely,



Wade Green, Jr.
Counsel to the Inspector General

Enclosures

APPENDIX A

ADMINISTRATIVE APPEAL RIGHTS

The Freedom of Information Act (FOIA) accords you the right to appeal a denial or partial denial of your FOIA request. An appeal must be received within 30 calendar days of the date of the initial determination letter denying or partially denying your FOIA request.

Your appeal must contain the following information:

- your name and address
- a copy of your initial request to us
- a copy of the letter denying your request
- the reason you believe that such records or information should be made available to you
- the reason you believe that our withholding was in error

You may send your appeal by mail, e-mail, or fax to:

The Assistant General Counsel for Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 5898-C
Washington, DC 20230
E-mail: FOIAAppeals@doc.gov
Fax: (202) 482-2552

Your appeal (including e-mail and fax submissions) is not complete without the required information. The appeal letter, the envelope, the e-mail subject line, or the fax cover sheet should be clearly marked "Freedom of Information Act Appeal."

The e-mail, fax machine, and the Office of the Assistant General Counsel for Administration (Office) are monitored only on working days during normal business hours, 8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday. FOIA appeals posted to the e-mail box, fax machine, or Office after normal business hours will be deemed received on the next normal business day.

For your information, the U.S. Department of Commerce's rules implementing the FOIA are published in the Code of Federal Regulations at 15 C.F.R. §§ 4.1 to 4.11.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

OFFICE OF THE SECRETARY
U.S. DEPARTMENT OF COMMERCE

ACTION MEMORANDUM

TO: Scott Berenberg, AIGI	OFFICE OF ORIGIN Alexandria Resident Office	PREPARING OFFICE Atlanta Regional Office
	☐ Open Date:	☒ Close Date: 12/31/08

PREDICATION:
DOC Grants to Non-profits in West Virginia
Various Locations, West Virginia
06HM16-18305

On September 5, 2006, the FBI reported that they were conducting an investigation involving Congressional Earmarks to various non-profit entities in West Virginia. Specifically, the FBI alleged that United States [redacted] may have used his [redacted] to earmark more than $178 million in federal monies to a small number of non-profits with which he was affiliated. The FBI stated that the $178 million included grants from NOAA and EDA. The FBI requested DOC OIG assistance on an as-needed basis.

[redacted] related to any DOC monies. The FBI stated that no further assistance was needed from DOC OIG. (Serial 13)

All allegations have been addressed, all logical leads have been investigated, and no further investigative activity is contemplated. All investigative activities have been documented in the Case Data System. Based upon the above information, it is recommended that this investigation be closed.

☐ ZERO FILE ☐ PI ☐ CASE ☐ HR WITHOUT RESPONSE ☐ HR WITH RESPONSE ☒ OUTSIDE REFERRAL				(For Headquarters Use) FILE NUMBER:
PREPARED BY [redacted] Special Agent	CLEARED BY [redacted] SAC	CLEARED BY [redacted] HQ DO	APPROVED BY Scott Berenberg AIGI	06HM16-18305-14 U.S. DEPARTMENT OF COMMERCE OFFICE OF INSPECTOR GENERAL OFFICE OF INVESTIGATIONS JAN 06 2009 SEARCH ___ SERIA[redacted] FILE
Initials & Date [redacted] 12/31/08	Initials & Date 1/2/09 [redacted] 1/2/09	Initials & Date [redacted] 1/2/09	Initials & Date SAB 1/2/09	

ACTION MEMORANDUM

SUPERVISORY REMARKS: Close case.

ALL REDACTIONS PURSUANT TO EXEMPTION (B)(7)(C)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
ANTI-DEFICIENCY VIOLATION AT PTO U.S. Patent and Trademark Office Alexandria, Virginia SPECIAL INQUIRY	07SS33-18603
	TYPE OF REPORT Final

BASIS FOR INVESTIGATION

On March 9, 2006, the DOC/OIG received a complaint alleging that at the end of the second quarter during Fiscal Year 2005, PTO used $3,000,000 of Trademark funds to pay Patent expenses and, as a result, violated the Trademark Act of 1946. Reportedly, [redacted] then [redacted] PTO, had been advised of the incident. The Government Accountability Office (GAO) subsequently forwarded a referral for investigation to DOC/OIG, dated May 5, 2006, which included this information and also detailed a violation of the Anti-deficiency Act (ADA) along with the Trademark Act violation. On January 31, 2007, the DOC/OIG received a follow-up referral from GAO that repeated these allegations. Subsequently, on April 20, 2007, an OIG investigation was initiated to address and resolve these allegations.

SUMMARY OF INVESTIGATION

Our investigation found that on March 31, 2005, the amount of Patent funds available for obligations totaled $639,546,858. However, Patent obligations on that date totaled $645,266,742, resulting in a shortfall of $5,719,884. In addition, on April 1, 2005, there was a shortfall in the amount of $1,985,614 - total available funds for obligations in the amount of $643,447,910 versus actual obligations totaling $645,433,523. In order to cover these obligations Trademark fees would have been necessary since no other funds were available at the time. The provision within 35 USC 42 that restricts the use of fees collected by PTO pursuant to the Trademark Act to trademark activities only, is commonly referred to as the Trademark "fence." After this incident was discovered senior PTO officials and the appropriate Departmental representatives were not notified or advised.

Distribution: OIG: ___ Bureau/Organization/Agency Management: ___ DOJ: ___ Other (specify):			
[redacted]	Date: Jan 28, 2009	Signature of Approving Official: [redacted]	Date: 1/29/09
Name/Title: [redacted] Resident Agent in Charge - SSRO		Name/Title: [redacted] Special Agent in Charge - WFO	

All Redactions Pursuant to b(7) (c)

[redacted] [redacted]

[redacted]

18603-19

OF COMMERCE
FOR GENERAL
INVESTIGATIONS

8, 2009 [redacted]

FILE [redacted]

nt or
G.

[redacted]

[redacted]

[redacted]

It was noted that on April 4, 2005, there was a surplus in the amount of $2,492,478 - total available funds in the amount of $648,279,045 versus actual obligations in the amount of $645,786,567.

On April 1, 2005, PTO recorded obligations for March, payable to GSA for rent for April and May 2005. Subsequently, on April 4, 2005, PTO de-obligated over $3.5 million from the $7.9 million (approximate total) rent payment for May that had been obligated three days prior. Our investigation determined that [redacted] directed these funds to be de-obligated. However, when questioned directly by the OIG, he was unable to recall any specific details concerning these particular rent transactions. [redacted] stated that the timing more than likely reflected an effort to spend all available funds during that particular period of time.

At the outset of our investigation, we obtained information that an internal review conducted by the PTO Office of General Counsel (OGC) concluded that both ADA and Trademark Act (Fence) violations had occurred. PTO/OGC reported that PTO distributed and managed funds at the program office level and did not consistently monitor Patent and Trademark fees against administrative operations. As a result, Trademark fees would have been necessary to use to cover at least a part of the Patent related shortfall since no other funds were available at the time of the incident. During the course of their review PTO/OGC noted that in 1999 Congress removed any discretion that PTO potentially had within 35 USC 42 concerning the use of Trademark fees:

> In an effort to more tightly *fence* Trademark funds for Trademark purposes, section 42 was amended such that the PTO shall use Trademark fees for Trademark registrations, or other Trademark activity and for a share of administrative cost proportionate to Trademark activity. In other words, the Commissioner may exercise no discretion when spending funds; they must be earmarked for Trademark purposes.

OIG was also advised that upon discovery of the potential ADA and Trademark Fence violations, an internal position paper was prepared by [redacted] then the [redacted] at PTO. During the course of that review of the incident his office failed to seek legal advice from PTO/OGC and also did not advise any PTO senior staff officials about the matter. The opinions he reported in that position paper were the following: 1) PTO obligations for the period in question did not exceed the amounts available in the appropriation; 2) PTO obligations did not exceed the amount contained in the apportionment covering the period in question; and 3) PTO obligations/expenditures did not violate any statutory prohibition or restriction.

In June 2008 the Assistant General Counsel for Administration reported to the DOC Deputy Chief Financial Officer and Director for Financial Management that based upon the facts presented to that office, they concluded that PTO did not violate the ADA. They noted that for the purposes of their opinion they did not address whether PTO violated the statutory prohibition within 35 USC 42. They noted that even if PTO had violated the restrictions within section 42, such a violation would not be an ADA violation because it is not in the appropriations act. As a result, DOC/OGC concluded that PTO did not violate the ADA because the restriction is not contained within an appropriation and PTO's appropriation for fiscal year 2005 did not include a similar restriction or otherwise incorporate the restriction by reference.

In September 2008 [redacted] reported to the Assistant General Counsel for Administration that they considered the recommendations made regarding the incident and addressed each one as part of their response to the original memorandum to the DOC Deputy Chief Financial Officer in June 2008. Specifically, for PTO/OCFO to work with the DOC Office of Financial Management and the PTO/OGC to ensure that appropriate controls are in place to ensure that PTO does not violate Federal fiscal laws and to ensure that they properly record their obligations consistently with the Recording Statute. In addition, for PTO/OCFO and PTO/OGC to also work with the PTO Records Management Officer to identify the records which should be created to ensure proper recordation of financial operations and compliance with Federal fiscal law and to ensure the records are maintained consistent with the applicable records retention schedules.

Based on the DOC/OGC findings and the PTO response to those findings, no further issues of actionable misconduct are outstanding. No further investigative activity is contemplated. All investigative activities have been documented in the Case Data System. Based upon the above information, this investigation is now closed.

BACKGROUND

The ADA prohibits Government employees from making or authorizing an obligation or expenditure which exceeds the amount available in an appropriation or fund for the expense or obligation. In addition, if a violation of the ADA occurs then the head of the agency shall immediately report to the President and Congress all the relevant facts and a statement of the actions taken.

Title 35 USC 42(c) states, in part, that all fees available to the PTO Director under the Trademark Act of 1946 shall be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the PTO.

DETAILS OF INVESTIGATION

PTO/OGC reported that while reviewing the FY 2005 second quarter financial statements, information was developed by OCP officials that Patent revenues were less than their expenses. Based upon these findings, the analysis completed by OCP determined that at the end of the second quarter in FY 2005 $3 million of Trademark fees were used for payment of Patent expenses. At that time, the incident was reported to [redacted] then [redacted] PTO, who in turn briefed the [redacted] Purportedly, the PTO Office of Finance conducted an independent review and based upon their analysis confirmed that the violation had occurred and increased the total amount to approximately $8 million.

[redacted] Attorney, PTO/OGC, stated that he was assigned to review this matter as a possible ADA violation. Based upon his findings he reported that an ADA violation had occurred. [redacted] noted that on December 8, 2004, Congress approved the Consolidated Appropriation Act for FY05 and provided PTO with $1,554,754,000. On March 2, 2005, PTO received an appropriation warrant from U.S. Treasury Department's Financial Management Services (FMS) for $1,336,000,000. On March 4, 2005, FMS processed a credit warrant for $1,336,000,000 and an appropriation warrant for $218,754,000 based on PTO's request. FMS posted a credit warrant for $218,754,000 on April 5,

2005. After that date PTO was required to rely on budget authority derived from offsetting collections as Patent and Trademark fees were received in order to cover obligations. Thus, PTO was authorized to obligate funds only after sufficient PTO fees were collected. (See Exhibit A)

[redacted] reported that at the end of the second quarter FY 2005 Trademark fees collected totaled $90,476,975 and their actual proportionate costs totaled $83,175,692. As a result, Trademark had a fee surplus of $7,301,283. However, during the same time period, Patent had collected fees in the amount of $639,546,858 while their actual proportionate costs and expenses totaled $645,266,742; therefore, Patent had a fee deficit of $5,719,884. Since Patent funds were insufficient to cover their costs they were in violation of the ADA. In addition, since Trademark funds were apparently used to cover this shortfall, a violation of the Trademark Fence also occurred. (See Exhibit A)

[redacted] OCP, reported that during the time period in question PTO made advance rent obligations, a practice that had been ongoing since she started with OCP in [redacted] According to [redacted] she was directed to pay specific amounts on specific dates and the overall process for payment of rent included the following: Office of Finance would provide the GSA rent obligation amount to [redacted] Office of Corporate Services (OCS), PTO; [redacted] would then send the document to OCP - [redacted] also with OCP, was responsible for verifying the budget authority before OCP obligated the funds. (See Exhibit B)

[redacted] Office of Corporate Services (OCS), stated there were several levels of approval that were necessary for an obligation or payment to be processed into the Momentum Financial System (MFS), including approval from the Office of Procurement. [redacted] explained that there were reoccurring costs, such as postal, telephone and Homeland Security costs, which were paid monthly on an annual fixed cost basis. Other services, including rent, did not require any requisitions because the leases with the General Services Administration (GSA) were the contract. (See Exhibit C)

[redacted] was responsible for processing requisitions into MFS. She said that in March 2005 she processed the PTO rent obligations for April and May 2005. According to [redacted] the Budget Office provided all the approvals for the obligations. During this time she said that she would have received all her direction regarding PTO rent obligations from the budget analysts assigned to the Budget Execution Team in OCP, specifically [redacted] who informed her when and how much funds to obligate for specific accounts. (See Exhibit C)

[redacted] OCS, said his office was the one responsible for PTO property, space, rent and other support services. He said OCS works with OCP to forecast rent and space expenses. According to [redacted] GSA submits an electronic rent summary that includes all the square footage space and cost, which is then sent to Finance, Budget and OCP. Once Finance approves the costs OCP gives [redacted] the approval to obligate the funds. [redacted] said he did not know whether GSA required rent on a quarterly basis or in advance; however, PTO elected to obligate the rent quarterly in advance. [redacted] stated that [redacted] contact at OCP for the rent was [redacted] and she [redacted] did as she was told by OCP concerning the rent obligation. (See Exhibit D)

[redacted] provided a copy of the PTO lease contract for the Carlyle Complex. A review of the contract disclosed that the lease is a fixed term of 20 years with extensions available. The lease rate was listed as $28.36 a square foot, and rent are to be paid at the end of each month in "arrears." (See Exhibits D and E)

[redacted] Office of Finance, PTO, and [redacted] OCP, reported that [redacted] was the OCP employee responsible for the building lease accounts for PTO. According to [redacted] he managed and verified these charges each month and coordinated with [redacted] to obligate funds for payment. During March 2005, while [redacted] was [redacted] performed his job receiving her direction from [redacted] stated that at the end of March 2005, [redacted] she was directed by [redacted] to contact [redacted] and have her obligate the April and May 2005 GSA rent. [redacted] said [redacted] instructed her to physically watch [redacted] enter the rent obligation into the computer system in order to ensure that she [redacted] completed and processed the obligation during March 2005. (See Exhibit F)

[redacted] explained that prior to joining OCP a practice had evolved in which great importance was attached to spending PTO funds exactly to plan, both annually and on a quarterly basis. He said he felt significant pressure was placed on OCP, as well as individual program offices, to obligate funds as close as possible to the expenses. [redacted] claimed that this practice, which continued during FY 2005, was considered an example of prudent and effective budgetary practices. (See Exhibit G)

[redacted] explained that for the first time in recent history, Congress had appropriated PTO the entire amount of expected fee collections for FY 2005. Additionally, program and operating plans were constructed assuming full access to Patent and Trademark fee collections. [redacted] reported that Patent fee collections were not received as anticipated and as of the end of the second quarter of FY 2005 Patent obligations had exceeded available Patent resources. He noted that the financial system in use at the time only disclosed total available funds and obligations and did not divide the figures between offices. As a result, any disparity was not immediately detected at the business level. [redacted] said that in May or June 2005, he and [redacted] discovered that Patent obligations had apparently exceeded available resources at the end of the second quarter. (See Exhibit G)

[redacted] stated that at that time he reported the incident to the only individual available, [redacted] According to [redacted] his immediate supervisor and then [redacted] were out of the office for extended periods of time and there was no Deputy CFO. [redacted] added that [redacted] was again out of the office at the time this incident was discovered. Later [redacted] returned to the office for a short duration and [redacted] at which time she was replaced by [redacted] said he discussed this matter with [redacted] and, since OCP did not have the necessary expertise to analyze the problem, assistance was sought from [redacted] indicated the shortfall in Patent funds compared to obligations lasted only a few days before correcting itself. In addition, [redacted] was hired [redacted] and was also informed of the incident. [redacted] said that [redacted] had prior experience with ADA issues and after he analyzed

the incident determined that neither an ADA nor a Trademark Fence violation had occurred. (See Exhibit G)

Both [redacted] OCP, acknowledged that there were several issues within PTO at the time of the rent payment obligation/de-obligation incident that probably had a direct impact on the budget processes. Specifically those included: staff and personnel problems (lack of the longtime rent expert – [redacted] and the absence of CFO senior level staff); budget issues (FY 2005 was the first year for the Congressional appropriation and PTO operated under a

Continuing Resolution until the appropriation was approved in the second quarter); PTO's move (the office was physically relocated from Crystal City, VA, to Alexandria, VA, making rent difficult to calculate); PTO was engaged in a pilot program ("Rent on the Web," conducted by OMB which was intended to streamline the process of paying rent); and finally, lower fee collections (projected fees during the second quarter of FY 2005 fell below their projections). (See Exhibits G and H)

[redacted] stated that he had no specific recollection of a particular rent obligation at the end of the second quarter FY 05 and a subsequent partial de-obligation in the early third quarter. He explained that if the timing of the second quarter rent payment was different from the rest of the year then it possibly reflected an effort to spend all the available funds. In addition, he noted that the overall rent process was intense and chaotic that year. Specifically, the pilot program intended to streamline the process of paying rent actually complicated rent payment procedures and amounts since the statements from GSA did not match these figures, which even further complicated the move. As a result, the actual lease obligations were in such flux that PTO could not reach an agreement with GSA on monthly amounts owed, as well as PTO having funds directly deducted from their account through the Intra-Governmental Payment and Collection (IPAC) system by GSA for amounts other than what had been obligated, or in some instances even without obligations, and PTO's reversing charges were deemed invalid or inappropriate. [redacted] said after these problems were finally resolved, GSA owed a large refund to PTO as a result of the overcharges. (See Exhibit G)

[redacted] OCP, stated that his duties included operational planning and payment of the GSA rent. According to [redacted] the rent is paid on a monthly basis. Typically, the invoice is received from GSA; the OCP analysts and [redacted] validate the invoice; OCP then approves the obligation of funds; and [redacted] obligates the funds. He said rent was paid in "arrears" for the month closing out. [redacted] reported that he heard PTO had violated the ADA; however, he did not know the time frame of the violation and he could not provide any other specific details or information. When asked specifically about the email message he sent to [redacted] requesting that she de-obligate the May 2005 rent payment of 43,563,760, [redacted] advised that the action was directed by [redacted] because the funds were needed elsewhere. (See Exhibit I)

[redacted] stated that after the incident surfaced in 2005 both the ADA and Trademark Fence violations were discussed in detail with [redacted] According to [redacted] they concluded that no violations had occurred. [redacted] opined that the Trademark Fence was an annual requirement and that as long as the dollar amounts were balanced in the right accounts at the end of the year then a violation did not occur. She also asserted that the ADA pertained to the total PTO budget and, when combined, if it was not deficient then the law was

not violated. As a result, she adamantly believed that PTO did not violate either the ADA or the Trademark Fence. (See Exhibit J)

[redacted] stated that after he arrived at PTO he immediately became involved with this issue. After research and discussions with [redacted] he prepared a draft position paper on the possibility of an ADA violation, dated July/August 2005. [redacted] said he concluded that PTO had not violated the ADA and claimed their budget authority had not been exceeded. With regard to the Trademark Fence violation, [redacted] explained that although Trademark fees were used for several days, additional fees were collected by PTO and, as a result, there was no end of year violation. He noted that since they determined that no violations had occurred, senior PTO management officials, specifically above the CFO, were not briefed on this issue. (See Exhibit K)

[redacted] PTO, currently works for PTO [redacted] He reports directly to [redacted] and [redacted] Prior to becoming the [redacted] worked for PTO in various positions beginning in [redacted] His experience was as a [redacted] in June [redacted] he became th[redacted] recalled that [redacted] was in the [redacted] office during March-April 2005, but she worked for [redacted] He noted the other staffing problems, and added that regardless of who was in what position, the office functions were all on "auto-pilot" and essentially no one was in charge. According to [redacted] the ADA and Trademark Fence issues did not surface until June 2005 when they were reported by [redacted] said he had hired [redacted] and immediately assigned him to investigate the matter and prepare a position paper, which provided a determination that no violations had occurred. [redacted] claimed that since the total PTO appropriation was not exceeded then an ADA violation did not occur; and, since the Trademark Fence was financially healthy according to the budget appropriation at the end of the Fiscal Year, then there was also not a Trademark Fence violation. (See Exhibit L)

PTO/OGC reported that GAO has consistently applied the principle that the use of appropriated funds for unauthorized or prohibited purposes violates the ADA. And, absent any alternative funding source, if no funds are available for an obligation then that also constitutes a violation of the ADA. If PTO obligated funds to cover Patent related expenses in excess of the Patent fees collected at the time, the obligation exceeded the amount available for that purpose and, absent an alternative funding source, PTO violated the ADA. They also believed that although there are some exceptions, none applied to this particular situation. PTO/OGC advised that PTO could not consider their appropriation as a single appropriation. Rather, since the Trademark and Patent appropriations are identified separately, obligating funds that exceeded those available in either organization constituted an ADA violation. (See Exhibit A)

On June 30, 2008, [redacted] submitted a memorandum to [redacted] in response to an inquiry from the DCFO/OFM on whether PTO committed a violation of the ADA and if they violated the Trademark Fence. DOC/OGC opined that based upon the information and facts provided for their review PTO had not committed an ADA violation. DOC/OGC also reported that, for purposes of their opinion, they did not need to address whether

PTO violated the statutory prohibition for 35 USC 42. They noted that since PTO collects parking fees, the PTO CFO and PTO/OGC should work together to determine the extent the fence applies to each of the fees collected given that the fence applies only to those fees collected pursuant to section 31 of the Trademark Act of 1946. (See Exhibit M)

DOC/OGC opined that based upon the terms of the statute, 35 USC 42 does not make fees collected by PTO immediately available for obligation or expenditure. Instead, the availability is contingent on Congress specifically authorizing use of the fees in appropriation acts. Accordingly, it does not constitute an appropriation, and a violation of the fence would not, by that fact alone, constitute an ADA violation. Even if PTO had violated the restrictions within section 42, such a violation would not be an ADA violation because it is not in the appropriations act. In other words, the restriction is not contained within an appropriation and PTO's appropriation for fiscal year 2005 did not include a similar restriction or otherwise incorporate the restriction by reference. As a result, DOC/OGC concluded that PTO did not violate the ADA. (See Exhibit M)

DOC/OGC noted that even though they determined that PTO did not commit an ADA violation, they had serious concerns regarding the financial management and record keeping practices of PTO at the time the incident occurred. They detailed these concerns and made specific recommendations for PTO to address and resolve accordingly. (See Exhibit M)

In September 2008 [redacted] reported to the Assistant General Counsel for Administration that they considered the recommendations made regarding the incident and addressed each one as part of their response to the original memorandum to the DOC Deputy Chief Financial Officer in June 2008. Specifically, [redacted] accepted the recommendation for PTO/OCFO to work with the DOC Office of Financial Management and the PTO/OGC to ensure that appropriate controls are in place to ensure that PTO does not violate Federal fiscal laws and to ensure that they properly record their obligations consistently with the Recording Statute. In addition, the bureau accepted the recommendation for PTO/OCFO and PTO/OGC to work with the PTO Records Management Officer to identify the records which should be created to ensure proper recordation of financial operations and compliance with Federal fiscal law and to ensure the records are maintained consistent with the applicable records retention schedules. (See Exhibit N)

CLEARED BY [redacted] HQ DO	APPROVED BY Scott Berenberg AIGI
Initials & Date [redacted] 1/23/09	Initials & Date SAB 1/23/09

All Redactions Pursuant to b(7) (c)

TABLE OF EXHIBITS

A	Investigative Record Form (IRF) Interview of [redacted] dated July 26, 2007
B	IRF Interview of [redacted] dated May 14, 2007
C	IRF Interview of [redacted] dated May 16, 2007
D	IRF Interview of [redacted] dated May 22, 2007
E	IRF Review of Records – PTO/GSA Lease, dated June 19, 2007
F	IRF Interview of [redacted] dated May 17, 2007
G	Affidavit from [redacted] dated September 25, 2007
H	IRF Interview of [redacted] dated May 22, 2007
I	IRF Interview of [redacted] dated June 19, 2007
J	IRF Interview of [redacted] dated June 18, 2007
K	IRF Interview of [redacted] dated June 18, 2007
L	IRF Interview of [redacted] dated September 22, 2007
M	Memorandum from DOC/OGC to [redacted] dated June 30, 2008
N	Memorandum from PTO/CFO to DOC/OGC, dated September 30, 2008

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
[redacted] Attorney NOAA GCEL Gloucester, MA	PPC-SP-10-0005-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On July 20, 2009, the OIG received an allegation that [redacted] had made threatening remarks about Massachusetts fishermen and fishing industry representatives who cooperated with the OIG in the current and ongoing inspection/review of NOAA fisheries enforcement practices in New England and elsewhere. That inspection/review bears OI project code 09WA33-19756. The remarks in question occurred during a meeting in June 2009 that was attended by two Massachusetts state legislators, [redacted] along with [redacted] and NOAA Office of Law Enforcement (OLE) [redacted] allegedly attempted to obtain from [redacted] the names of local fishermen and industry representatives who had spoken with the OIG during the review. [redacted] refused to provide this. [redacted] allegedly stated that his purpose in asking for the names was so that their [fisheries regulatory enforcement] cases could be reviewed, and so that "If anybody makes a false statement to the IG, [redacted] could] 'charge' them with making false statements." This investigation was initiated to determine whether [redacted] actions and statements constituted criminal or administrative misconduct.

SUMMARY OF INVESTIGATION

Our investigation did not disclose conclusive evidence of misconduct by [redacted] in this matter that would be sufficient to warrant referral to NOAA or any other entity for disciplinary action of any kind. [redacted] denied making any request for the names of cooperating individuals. This was backed up by [redacted] and critically, by notes taken contemporaneously by [redacted] when interviewed, all stated that they recalled [redacted] requesting the names

Distribution: OIG ___ Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):			
Signature of Case Agent:	Date:	Signature of Approving Official:	Date:
Name/Title: [redacted] Special Agent in Charge		Name/Title: Scott Berenberg, Asst. IG for Investigations	

and suggesting prosecution for any false statements. There exist no additional sources of information about what occurred or was said at the meeting.

BACKGROUND

As background, on June 8, 2009, a meeting was held, at the request of [redacted] of the NOAA Office of Law Enforcement (OLE), Northeast Enforcement Division, in the office of [redacted] at the State House in Boston, MA. The five (5) attendees of the meeting were [redacted] According to all in attendance, the purpose of the meeting was to discuss concerns that [redacted] had about fisheries enforcement issues. It was known by all in attendance at the time of the meeting that an OIG review of fisheries enforcement practices was imminent.

This case was originally indexed at OIG-OI as case 09WA10-19827, and reassigned its current file number with the initiation of a new management information system.

DETAILS OF INVESTIGATION

We interviewed all attendees of the meeting and obtained sworn statements from each. We also reviewed detailed notes taken by [redacted] during the course of the meeting. There is substantial disagreement among various attendees as to the substance and specifics of what was said at the meeting. However, all of those present except [redacted] stated when interviewed by OIG agents that [redacted] in some manner sought the identities of individuals raising complaints about fisheries enforcement practices. [redacted] stated when interviewed by OIG agents that [redacted] had made remarks about the possibility of individuals making false statements to the OIG and the desirability of prosecuting such individuals. [redacted] himself made it clear to OIG investigators that he believed that false statements relating to these issues should be prosecuted.

When interviewed, [redacted] stated that several times during the June 8 meeting, [redacted] and [redacted] requested the identities of local fishermen who had complained to [redacted] about fisheries enforcement practices in the past and might raise the same issues with the OIG. [redacted] stated that he and [redacted] declined to provide that information and repeatedly affirmed their desire that local fishermen should feel free to speak to the OIG openly. [redacted] stated that [redacted] said that he intended to "strongly prosecute" any fishermen who made "false statements" to the OIG.

When interviewed, [redacted] stated that [redacted] asked herself and [redacted] for a list of individuals who had complained to her or were likely to complain to the OIG regarding fisheries enforcement practices during the upcoming OIG review. [redacted] stated that [redacted] told her he wanted to know so he could "review their claims and files". [redacted] stated that [redacted] added that "If anybody makes a false statement to the IG, we're going to charge them with making false statements."

All Redactions Pursuant to b(7) (c)

When interviewed, [redacted] stated that she recalled few details of the meeting but took detailed notes in order to provide sufficient information on the meeting to [redacted] who it was known would arrive at the meeting late, and in fact did arrive late, as was confirmed by all present. [redacted] did recall [redacted] asking for the names of fishermen who were talking to the OIG and that names were not provided. [redacted] also recalled that both [redacted] and [redacted] had expressed their support for the idea of prosecutions for any false statements made to the OIG. [redacted] authenticated the notes she took during the meeting, but stated that the notes, while highly detailed, were not a verbatim transcript of the entire meeting nor intended to be such. The notes identify instances in which both [redacted] characterize complaints about enforcement practices as vague and unfounded but do not identify any direct requests for lists of OIG or other complainants. The notes identify instances in which both [redacted] claim that allegations of misconduct against themselves or their respective offices are false or unsupported but do not identify either [redacted] talking about prosecution or indeed any sanction against individuals making false statements.

When interviewed, [redacted] denied that [redacted] asked [redacted] for a list of people scheduled to speak with the OIG. [redacted] stated that he recalled that [redacted] speculated that some individuals might lie to the OIG to discredit OLE and GCEL, particularly individuals who had violated the law and been prosecuted. [redacted] stated that he recalled that [redacted] expressed the hope that OIG personnel would require those who spoke with the OIG to provide signed statements made on penalty of perjury, and that if false statements were made, they would be prosecuted. [redacted] stated that at the time he shared and affirmed [redacted] concern. [redacted] claimed that these statements were taken out of context if interpreted as constituting a threat, stated that they were hypothetical, and asserted that they were not made "in the context of discouraging individuals from speaking to OIG agents, or to influence what was reported to them."

When interviewed by OIG agents, [redacted] did not state that he sought the identities of individuals raising complaints about fisheries enforcement practices at the meeting in question, but stated instead that he "expressed frustration at the lack of specifics regarding allegations of bad acts" by OLE and GCEL personnel. [redacted] elaborated that he could not respond to allegations of misconduct if they were not tied to specific individuals, cases, details or incidents. [redacted] "categorically denied" to the OIG that he threatened any OIG or other complainant, and stated that he did not have or pretend to have the power or intention to prosecute false statements made to the OIG. [redacted] stated that he welcomed the airing of "*legitimate complaints*", as opposed to "*unfounded allegations*" and never retaliate against those who made "*legitimate complaints*". In his interview and while discussing the preparation of his affidavit, [redacted] took pains to distinguish circumstances in which he still felt prosecution was justified, i.e. where "unfounded allegations" were made, and circumstances in which he felt prosecution was not justified and that complainants should feel safe, i.e. "legitimate complaints", and this is reflected in the language of the affidavit. [redacted] asserted that he was "shocked" by the fact that this issue was being investigated at all. [redacted] then inquired of OIG agents whether the individuals who had at the inception of this investigation alleged that he sought a list of complainants and threatened them with prosecution for making false statements could themselves be prosecuted for making false statements.

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TABLE OF EXHIBITS

A	IRF interview of [redacted]
B	IRF interview of
C	IRF interview of
D	IRF interview of
E	IRF interview of
F	Transcription of meeting notes, authenticated by [redacted]
G	IRF records review of NOAA GCEL email
H	[redacted] Affidavit
I	[redacted] Affidavit
J	[redacted] Affidavit
K	[redacted] Affidavit
L	[redacted] Affidavit
M	Original meeting notes handwritten by [redacted] at June meeting
N	IRF additional interview of [redacted]

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
[redacted] NOAA NMFS Juneau, AK	PPC-SP-10-0003-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On October 1, 2008 the OIG received an anonymous complaint, via the OIG Hotline, alleging ethical violations by [redacted] involving lack of impartiality in performing his official duties and misuse of his position [redacted] National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA). The complaint alleged that [redacted] made decisions, in his official capacity, benefitting an Alaska fishing industry [redacted] with whom he has a close personal relationship. Second, that [redacted] personally intervened on their behalf in official matters, either for [redacted] benefit or the benefit of her clients.

SUMMARY OF INVESTIGATION

During the course of the investigation we interviewed witnesses in the NMFS office in Silver Spring, including [redacted] within the Office of General Counsel, Office of Ethics, and within the NMFS Alaska Regional Office. We also reviewed documents obtained from the Office of Ethics. See Exhibits A-G. It is important to note that some of the information we obtained from the NMFS Alaska office was provided anonymously. Our investigation did not disclose any misconduct or inappropriate actions of any kind on the part of [redacted] but indicated that an unfounded but troubling perception nonetheless existed, among some parties, of less than full impartiality by [redacted]

Distribution: OIG ___ Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):			
Signature of Case Agent:	Date:	Signature of Approving Official:	Date:
Name/Title: [redacted] Special Agent in Charge		Name/Title: Scott Berenberg, Asst. IG for Investigations	

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

DETAILS OF INVESTIGATION

Our investigation determined the following:

1. No evidence was found that [redacted] might have violated a criminal conflict of interest statute. Specifically, ***18 USC 208 – Acts affecting a personal financial interest.*** The OIG did learn there is a perception among NMFS Alaska employees and industry members regulated by NMFS that [redacted] and the identified industry [redacted]. However, our investigation found no evidence that [redacted] and [redacted]. OIG did learn, from [redacted] that when he travels to Alaska he [redacted]

2. No evidence was found that [redacted] might have violated ***The Standards of Ethical Conduct for Employees of the Executive Branch, 5 USC Section 2635.502 – Personal and business relationship.*** For reasons set forth below, [redacted] relationship with [redacted] does not fit the definition of a household member or covered relationship. The regulation reads in relevant part:

   (a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

   (1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

   (2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

   OIG confirmed that [redacted] has had a personal relationship with the referenced fisheries industry [redacted] since at least [redacted] However, by statutory definition this relationship is not with a "member of household," nor does it constitute a "covered relationship." There are five criteria provided in the rule to define covered relationship. None of the criteria are met for the relationship between [redacted] and [redacted] in question. As identified earlier, when interviewed by the OIG, [redacted] stated that he and [redacted] do not [redacted], nor have they ever [redacted]. However,

[redacted] did indicate that when he travels [redacted] Alaska he [redacted] No evidence was found by the OIG to contradict this statement.

Additionally, our investigation did not find evidence that [redacted] intervened directly in any matter involving [redacted], or otherwise took official actions on [redacted] behalf or on behalf of [redacted] clients.

Per regulation, [redacted] did seek assistance on this matter from an agency ethics official and he did use the process described in the section to delegate matters relating to the consultant to other personnel, namely [redacted] Consistent with legal advice provided to him, in August, September and October 2008, [redacted] filed formal letters to recuse himself from matters involving [redacted] clients, and eventually [redacted] herself. In the recusals he delegated such matters to [redacted]

3. Evidence was found that [redacted] may have implicated ***5 USC § 2635 Subpart B – Gifts From Outside Sources***, by accepting hospitality from [redacted] in question when, by his own admission, [redacted] when traveling to Alaska. However, because of a specific exception to the rule found under ***2635.204 (b) – Gifts based on a personal relationship***, the rule does not appear to apply.

4. *Evidence was found that* [redacted] *relationship with* [redacted] *does implicate* **The Standards of Ethical Conduct for Employees of the Executive Branch 5 USC § 2635.101 - Basic obligation of public service, which reads in relevant part:**

(a) *Public service is a public trust.* Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) *General principles.* The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

The investigation disclosed the existence of a *perception* in Alaska, both in NMFS and in industry, that [redacted] favors [redacted] and her clients. OIG received information, from NOAA Alaska personnel and industry representatives, indicating a perception that [redacted] has

manifested resentment and anger in response to questions about, or examination of, his relationship with the [redacted] and its professional implications.

The OIG was made aware of, and confirmed with [redacted] a reference [redacted] made with respect to a pending official matter involving [redacted] to an Alaska fisherman via [redacted] NOAA email account. [redacted] The [redacted] for public comment. In reviewing the public comments [redacted] noted a negative comment regarding [redacted] with whom he has the personal relationship. The comment was by [redacted] who is a fisherman. [redacted] wrote the fisherman, using his NOAA email address, stating that out of all the [redacted] only comments about this one and it is a negative comment. [redacted] advised the OIG that the fisherman perceived the reference as inappropriate and that he advised [redacted] as such at the time the email was sent.

Additionally, an anonymous fisherman (it is unknown [redacted] complained through the OIG hotline about the selection, by Commerce, of a [redacted] The person selected holds/held a leadership position within an organization [redacted] and according to the complainant, the selection did not go through the normal process and the named individual had no experience with respect to [redacted] The complainant opined that the selection was unusual and that the perception in industry was that [redacted] was receiving favored treatment because of her relationship with [redacted] Despite the perception, OIG did not find any evidence to support the contention that [redacted] had, in fact, provided special treatment [redacted] or that he was in any way involved in the selection of [redacted]

Finally, concerns were expressed to the OIG, by NOAA Alaska employees, about the perceived and anticipated consequences of providing information to the OIG regarding this matter. As a result, direct examples of alleged favoritism by [redacted] toward [redacted] were received by the OIG primarily through a third party, [redacted] in NOAA's General Counsel's Office. For example, we were informed on one occasion, when a "negative report" was issued from within NMFS Alaska regarding an issue related to [redacted]; [redacted] approached an employee responsible for the report and inquired about the basis for it. It was reported to us that this caused the employee to feel discomfort and intimidation. It was reported to us that a second employee denied a "request" by [redacted], who responded by telling the employee to "Talk to [redacted] Because employees used a spokesperson to relate these incidents we did not obtain further information related to these specific examples, nor did we seek to further indentify the employees who provided these examples.

The OIG provided a transmittal memorandum on October 13, 2009, summarizing the results of our investigation, and NOAA followed up, in consultation with the Office of General Counsel. A recusal letter specific to the aspects of [redacted] personal situation at issue in this investigation, dated February 5, 2010, was provided to the OIG in response to our transmittal memorandum. See Exhibit H. All appropriate investigative steps have been completed and all results have been properly documented to the appropriate OIG investigative databases. This investigation may be closed.

All Redactions Pursuant to b(7) (c)

TABLE OF EXHIBITS

A	IRF [redacted] interview
B	IRF interview of [redacted] OGC
C	IRF interview of [redacted] NOAA
D	IRF interview of [redacted], NOAA
E	Disqualification letter, [redacted] version 1
F	Disqualification letter, [redacted] version 2
G	Disqualification letter, [redacted] version 3
H	FINAL Disqualification letter, [redacted]

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE: [redacted] Attorney-Adviser Office of General Counsel	FILE NUMBER: PPC-CC-10-0002-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

This investigation was initiated by an allegation, received by the OIG, that [redacted] had improperly altered an official document, specifically; an [redacted] The allegation, and initial supporting information, was provided in writing to the OIG by the Department's Employment and Labor Law Division on June 17, 2009. Notwithstanding implications by the Employment and Labor Law Division that criminal charges were a possibility, the OIG deemed the case to be purely administrative in nature from the outset.

DETAILS AND SUMMARY OF INVESTIGATION

For this investigation OIG interviewed all identified individuals with relevant information to the matter in question, including; [redacted] first and second line supervisors, [redacted] at the time of the incident, and two [redacted] who were directly involved with the case. OIG obtained written statements from [redacted] and the [redacted] OIG also collected and analyzed all identified documents with relevant information to the investigation.

Our investigation disclosed that [redacted] did provide instructions to [redacted] in her office to alter/change the document/s in question in order to, according to [redacted] correct a typographical error. The error/s in question was disclosed after the package of documents in question had been signed by all relevant parties, including an Order signed by the [redacted] and published on the [redacted] website. [redacted] admitted no wrongdoing and claimed that any actions she initiated to make changes/corrections were in good faith, and that she informed management of her actions. Further, she asserted that management did not protest or otherwise instruct her to not take

Distribution: OIG _x_ Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):			
Signature of Case Agent: [redacted]	Date: 7/12/10	Signature of Approving Official:	Date:
Name/Title: [redacted] Special Agent		Name/Title Scott Berenberg, AIGI	

action. Management, on the other hand, averred that [redacted] "should have known" she was violating protocol in altering the document/s and that they were not aware of the changes at the time they were made. OIG confirmed with management that formal and/or written office policies, procedures, and protocols for the correction of errors in official, signed [redacted] documents do not exist. However, OIG was made aware of review procedures, implemented by management since the incident, to help ensure *prevention* of such errors from occurring. Management further explained to the OIG what appears to be an informal process to address errors in documents that they believe is widely known and understood by staff. Whether an attorney of [redacted] experience and professional standing "should [otherwise] have known" that handling a correction such as this, in the manner she did, is inappropriate, is an issue outside the scope of this investigation.

As background, the underlying matter was a routine regulatory case involving the [redacted] for which [redacted] was the assigned attorney. For a settlement on a case such as this there are a set of documents, which must all be consistent in content. These are the Order, Proposed Charging Letter (PCL) and Settlement Agreement. The Order in this case was signed, per normal procedure, [redacted] on May 26, 2009. On May 29, 2009, the signed Order was sent to [redacted] attorneys, by [redacted] and was subsequently posted to the [redacted] website by [redacted] again per normal procedure. On June 3, 2009, an individual [redacted] pertaining to export law news identified inconsistencies among the referenced Order and PCL. The specific error of concern, contained in the Order, was a [redacted] The correct reference would be 6-2-4-2, while the reference in the initial Order was 6,242. On the same day, [redacted] provided written instructions to a [redacted] to correct the Order, changing 6,242 to 6-2-4-2, and send the corrected order to [redacted] counsel. The [redacted] immediately complied with these instructions and a corrected Order was emailed, by the [redacted] counsel on June 3, 2009. On June 4, 2009, [redacted] further provided instruction to the same [redacted] to post the corrected order to the [redacted] website. By the end of June 4, 2009, the website posting had been corrected.

On June 4, 2009, [redacted] informed, via email, both her first and second line supervisors, [redacted] of the action she had initiated to correct the order with both counsel for [redacted] and with respect to the website posting. [redacted] also verbally discussed the errors, on June 4, 2009, with her managers. All interviewed parties agree that during these discussions the focus of conversation was on how the errors occurred and not on making corrections to the errors. Further, on June 5, 2009, [redacted] spoke with [redacted] and discussed the errors. Both interviewed parties agreed that [redacted] indicated the errors were "no big deal." [redacted] claims that, during this conversation, she raised the issue of her corrections, while [redacted] denies that corrections were discussed. However, despite this inconsistency in their respective recollection of events, at the time this conversation took place the changes/corrections had already been made and steps to post a correct order were complete.

[redacted] immediate supervisor, indicates he ordered [redacted] on June 4, 2009, to cease and desist in any dealings on the case and turn the file over to him. This order appears to have been made subsequent to [redacted] instructing the office [redacted] to post the corrected order to the [redacted] website. As a result, all evidence indicates [redacted] complied with her supervisor's cease and

desist order. However, [redacted] when interviewed by the OIG about the matter, said he considered [redacted] answers on and after June 4, 2009, to his questions about the event, "evasive" and as a result, he initiated contact with [redacted] counsel to explore the circumstances surrounding how the errors occurred and when [redacted] became aware of them.

On June 8/9, 2009, [redacted] had a series of exchanges with [redacted] counsel, during which time he indicates he first learned that [redacted] had changed/corrected the order in question. When questioned by the OIG about [redacted] June 4, 2009, email where she informs him of steps she is taking to change/correct the Order, [redacted] indicates he did not understand that to mean that changes/corrections had already been made, only that they had been discussed. Further, that he checked the [redacted] website on June 4, 2009, and found the Order to be correct. [redacted] indicates he did not realize when he checked the Order on the website, that it was correct because changes/corrections had already been made.

After confirming with [redacted] counsel how the changes/corrections were initiated and made, [redacted] confirmed the circumstances with the paralegal that had carried out [redacted] instruction [redacted] stated that after he confirmed that the Order had been corrected as described above, he did not approach [redacted] to discuss the issue because he "knew what had happened."

On June 12, 2009 [redacted] placed [redacted] on administrative leave so that "the Agency can conduct fact-finding with respect to allegations of misconduct on your part." [redacted] disputes [redacted] claim that her actions were a good faith correction of a minor typographical error, and asserts that as a matter of law, no correction can be made to an Order of this type without the direct participation of the [redacted] i.e. re-signing the corrected Order, and that [redacted] "should know" this. [redacted] on the other hand, states that other similar errors have been handled in the same manner in the same office, before and since.

RECOMMENDATIONS

The issue in this case appears to be compliance by [redacted] with the appropriate protocols in the [redacted] relating to the correction of inadvertent errors appearing in settlement documents. Noncompliance with protocol that resulted from inadvertent error or professional negligence, if it affected the operations or reputation of the office, is a matter to be properly determined and settled administratively by the Department.

The OIG has been informed that such administrative action has occurred. Removal proceedings were commenced with a proposal letter dated in November 2009, with a final decision of removal issued in March 2010. The final decision letter specifically states that this investigation was not reviewed or relied upon by Department officials in connection with the removal, and so no investigative activity by the OIG is implicated by the ongoing MSPB appeals proceedings, which are pending as of July 2010.

All allegations have been addressed, all logical leads have been investigated, and no further investigative activity is contemplated. All investigative activities have been documented in the Inspector General Complaint Intake and Tracking System (IG-CIRTS). Based upon the above information, it is recommended this investigation be closed.

All Redactions Pursuant to b(7) (c)

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

MEMO TO FILE

FROM: ASAC WFO [redacted]

DATE: September 17, 2010

REF: Closing FOP-WF-10-0075-I, Toyobo Co Ltd

Toyobo Co Ltd is the manufacturer of Zylon targeted by the "Zylon Task Force" within the Commercial Litigation Branch, Civil Division, U.S. Department of Justice, District of Columbia seeking recovery under the False Claims Act for defective fiber used to manufacture bulletproof vests purchased with Federal funds. Toyobo is only one of more than a dozen manufacturers involved with defective body armor targeted by the task force. All matters in this regard in DOC OIG will be worked under case number FOP-WF-10-0069-I, "Zylon Task Force". Therefore case number FOP-WF-10-0075-I is being closed, referenced to and continued under 0069-I.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
NIST Plutonium Incident Boulder, Colorado	FOP-DF-10-0097-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On June 09, 2008, a glass vial containing 0.25 grams of a Certified Reference Material (CRM) of plutonium (i.e. Pu 238, 239, 240, 241 & 242), was discovered cracked resulting in a spill of plutonium powder in laboratory number 2124 at the National Institute of Standards and Technology (NIST), Boulder, Colorado. This CRM of plutonium was radioactive resulting in radiation contamination of the lab, a foreign guest researcher who was working with the CRM, and another researcher who had been informed that the vial may have cracked. Through a series of events, some of the radioactive material was carried outside the lab in which the spill occurred, resulting in trace contamination spreading to other NIST personnel and to other locations in the building where the lab is located. On July 01, 2008, the U.S. Department of Commerce (DOC), Deputy Secretary requested the Office of Inspector General (OIG), initiate an independent review of this incident.

SUMMARY OF INVESTIGATION

In conjunction with the DOC, Denver Regional Office of Audit, a joint investigation was conducted along with the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI). This investigation revealed the former [redacted] at the NIST, Boulder, had willfully failed to provide complete and accurate information to the NRC regarding the security of the plutonium material and willfully failed to provide complete and accurate information to the NRC in a license amendment application regarding written procedures for the safe use of plutonium material. This misinformation and misconduct led to the plutonium spill that later followed. On April 08, 2009,

Distribution: OIG ___ Bureau/Organization/Agency Management _x__ DOJ: ___ Other (specify):			
Signature of Case Agent:	Date: May 28, 2010	Signature of Approving Official:	Date: June 1, 2010
Name/Title: [redacted] Special Agent		Name/Title: [redacted] Assistant Special Agent in Charge	

Associate Deputy Chief [redacted], U.S. Department of Justice, Criminal Division, Fraud Section, advised that this case did not warrant prosecution and rendered an oral declination. This investigation resulted in [redacted] voluntarily resigning his position at the NIST, Boulder, and a one year prohibition from engaging in NRC-licensed activities. The NIST, Boulder, agreed to pay a $10,000 fine and implement a series of corrective actions related to radiation safety.

BACKGROUND

On June 09, 2008, an unplanned contamination event occurred in Room 2124, i.e. a lab, at the NIST facility located in Boulder, Colorado. The following day, the NIST notified the NRC that a mixed plutonium contamination event had occurred at the NIST. On June 11, 2008, the NRC staff initiated an onsite inspection of the NIST plutonium spill. A preliminary review and inspection of the NIST event disclosed that at least two NIST employees had been contaminated by the release of the radioactive material; there was a release of the radioactive material into the sewer system; and radioactive material contamination was found in specific areas of the NIST facility. Subsequent review of documents obtained during the NRC's inspection determined there were numerous indicators of specific wrongdoing, which appeared to be potential willful misconduct on the part of NIST personnel.

DETAILS OF INVESTIGATION

On July 23, 2008, [redacted] was interviewed in Boulder, Colorado. [redacted] was [redacted] who was working with the plutonium material at the NIST lab when the plutonium spill occurred. [redacted] is a [redacted] who joined the NIST in [redacted] under a contract for the purpose of [redacted] first experience working with the plutonium material at the NIST was in May 2008. This was the first time he had actually handled or worked with any plutonium material. He had no prior experience with any radioactive material. He worked with [redacted] all of the time in the lab, so he considered [redacted] his technical supervisor. [redacted] did not provide [redacted] with any guidance or procedures in terms of handling the plutonium material. Prior to the plutonium spill, [redacted] had never met the [redacted] at the NIST, [redacted] and was not familiar with the duties and responsibilities of a [redacted] described how the plutonium was containerized, stored, and used during his experiments. He then described the events leading up to, during, and after the plutonium spill (Exhibit 1).

On August 06, 2008, [redacted] was interviewed at the U.S. Department of Energy (DOE), New Brunswick Laboratory, Argonne, Illinois. [redacted] was employed by the DOE as an [redacted] She previously held the position of [redacted] at the [redacted] was interviewed relative to the circumstances surrounding the NIST's acquisition of the plutonium material from the New Brunswick Lab. [redacted] handled and/or assisted the NIST in the acquisition of the subject plutonium material. [redacted] provided copies of emails to and from her and [redacted] She also provided copies of other documents to include: the DOE Certificate of Analysis for the plutonium material;

the NIST's Request to Purchase Radioactive Sources from the New Brunswick Lab; the Domestic Order Form for Certified Reference Materials; and the NRC Materials License and License Amendment (Exhibit 2).

On August 06, 2008, [redacted] was interviewed at the DOE, New Brunswick Laboratory, Argonne, Illinois. [redacted] was employed by the DOE as a [redacted] duties included [redacted] He was interviewed relative to the circumstances surrounding the NIST's acquisition of the plutonium material from the New Brunswick Lab. [redacted] had discussions with [redacted] at the NIST, as well as email communications, regarding the purchase, packaging and safe handling of the plutonium material. [redacted] provided copies of emails to and from him and [redacted] as well as copies of photos of the plutonium material (Exhibit 3).

On August 20, 2008, [redacted] was interviewed at [redacted] was employed by the [redacted] His duties included [redacted] activities. He was interviewed relative to the circumstances surrounding the NIST's acquisition of the plutonium material from the New Brunswick Lab. [redacted] recalled having a number of discussions with [redacted] at the NIST, Boulder. He and [redacted] became involved in a fairly complex NRC license amendment request in which [redacted] requested a number of radioisotopes to be added to the NIST's license. He recalled [redacted] stating the NIST had a researcher there, "some fellow that came in fairly new that was developing a new kind of radiation detector and needed nuclear material to help calibrate this detector." [redacted] had discussions with [redacted] as well as [redacted] at the New Brunswick Lab, regarding how the plutonium material was packaged and the shipment of the plutonium to the NIST (Exhibit 4).

On December 16, 2008, [redacted] was interviewed at the NIST, Gaithersburg, Maryland. [redacted] was employed by the NIST as [redacted] He was interviewed to discuss potential deficiencies in a NRC license renewal submission in December 2004 by the NIST and in a NRC license amendment submitted in February 2007. The NRC had identified these potential deficiencies following the plutonium spill incident at the NIST, Boulder in June 2008. [redacted] was involved in two program audits at the NIST, Boulder, prior to the plutonium spill. When [redacted] was notified of the plutonium incident, he was unaware of the magnitude of the plutonium material that the NIST, Boulder, had acquired and was unaware of the form, i.e. how it was containerized (Exhibit 5). On December 18, 2008, a follow-up interview of [redacted] was conducted. The purpose of this interview was to discuss some additional information that [redacted] had been able to uncover regarding the revision history of the NRC license renewal back in December 2004/January 2005 timeframe (Exhibit 6).

On January 27, 2009, [redacted] was interviewed at the NIST, Boulder, Colorado. Mr. [redacted] was interviewed to discuss potential deficiencies in a NRC license amendment that was submitted to the NRC in February 2007. Specifically, the amendment prepared by [redacted] stated "access to buildings and laboratories requires a coded key card." According to [redacted] two laboratories at the NIST,

Boulder, used radioactive material. He responded "no" as to whether either one of these labs had the coded key card access. [redacted] stated, he made a bad assumption and did not verify. Another area discussed related to the [redacted] following guidance contained in a NIST procedure that did not exist at the time of the license amendment submittal, as well as at the time of the plutonium incident. Another area that was discussed related to operating and emergency procedures. In the amendment request, it stated: "NIST has developed and maintains operating procedures for safe use in emergencies." This was an amendment that amended the NIST's license that was renewed in 2005. In 2005, the NIST committed to having standard operating procedures that were developed for the safe use of each radionuclide used in the labs. [redacted] responded, he missed that one when he wrote the amendment (Exhibit 7).

On January 27, 2009, [redacted] was interviewed at the NIST, Boulder, Colorado. [redacted] was employed [redacted] was interviewed to discuss deficiencies in a NRC license renewal submission in December 2004, as well as questions pertaining to the plutonium incident in June 2008. In the license renewal submission to the NRC regarding the Safe Use of Radionuclides and Emergency Procedures it stated: "Standard operating procedures have been developed for safe use of each radionuclide used in our laboratories." This was submitted to the NRC by the NIST, [redacted] in January 2005. [redacted] stated he may have been involved in some verbal discussions, but did not recall involvement in preparing the license renewal submission. His impression was that developing protocols was not his business; it was the safety department's business. [redacted] had knowledge that he was listed as an authorized user on the NRC license; however, he was not directly involved in preparing amendments to the license.

[redacted] stated he did not receive any isotope-specific training for the use of plutonium at the NIST prior to acquiring the plutonium material. He did receive basic radiation safety training; however, it did not involve the specifics of the use of plutonium. He did not undergo any training regarding the proper procedure for the acquisition of radioactive material. [redacted] described how the plutonium material was packaged and shipped to the NIST from the New Brunswick Lab. He recalled demonstrating how to handle the plutonium material in conducting the detector experiments and that [redacted] was present. [redacted] did not believe it was his duty or that he had a formal obligation to provide training to [redacted] regarding the use of the plutonium material. Mr. [redacted] stated he advised the [redacted] that there were new staff in the project on two occasions and the [redacted] had taken no action (Exhibit 8).

On January 27, 2009, [redacted] was interviewed at the NIST, Boulder, Colorado. [redacted] was employed [redacted] was interviewed to discuss deficiencies in a NRC license renewal submission in December 2004. [redacted] became the [redacted] for the NIST, Boulder, in 2003 or 2004 although she had no formal training as a [redacted] Subsequent to her designation, she completed a [redacted] was questioned regarding a license renewal submission to the NRC in January 2005. These questions pertained to what was in place at the NIST, Boulder, at the time of the submission; specifically, questions related to standard operating procedures and emergency procedures. Upon review following the plutonium spill in June 2008, [redacted] stated these were insufficient; however, she did not make an untruthful statement (Exhibit 9).

On February 09, 2009, [redacted] as [redacted] serving as the [redacted] since [redacted] at the NIST, Boulder, Colorado. [redacted] had previously received notification, on October 27, 2008, of the proposed removal from his position at the NIST, based upon his 1) misrepresentation of fact on official forms; 2) negligence in performance of duty; and 3) failure to follow safety instructions (Exhibit 10).

On June 04, 2009, the NRC-OI, issued a Report of Investigation. Based on the evidence developed during this investigation, the allegation that the former [redacted] at the NIST, [redacted] willfully failed to provide complete and accurate information to the NRC in a licensing renewal submission, dated December 15, 2004, was not substantiated. Based on the evidence developed during this investigation, the allegations that the current [redacted] at the NIST, [redacted] willfully failed to provide complete and accurate information to the NRC regarding the security of material in a license amendment application, as well as willfully failed to provide complete and accurate information to the NRC regarding written procedures for the safe use of plutonium sources in a license amendment application, dated February 15, 2007, were substantiated (Exhibit 11).

On March 01, 2010, a Confirmatory Order Modifying License was issued to the NIST, Boulder, by the NRC as a result of a successful Alternative Dispute Resolution (ADR), which was initiated at the request of the NIST, Boulder. As a result, the NIST agreed to pay a $10,000 fine and implement a series of corrective actions related to radiation safety (Exhibit 12). Also on March 01, 2010, an Order Prohibiting Involvement in NRC-Licensed Activities was issued to [redacted] by the NRC as a result of his deliberate misconduct. [redacted] was prohibited from engaging in NRC-licensed activities for a period of one year (Exhibit 13).

RECOMMENDATIONS

All relevant casework is complete, all investigative activities, and civil and administrative actions have been documented in IG-CIRTS. It is recommended that this matter be closed.

TABLE OF EXHIBITS

Exhibit	Exhibit Description
1	Transcript of Interview of [redacted] on July 23, 2008.
2	Transcript of Interview of [redacted] on August 06, 2008.
3	Transcript of Interview of [redacted] on August 06, 2008.
4	Transcript of Interview of [redacted] on August 20, 2008.
5	Transcript of Interview of [redacted] on December 16, 2008.
6	Transcript of Interview of [redacted] on December 18, 2008.
7	Transcript of Interview of [redacted] on January 27, 2009.
8	Transcript of Interview of [redacted] on January 27, 2009.
9	Transcript of Interview of [redacted] on January 27, 2009.
10	[redacted] Agreement for [redacted] on February 09, 2009, & Notice of Proposed Removal for [redacted] dated October 27, 2008.
11	NRC-OI Report of Investigation, dated June 04, 2009.
12	Confirmatory Order Modifying License to the NIST from the NRC on March 01, 2010.
13	Order Prohibiting Involvement in NRC Licensed Activities to [redacted] from the NRC on March 01, 2010.

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

MEMORANDUM FOR: Stephen Jacobs
Deputy Assistant Secretary for Market Access and Compliance
International Trade Administration (ITA)

FROM: [redacted]
Special Agent In Charge, Office of Investigations

SUBJECT: [redacted] ITA, Washington, DC

REFERENCE: FOP-WF-10-0125-I

The Department of Transportation (DOT), Office of the Inspector General (OIG) advised the U.S. Department of Commerce (DOC) OIG that [redacted] ITA, sold Metrocheks on eBay in violation of the federal transit benefit subsidy regulations. In support of this allegation the DOT OIG eBay Fraud Investigations Team provided a January 2008 report that set forth an accounting of the transactions in which [redacted] sold Metrocheks. Additionally, OIG investigators collected documentation corroborating that [redacted] applied for and received transit benefits during the time in question.

On August 24, 2010, [redacted] was interviewed by DOC OIG in relation to the sale of Metrocheks on eBay. [redacted] admitted to selling $1,200 worth of Metrocheks on eBay on thirteen separate occasions and receiving payments totaling over $800 in 2007. [redacted] said that she has not sold any additional Metrocheks previous or subsequent to the ones referenced immediately above in 2007. [redacted] commented that she was not sure if it was wrong to sell the Metrocheks and that although she signed the application for transit subsidy forms, she did not read them thoroughly. [redacted] explained that the reason she sold the Metrocheks was because at she was a [redacted] at the time and needed the money. [redacted] said that she would be willing to pay back the money she received for selling the Metrocheks.

This case was declined for prosecution by the United States Attorney's Office, District of

All Redactions Pursuant to b(7) (C)

Columbia Superior Court, and you are being advised so that you may consider any administrative actions you deem necessary or appropriate. If you have any questions regarding these matters, please don't hesitate to call me directly at (202) 482[redacted] If you elect to take actions regarding these matters, please advise this office within 60 days of said action so we may close our file; additionally, we would appreciate notification if you elect to take no action.

Attachment:
1. Investigative Record Form, Interview of [redacted] August 24, 2010.

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Berger Group Holdings, Inc.	FOP-WF-10-0072-I CDS: 07SS16-18402
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On November 1, 2006, the U.S. Department of Commerce (DOC) Office of Inspector General (OIG) received information regarding False Claims Act *qui tam* Complaint *U.S. ex rel. Salomon v. Berger Group Holdings, Inc., The Louis Berger Group, Inc. and the Louis Berger Group (Domestic), Inc.* (collectively the "Louis Berger Group" or "LBG") which was filed under seal with the U.S. District Court for the District of Maryland on July 31, 2006. It was reported that false and fraudulent statements, records, and claims were made in connection with contracts for construction, engineering and environmental projects with various Federal agencies, including DOC. It was alleged that LBG systematically manipulated overhead cost data and overhead rate proposals that were submitted for use in negotiation, payment and settlement of contract rates for these projects in order to receive higher payments and avoid their obligation to repay certain amounts due pursuant to the terms of the contracts and applicable statutes and regulations.

SUMMARY OF INVESTIGATION

On November 5, 2010, the lawsuit against LBG was settled for $69.3 Million. From at least 1999 through August 2007, LBG overbilled the U.S. Government inflated overhead rates in connection with contracts for work performed overseas. LBG charged the federal government inflated rates on cost plus contracts performed overseas for the U.S. Agency for International Development (USAID), the U.S. Army, and the U.S. Air Force.

DOC was not a party to this settlement agreement. No DOC funds were involved in the identified fraud as DOC did not have any cost plus contracts with LBG for work performed overseas.

Distribution: OIG ___ Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):			
Signature of Case Agent:	Date:	Signature of Approving Official:	Date:
Name/Title: [redacted] Special Agent		Name/Title: [redacted] Assistant Special Agent in Charge, WFO	

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

DETAILS OF INVESTIGATION

DOC Acquisition and Grant offices were contacted to determine whether any grants or contracts had been awarded to LBG (IG Complaint Intake Reporting and Tracking System [CIRTS], Case Documents, hereafter "Index" numbers 2 – 21). One fixed price contract (WC133F-04-CQ-005) with 19 task orders was identified. It was awarded to the LBG on May 11, 2004, by the National Oceanic and Atmospheric Administration (NOAA), Central Region Acquisition Division, Kansas City, MO, for miscellaneous environmental restoration projects (Index 15).

Information on the fixed price contract was provided to USAID OIG, lead agency in the investigation. DOC OIG was informed that [redacted] (Index 22).

On November 5, 2010, the lawsuit against LBG was settled for $69.3 Million. From at least 1999 through August 2007, LBG overbilled the U.S. Government inflated overhead rates in connection with contracts for work performed overseas. LBG charged inflated rates on cost plus contracts performed overseas to USAID, the U.S. Army, and the U.S. Air Force (Index 23).

DOC was not a party to this settlement agreement. No DOC funds were involved in the identified fraud as DOC did not have any cost plus contracts with LBG for work performed overseas.

TABLE OF INDEXES

(Corresponding to IG CIRTS document Index numbers)

2. Investigative Record Form (IRF), interview of [redacted] 12/14/2006
3. IRF, interview of [redacted] 1/9/2007
4. IRF, interview of [redacted] 1/11/2007
5. IRF, interview of [redacted] /11/2007
6. IRF, interview of [redacted] 1/31/2007
7. IRF, interview of [redacted] 1/31/2007
8. IRF, interview of [redacted] 1/31/2007
9. IRF, interview of [redacted] 1/31/2007
10. IRF, interview of [redacted] 2/1/2007
11. IRF, interview of [redacted] 2/2/2007
12. IRF, interview of [redacted] 2/5/2007
13. IRF, interview of [redacted] 2/6/2007
14. IRF, interview of [redacted] 2/15/2007
15. IRF, review of WC133F-04-CQ-005 contract file, 2/15/2007
16. IRF, interview of [redacted] 2/21/2007
17. IRF, interview of [redacted] 2/27/2007
18. IRF, interview of [redacted] 2/7/2007
19. IRF, interview of [redacted] 3/6/2007
20. IRF, interview of [redacted] 3/6/2007
21. IRF, interview of [redacted] 3/6/2007
22. Memo to the File regarding contact with USAID OIG, 3/8/2007
23. US Department of Justice Press Release regarding LBG Settlement, 11/5/2010

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Advanced Bionutrition Corp.	FOP-WF-10-0076-I CDS: 08SS16-18971
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On October 19, 2007, the U.S. Department of Commerce (DOC) Office of Inspector General (OIG) received information regarding False Claims Act *qui tam* Complaint *U.S. ex rel. Albert Cunniff, Jr. v. Advanced Bionutrition Corporation* (ABN) which was filed with the U.S. District Court of Maryland (MD) on September 20, 2007. The Relator alleged that ABN fraudulently obtained grants from federal agencies in violation of a prerequisite that the recipient company be at least 51% U.S. owned. At the time, ABN was more than 51% owned by David Kyle. [redacted] Relater further claimed that Kyle filed false and misleading financial and scientific reports in support of these grants.

SUMMARY OF INVESTIGATION

In 2003 and 2005, DOC awarded one grant and two Small Business Innovation Research (SBIR) contracts to ABN. The grant was subject to a requirement that 51% of the company be owned by a U.S. citizen and that the Chief Executive Officer (CEO) or President be a U.S. citizen. ABN CEO Kyle disclosed on the grant application that he was [redacted] and [redacted] U.S., but the grant was awarded in an apparent oversight of the regulation. SBIR policy directives allow a company owned by a permanent resident to receive SBIR awards. No apparent false statements were made to DOC in regard to Kyle's citizenship. In 2008, an Assistant U.S. Attorney (AUSA), District of MD [redacted] under the pending civil action.

On July 1, 2010, the civil lawsuit against ABN was settled for $934,000. According to the settlement, ABN made material misrepresentations and omitted critical information in grant proposals and final reports to the National Science Foundation (NSF). As part of the settlement, ABN agreed to a five-year Compliance Integrity Agreement and Kyle voluntarily agreed to be excluded from federal procurement and non-procurement programs for a period of five years. DOC was not a party to the settlement and no DOC funds were involved in the identified fraud.

Distribution: OIG ___ Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):			
Signature of Case Agent:	Date:	Signature of Approving Official:	Date:
Name/Title: [redacted] Special Agent		Name/Title: [redacted] Assistant Special Agent in Charge	

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

DETAILS OF INVESTIGATION

In June 2003, the National Marine Fisheries Service (NMFS) awarded grant NA03NMF4270163, a Saltonstall-Kennedy grant for $190,000 titled "Novel Oral Vaccine for Infectious Salmon Anemia," to ABN. The grant was subject to 46 USC Appendix 802 requiring that 51% of a company be owned by a U.S. citizen and that the CEO or President be a U.S. citizen. Kyle, CEO and majority shareholder of ABN, disclosed on the grant application materials that he was [redacted] and [redacted] U.S., but the grant was awarded nevertheless, in an apparent oversight of the regulation (Index 2).

DOC awarded two SBIR contracts to ABN in 2005. The National Oceanic and Atmospheric Administration (NOAA) awarded SBIR Phase I contract DG133R-05-CN-1205 for $49,996 titled "National and Sustainable Alternative for Fish Meal/Oil Usage in Atlantic Salmon Needs" and SBIR Phase II contract DG133R-05-CD-1240 for $199,893 titled "Non-marine Based Fishmeal and Fish Oil Replacement Strategies for the Production of Aquaculture Feeds." According to the SBIR Policy Directive, a small business must be "at least 51% owned and controlled by individuals who are citizens of *or permanent resident aliens in* the U.S." [emphasis added] (Index 5).

In November 2007, a meeting with the Relator was held at the U.S. Attorney's Office in Baltimore, MD. Present for the meeting were representatives from the NSF OIG, U.S. Department of Agriculture OIG, Defense Criminal Investigative Service and DOC OIG. Following the Relator interview, NSF OIG produced one of the reports the Relator had questioned and was able to refute some of the Relator's claims with respect to falsification of scientific claims and material omissions of results. Specifically pointed out were areas in the report where ABN disclosed material problems with their research that the Relator claimed were omitted (Index 4).

In October 2008, information on the DOC grants and contracts was provided to an AUSA, District of MD [redacted] as ABN CEO Kyle disclosed he was [redacted] on the NOAA grant application and NOAA's apparent oversight seemed to imply endorsement of ABN (Index 7).

On July 1, 2010, the lawsuit against ABN was settled for $934,000. The statement of facts indicated that ABN made material misrepresentations and omitted critical information in grant proposals and final reports to NSF. As part of the settlement, ABN agreed to a five-year Compliance Integrity Agreement and CEO Kyle voluntarily agreed to be excluded from all federal procurement and non-procurement programs for a period of five years. DOC was not a party to this settlement agreement. No DOC funds were involved in the identified fraud (Index 8).

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

Table of Indexes
(Corresponding to IG CIRTS document Index numbers)

2. Investigative Record Form (IRF), review of NMFS grant number NA03NMF4270163, 11/15/2007
5. IRF, review of NOAA contract files numbers DG133R-05-CN-1205 and DG133R-05-CD-1240, 11/28/2007
4. Memo, Relator meeting with AUSA, Baltimore, MD, 11/19/2007
7. Memo, telephone conference with AUSA, District of MD and NSF, October 2008
8. DOJ press release regarding ABN settlement, 7/1/2010

OFFICE OF THE SECRETARY | FORM SEC-1000

U.S. DEPARTMENT OF COMMERCE
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

ACTION MEMORANDUM

TO: AIGI	FILE NUMBER FOP-AF-10-0014-I	DATE December 13, 2010
	OFFICE OF ORIGIN Atlanta Field Office	PREPARING OFFICE Atlanta Field Office

SUBJECT:

USA Citrus Alliance
U.S. Department of Justice-Antitrust Division (DOJ-ATR) Investigation

-C-

This investigation began as a preliminary inquiry based on a complaint from a South African exporter about the business practices of a group of South African producers and exporters of fresh citrus fruit bound for the U.S. market. The complainant [redacted] alleged that the citrus producers and exporters formed a group, the USA Citrus Alliance ("the Alliance"), that limited the volume of citrus fruit exported to the United States, set minimum prices for the sale of South African citrus in the United States, and effectively excluded producers and exporters from the U.S. market if they did not adhere to the volume and price controls. By agreement, the Alliance worked exclusively with seven U.S. importers, who were allegedly complicit in the controls on prices charged to the U.S. customers, such as grocery stores. In addition, [redacted] alleged that the Alliance entered into an agreement with a group of citrus producers in Australia (Riversun Export Pty. Ltd.) to limit the total volume of most varieties of citrus fruit from the Southern Hemisphere that is sold in the U.S.

[redacted] provided documentation supporting his complaint that had been gathered in connection with an investigation of the USA Citrus Alliance, by the Competition Commission of South Africa ("Commission"). The Commission determined that the Alliance had violated the competition laws of South Africa; it entered a settlement in which the Alliance paid an administrative penalty. Staff interviewed [redacted] and [redacted] A grand jury investigation was opened shortly thereafter, focusing on price fixing, market allocation, conspiracy to defraud, mail fraud and payment of kickbacks.

After the grand jury request was approved, [redacted] participated in consensual monitoring at a citrus trade conference, in San Diego, California, in October 2006. On January 18, 2007, the FBI executed search warrants and served grand jury subpoenas duces tecum at the corporate headquarters of Seald Sweet and DNE, two United States importers. Simultaneously, grand jury subpoenas duces tecum were issued to the following companies: A. Duda and Sons; DCM; Del Monte; DLF International, Inc.; Dole; William H. Kopke, Jr. Inc.; LGS Specialty Sales, Ltd.; Fisher Capespan USA, LLC; Unifrutti of America, Inc.; Seald Sweet and Sunkist. In conjunction with the service of the subpoenas duces tecum and the search warrants, staff and other attorneys in the Atlanta Field Office conducted drop-in interviews of some of the key investigative subjects. Subsequent to the January 2007 interviews, staff conducted follow-up interviews with certain employees of the United States importers. The staff engaged in extensive negotiations over document production and over reviewing the seized evidence.

Staff completed a Mutual Assistance Request (MAR) to the government of Australia. It was finalized and sent to the Australian competition authorities by Foreign Commerce on June 10, 2008. Staff also finalized a Mutual Legal Assistance Treaty request for the South Africans, which was sent to the South African government by the Office of International Affairs on July 17, 2008. In May 2009, the Australian Federal Police (AFP), along with the assistance of U.S. Department of Commerce-Office of Inspector General (DOC-OIG) and the Australian Consumer and Competition Commission (ACCC) executed search warrants on the offices of Riversun Export Pty. Ltd., in Renmark, South Australia.

During the inventory stage of the search warrant, [redacted] Riversun Export Pty. Ltd., claimed Legal Professional Privilege (LPP) under Australian Law for 12 items seized during the warrant. [redacted] claimed LPP for those items because the documents related to certain opinions and possible scenarios which are considered confidential and legally privileged between Riversun and [redacted] Law Offices. Having regard to the claim for privilege, the warrant has not been executed in respect of the documents set out in the list and that those documents were sealed in the envelope pending the resolution of the claim. The sealed envelope and a copy of the list of the 12 items were delivered to the Renmark Police Station, who acted as the Third Party in this matter. The Renmark Police Department held the envelope and the list pending the resolution of the claim for privilege. A total of 87 items were seized from the Riversun offices located at the above stated address. Information was seized from 5 computer hard drives and copied by [redacted] PPB Information Technology Forensics and hand carried back to the United States, at which time all were forwarded to DOC-OIG Computer Crimes Unit (CCU) for processing.

All Redactions Pursuant to b(7) (c)

After completing the search warrant, ACCC, DOC-OIG and DOJ-ATR personnel interviewed [redacted] stated that there was absolutely no price fixing from DNE World Fruit Sales. According to [redacted] this is the normal thing competitors would do. [redacted] stated this is just us trying to establish the citrus market industry and trying to establish how much fruit to send to the United States. [redacted] explained that Riversun is a high cost producer that is sensitive in a downturn of prices. [redacted] stated that the South African citrus companies "do their own thing with pricing". [redacted] said if volume control of citrus imported to the United States did occur, Riversun was not privy to this information. [redacted] said the volume of Australian citrus shipped to the U.S. was self-imposed and not restrictive. [redacted] said Riversun is cautious of being caught in the market [redacted] said Riversun didn't have a Memorandum of Understanding between the South African citrus companies in the later years. [redacted] said he did not know that we (Riversun) necessarily reached agreements with the South Africans.

From October 1 through October 5, 2009, DOC-OIG agents, agents and foreign linguists from the Federal Bureau of Investigation (FBI) and staff from DOJ-ATR, participated in a mass interview operation at the Produce Marketers Association (PMA) meeting in Anaheim, California, to secure interviews and/or serve grand jury subpoenas upon 30+ subjects involved in the criminal antitrust investigation of the Australian, Chilean, Peruvian and South African citrus industries. The focus of the interview operation was to obtain witness interviews of the several subjects involved with this scheme to violate U.S. antitrust laws. As a result of the interviews obtained from the PMA meeting, DOC-OIG, DOJ-ATR and FBI personnel were unsuccessful in obtaining cooperating witnesses in the investigation.

On October 1, 2010, DOJ-ATR directed DOC-OIG to place [redacted] a key witness in this investigation, on border watch and request that ACCC personnel attempt to locate [redacted] and direct him to contact DOJ-ATR. To date, [redacted] has not been located and he has not traveled to the United States. Upon reporting this information to [redacted] Lead Trial Attorney, DOJ-ATR, she consulted with [redacted] Atlanta Division, DOJ-ATR. Both [redacted] recommended that this investigation be closed.

All allegations have been addressed, all logical leads have been investigated, and no further investigative activity is contemplated. All investigative activities have been documented in IG-CIRTS. Based upon the above information, it is recommended that this investigation be closed.

COPIES MADE:

1 - Investigative Services
1 - Special Agent

(For Headquarters Use)

PREPARED BY	CLEARED BY	APPROVED BY	
[redacted]			
SA, AFO	ASAC	SAC	
Initials & Date	Initials & Date	Initials & Date	
[redacted] 1/05/10	[redacted] 1/5/10		

(6-82)

All Redactions Pursuant to b(7) (c)

EXHIBIT 3-9

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
[redacted] et al Local Census Office (LCO) #2225 Census (CEN) Brooklyn, NY	PPC-CI-10-0940-I
	TYPE OF REPORT ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On June 16, 2010, the OIG received information alleging that [redacted] and [redacted] of Local Census Office 2225 falsified Enumerator Questionnaires (EQ) in order to expedite Non-Response Follow-Up (NRFU). The complainant further alleged that the two [redacted] had printed information about addresses from the FastData website and ordered clerks to fill in EQs with the information to make it seem as if interviews had been conducted.

SUMMARY OF INVESTIGATION

Our investigation substantiated the allegations and both employees were terminated for their conduct. The matter was declined for prosecution.

DETAILS OF INVESTIGATION

During July 2010, both [redacted] provided sworn affidavits admitting that they had ordered clerks in their office to fill out EQ's using information from the FastData website. [redacted] explained that they were under pressure to complete NRFU quickly and chose to falsify the forms to improve their office statistics. Both [redacted] denied obtaining permission from upper management for their decisions (see Exhibits 1 and 2).

On [redacted] both [redacted] were removed from their positions with the US Census Bureau for their actions (see Exhibits 3).

During July 2010, Census provided documentation indicating that the compromised EQ's were sent back out to the field for re-enumeration (see Exhibit 3).

This case was presented to the United States Attorney's Office, Eastern District of New York. They declined prosecution of the matter (see Exhibit 4).

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

TABLE OF EXHIBITS

1. Sworn Affidavit of [redacted]
2. Sworn Affidavit of [redacted]
3. Summary of internal investigation conducted by Census
4. Declination Letter

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Inter-Tribal Council of California (ITCC) Sacramento, California	FOP-DF-10-0122-I
	TYPE OF REPORT ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On October 15, 2009, the Office of Investigations (OI) received information from the U.S. Department of Justice, Office of Inspector General (DOJ OIG) pertaining to possible grant fraud. A complaint was made initially to DOJ OIG concerning possible fraud perpetrated by [redacted] the [redacted] for Inter-Tribal Council of California (ITCC) in that [redacted] commingled grant funds with other agency grants, used grant money earmarked for particular purposes for unauthorized purposes, hired relatives as consultants in a conflict/nepotism kind of arrangement, and embezzled funds. (Exhibit 1)

RESULTS/SUMMARY OF INVESTIGATION

Our investigation disclosed no evidence of loss to Department of Commerce programs and we were unable to establish criminal intent. We did, however, discover significant accounting irregularities and referred our concerns over ITCC's accounting practices to the U.S. Department of Health & Human Services, Office of Inspector General (HHS/OIG).

METHODOLOGY

This case was conducted through interviews and document review, including electronic mail, public domain documentation, Internet sources, correspondence from witnesses and the subject, and documents from the Economic Development Administration (EDA). We also conducted an analysis of financial and business records provided over the course of the investigation. Finally, we coordinated with the cognizant audit agency, HHS/OIG.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):

Signature of Case Agent:	Date:	Signature of Approving Official:	Date:
[redacted]	3/23/2011	[redacted]	3/23/2011
Name/Title: [redacted] Special Agent, DFO		Name/Title: [redacted] Assistant Special Agent in Charge, DFO	

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

All Redactions Pursuant to b(7) (c)

DETAILS OF INVESTIGATION

The Economic Development Administration (EDA) provides assistance to Planning Organizations (as defined in 13 CFR §303.2) for the development, implementation, revision, or replacement of a Comprehensive Economic Development Strategy (CEDS), short-term planning efforts, and State plans designed to create and retain higher-skill, higher-wage jobs, particularly for the unemployed and underemployed in the nation's most economically distressed regions. EDA awarded planning grants to ITCC beginning in 2006. The first year, ITCC spent $87,406 out of a $100,000 grant, and in 2007 and 2008 they spent $100,000. In 2009, the grant was for $400,000. Dissatisfied with ITCC's performance, EDA informed them that they would discontinue funding in 2010. (Exhibits 2, 3, 5, 9)

Our investigation included interviews of several current and former employees, as well as [redacted] (Exhibits 6, 11, 12, 13, 14, 15, 17 and 18) Records were also sought from the grantee. (Exhibit 10) Investigation revealed several concerns, but none of which met prosecutorial standards for prosecution (Exhibit 16). The investigation found:

- [redacted] did hire individuals related to her, though some were distant relatives, but in the [redacted] they are referred to [redacted] which ITCC's internal policies and procedures do not prohibit. She did, however, hire [redacted] as a [redacted] at her own discretion and without recusing herself from the process (Exhibits 6, 11, 12, 14, 17 and 18);
- ITCC did commingle grant monies, including combining all monies into one bank account. There were extensive due to/from accounts as grants with a positive balance were "borrowed" from to meet cash flow demands for unrelated grants or other projects (Exhibits 6, 11, 12, 13, 14, and 17);
- ITCC, a not-for-profit entity that has no private donations and minimal revenue generating operations (i.e., almost entirely funded with grants) reported a nearly $200,000 deficit in net assets in their audited financial statements for 2007. They reported extensive debt stemming from settlement agreements related to improper indirect cost claims with the U.S. Department of Health & Human Services. Yet inexplicably in about three years they have found a way to substantially erase that deficit. The witness statements, including that of the controller, inadequately explained how they did this without using grant funds improperly, but does seem to indicate at least part of the method involved indirect costs. (Exhibits 11, 12, 13, and 17)

The EDA has protected their interests by declining further business with this enterprise. (Exhibit 9) The several concerns identified in this investigation have been turned over to the US Department of Health & Human Services OIG since their audit agency is the cognizant agency. (Exhibit 19) The U.S. Attorney's Office for the Eastern District of California has declined to prosecute this case. (Exhibit 16)

Investigation has found no evidence to support any DOC loss and this matter has been referred to the appropriate agency to determine if indirect costs are a problem. Based on the above information, it is recommended that this investigation be closed.

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

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9	Interview of [redacted]	9
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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE: [redacted] National Oceanic and Atmospheric Administration Silver Spring, MD	FILE NUMBER: PPC-SP-10-0391-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

In March 2010 an anonymous email complaint was submitted to the DOC/OIG Hotline regarding an allegation of time and attendance abuse and the questionable use of the NOAA Asset Forfeiture Fund (AFF) involving [redacted] Office of General Counsel (OGC), NOAA, Silver Spring, Maryland. Specifically, it was alleged that [redacted] had [redacted] instead of attending an international fisheries conference that was held [redacted] and paid for with the NOAA AFF. Reportedly, [redacted] chose to [redacted] rather than the conference which had involved various aspects of international fisheries and included representatives from numerous countries throughout the world.

SUMMARY OF INVESTIGATION

The results of our investigation disclosed that although [redacted] attended [redacted] for one day while in [redacted] sponsored by the [redacted] there was no evidence established of any time and attendance abuse or questionable use of the NOAA AFF by [redacted] He admitted that on the day in question - [redacted] - he attended and participated in a [redacted] rather than attend the event(s) scheduled for the conference that day. A review of the agenda disclosed that the event(s) scheduled for that day were for one of three field trips for scenic tours throughout the city. Instead, [redacted] stated that he elected to attend a [redacted] that was held at [redacted] In addition, the Time and Attendance report for [redacted] listed no work hours claimed on either [redacted] which was also a scheduled work day for the [redacted] which [redacted] attended and participated in at the conference.

Based upon the above information, it is recommended that this case be closed.

Distribution: OIG: X Bureau/Organization/Agency Management: ____ DOJ: ____ Other (specify):			
Signature of Case Agent: [redacted]	Date: 01/28/2011	Signature of Approving Official:	Date:
Name/Title: [redacted] Special Agent, Special Project Units, PPC		Name/Title: [redacted] Special Agent in Charge, PPC	

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

DETAILS OF INVESTIGATION

On March 17, 2010, an anonymous email complaint was submitted to the DOC/OIG Hotline regarding an allegation of time and attendance abuse and the questionable use of NOAA AFF funds involving [redacted] Office of General Counsel (OGC), NOAA, Silver Spring, Maryland. Specifically, it was alleged that [redacted] had [redacted] instead of attending an international fisheries conference that was held in [redacted] and paid for with funds from the NOAA AFF. Reportedly, he had chosen to attend a [redacted] rather than the conference which involved various aspects of international fisheries, including enforcement, with representatives from numerous countries throughout the world. (See IGCIRTS Index 1)

The [redacted] was hosted by the [redacted] from [redacted] Registration for the conference was scheduled to begin on [redacted] from 4:00 p.m. to 8:00 p.m. The conference was scheduled to conclude on [redacted] at 4:00 p.m. (See IGCIRTS Index 3)

The conference had a full schedule of events listed for [redacted] from 8:00 a.m. to 5:50 p.m., followed by a reception hosted by the [redacted] scheduled to begin at 7:00 p.m.; [redacted] from 9:00 a.m. to 7:00 p.m.; [redacted] from 9:00 a.m. to 4:00 p.m., followed by the Conference Dinner at the [redacted] scheduled to begin at 7:30 p.m.; and [redacted] from 9:00 a.m. to 4:00 p.m. (end of conference). (See IGCIRTS Index 3)

The schedule of events for [redacted] was listed as follows:
9:00 a.m. – Departures at field trip options
1. Vessel tour [redacted]
2. Tour of [redacted]
3. Guided city tour of [redacted] (See IGCIRTS Index 3)

A copy of the certified Time and Attendance (T&A) Report for [redacted] for Pay Period [redacted] ([redacted]) was obtained and review disclosed [redacted] claimed a total of eighty (80) hours of regular base pay during the pay period. He claimed forty (40) hours of regular base pay for week one of the pay period – from [redacted] (Friday) and and forty (40) hours of regular pay for week two of the pay period – from [redacted] There was no leave claimed and no other time transactions, i.e., compensatory time, listed on the report, particularly for [redacted] as well as [redacted] (See IGCIRTS Index 2)

The T&A record was created (automatically) on [redacted] at 07:17 p.m. by the System; validated by the timekeeper – [redacted] – on August 14, 2008 at 3:50 p.m.; and certified by the supervisor – [redacted] NOAA – on [redacted] at 10:04 a.m. (See IGCIRTS Index 2)

All Redactions Pursuant to b(7) (c)

On January 7, 2011, [redacted] was provided a Kalkines Warning regarding this complaint and was informed the administrative investigation involved his time and attendance during the [redacted] Conference held in [redacted] He agreed to conduct an interview and subsequently provided an affidavit concerning this matter. [redacted] also provided copies of two email messages related to the incident. (See IGCIRTS Indexes 4 and 5)

[redacted] explained that either on [redacted] after already having arrived in [redacted] for the conference, he went on a run around the city during the evening. He stated that while running he saw [redacted] in the [redacted] and diverted his run to check out the [redacted] and see if there was any chance of participating in [redacted] noted that he [redacted] when [redacted] hobby. (See IGCIRTS Index 4)

[redacted] stated that he was told by one of the [redacted] that although normally there would be Wednesday [redacted] it was canceled that week due to preparations for [redacted] scheduled for the upcoming weekend. [redacted] explained that the individual told him that if he was interested, he could leave some contact information and he (the [redacted] would pass it along in case anyone needed [redacted] stated that on [redacted] he was contacted by a [redacted] who invited him to join them in the [redacted] said he accepted the invitation with the understanding that he would only be able to participate on Saturday because he had to return to the conference on Sunday. These email messages corroborated what [redacted] had reported and he attached copies of them to his affidavit. (See IGCIRTS Index 4)

[redacted] noted that the conference schedule was structured so that there were presentations all day on Thursday, Friday, Sunday, and Monday, with Saturday left as an open day with the only scheduled event being an optional field trip that consisted of either a walking tour of the city, a boat trip to visit a [redacted] or a bus trip to visit a [redacted] He understood that there was no requirement - at least none he was aware of - that attendees participated in any one of the organized field trips on Saturday. [redacted] recalled that he informed [redacted] then [redacted] NOAA Office of Law Enforcement and one of the organizers of the conference, of his intention to participate in the [redacted] on Saturday so that his whereabouts would be known. He stated that he had participated in the [redacted] on Saturday only and on Sunday he returned to the [redacted] conference and attended the presentations. (See IGCIRTS Index 4)

RECOMMENDATION

Based on the information listed above it is recommended that this case be closed.

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

TABLE OF EXHIBITS
IG CIRTS Index Numbers

1	Incoming Complaint
2	IRF Receipt/Review of Records – T&A Records for [redacted]
3	IRF Review of Records – [redacted] Agenda
4	Affidavit for [redacted]
5	Kalkines Warning for [redacted]

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Chicataw Construction Corporation	FOP-WF-10-0177-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On September 17, 2004, information was received alleging that six companies (Takota Corporation, Reitmeyer &Associates Inc, [redacted] Cooper Construction, Cooper Contracting, and Chicataw Construction Inc.) were involved in bid rigging in connection with Departments of Homeland Security (DHS), Justice (DOJ), Defense (DOD), and the General Services Administration (GSA) construction contracts. The companies were also involved in a number of suspicious mistakes in bid claims. [Index #2]

DHS Office of Inspector General (OIG) initiated an investigation, which revealed that the suspect companies have also had contracts with a number of other agencies, to include Departments of Energy (DOE), Commerce (DOC) via National Oceanic and Atmospheric Administration (NOAA), Agriculture (DOA), Veterans Affairs (VA), and Interior (DOI). A joint, Grand Jury investigation amongst the aforementioned Departmental OIGs was pursued and lead by a Senior Trial Attorney from DOJ's, Antitrust Division. [Index #s 2, 29]

Results / Summary of Investigation

Based on the results of the investigation, [redacted] Chicataw, pled guilty to one count 18 USC §1001 and was sentenced to three (3) years probation. He was also fined $5,000, and $100 for court fees. On July 18, 2007 [redacted] and its Affiliates, Chicataw Construction Incorporated and Cooper Construction were debarred until June 15, 2010. [Index # 4]

Subsequent to [redacted] plea, the investigation focused on Reitmeyer & Associates. However, despite investigative efforts, on August 27, 2008 the US Attorney recommended the Grand Jury be closed on the case due to difficulty in succeeding at trial. A closure memo was drafted by DOJ, however, Asst. US Attorney; [redacted] is awaiting permission to distribute the memo outside of the Department. [Index #s 5 & 28]

Distribution: OIG ___ Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):			
Signature of Case Agent: [redacted]	Date: 12/1/10	Signature of Approving Official:	Date:
Name/Title: [redacted] Special Agent		Name/Title: [redacted] Assistant Special Agent-in-charge	

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

Methodology

This case was conducted through a review of witness interviews and documentation including electronic mail, public domain documentation, and internal correspondence and/or documents from the National Oceanic and Atmospheric Administration. In addition, assistance was provided through additional interviews of witnesses and the Subject by the Offices Of Inspector General for DHS, DOD, GSA, VA, and DOI, Washington DC."

DETAILS OF INVESTIGATION

On September 17, 2004, DOC OIG OI joined DHS and other federal agencies in an investigation of six companies (Takota Corporation, Reitmeyer &Associates Inc, [redacted] Cooper Construction, Cooper Contracting, and Chicataw Construction Inc.) were involved in bid rigging in connection with Departments of Homeland Security (DHS), Justice (DOJ), Defense (DOD), and the General Services Administration (GSA) construction contracts. The companies were also involved in a number of suspicious mistakes in bid (bids inadvertently set too low) claims. [Index #2]

DHS Office of Inspector General (OIG) initiated an investigation, which revealed that the suspect companies have also had contracts with a number of other agencies, to include Departments of Energy (DOE), Commerce (DOC) via National Oceanic and Atmospheric Administration (NOAA), Agriculture (DOA), Veterans Affairs (VA), and Interior (DOI). A joint, Grand Jury investigation amongst the aforementioned Departmental OIGs was pursued and lead by a Senior Trial Attorney from DOJ's, Antitrust Division. [Index #s 2, 29]

Over the next several months, Agency investigators from DHS, DOD, DOE, DOC, DOI, and DOA reviewed documents obtained as a result of Grand Jury subpoenas. Additionally, each participating Agency identified, obtained, and reviewed documentation specific to their contracts with Takota Corporation, Reitmeyer &Associates Inc, Cooper Construction, Cooper Contracting, and / or Chicataw Construction Inc. [Index #s 6, 15 18, 19, 27]

Document review by OIG investigators indicated that DOC through NOAA had contracts with Chicataw the companies Takota and [redacted] were associated through its [redacted] and Cooper Construction, Cooper Contracting, and Chicataw Construction were associated through [redacted] [Index # 15, 17, 27]

Interviews of current and former, Cooper Construction, Cooper Contracting, and / or Chicataw Construction Inc. employees indicated that [redacted] initially worked with [redacted] however a falling out between the two resulted in a split. Further, interviews indicated that Cooper / Chicataw provided false references on government bids and that mistake in bids were claimed for a number of bids; and in some cases when the company believed they could win by knowingly bidding below cost and then through change orders, reach a level of profitability. [Index #s 8, 12, 13, 16, 21]

Based on the results of the investigation, which initially focused on [redacted] companies, Cooper and Chicataw, [redacted] pled guilty to one count 18 USC §1001 and was sentenced to three (3) years probation. He was also fined $5,000, and $100 for court fees. On July 18, 2007 [redacted] and its Affiliates, Chicataw Construction Incorporated and Cooper Construction were debarred until June 15, 2010. [Index # 4]

Subsequent to [redacted] plea, the investigation focused on Reitmeyer & Associates. Review of documents revealed that NOAA also had contracts with Reitmeyer and Associates. Interviews of current and former

employees of Takota Corporation and/or Reitmeyer &Associates Inc indicated that [redacted] has also made mistake in bid claims. [Index #s 7, 9, 10, 17, 19]

However, despite investigative efforts, on August 27, 2008 the US Attorney recommended the Grand Jury be closed on the case due to difficulty in succeeding at trial. A closure memo was drafted by DOJ, however, Asst. US Attorney; [redacted] is awaiting permission to distribute the memo outside of the Department. [Index #s 5, 28]

All allegations were addressed and no additional investigative activity is contemplated. All investigative activities have been documented in the Inspector General Complaint Intake and Tracking System (IG CIRTS). Since no additional criminal or civil violations exist, it is recommended this investigation be closed with no further action.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

All Redactions Pursuant to b(7) (c)

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
[redacted] National Oceanic & Atmospheric Administration (NOAA) 325 S. Broadway Boulder, CO	FOP-DF-10-0317-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On February 17, 2010, the Office of Investigations (OI) was contacted by [redacted] in the NOAA [redacted] at the Boulder Labs. They made complaints concerning a hostile workplace. Specifically, they recounted an incident from January 21, 2010 in which a [redacted] was arrested. The arrest stemmed from [redacted] bringing in a brownie baked with "medical marijuana". The complainants alleged [redacted] "has a license to sell" medical marijuana. Initially, [redacted] offered marijuana-laced brownies to her co-workers for $5 each, then later said they were free. The complainants alleged [redacted] frequently comes to work either drunk or high. They also alleged threatened and actual physical violence in the workplace by [redacted] including flattening/slashing tires, damaging personal cars, and making threats; they describe her as vindictive and hostile. They claim she has access to personally identifiable information (PII) and client information, and they fear she will use that information to her advantage and worry about their safety. They complained of a disruptive and hostile work environment that their supervisor, [redacted] would not address. This case was opened to assess the potential for workplace violence. (Exhibit 1)

RESULTS/ SUMMARY OF INVESTIGATION

Our investigation helped facilitate a personnel action which removed the workplace violence concern. The controlled substance charged resulted in a judicial disposition.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):			
Signature of Case Agent: [redacted]	Date: 3/15/2011	Signature of Approving Official:	Date:
Name/Title: [redacted] Assistant Special Agent in Charge, DFO		Name/Title: [redacted] Special Agent in Charge	

All Redactions Pursuant to b(7) (c)

METHODOLOGY

This case was conducted through interviews and document review, as well as coordination with other law enforcement agencies and the United States Attorney's Office.

DETAILS OF INVESTIGATION

Our investigation found that in addition to the drug arrest, a 12" knife was recovered at [redacted] desk, and the complainants viewed that as yet another attempt at intimidation. (Exhibit 3) Contact with [redacted] found she wanted to take immediate disciplinary action to protect the workplace, but claimed the WFMO HQ managers and attorneys prevented her from doing so. (Exhibit 2) Contact with WFMO HQ found they wished to pursue a proposal to remove [redacted] from federal service, but could not proceed until they had a copy of the police report or at least the lab report confirming the presence of marijuana. OI facilitated the release of the report through the USAO and DOC Police, which was sent to WFMO HQ. (Exhibits 4, 5) OI also presented the knife portion of this case to the AUSA as a potential violation of 18 USC §930, but this portion of the case was declined. (Exhibit 6)

On March 26, 2010, [redacted] case was heard on the Petty Offense docket in US District Court. [redacted] agreed to a plea bargain to dispose of this case by paying a $150 "collateral forfeiture", which is a disposition that is a fine to dispose of the case, but does not result in any admission of guilt, or any court finding of guilt. On May 10, 2010, [redacted] was presented with a letter of removal, effective May 14, 2010. (Exhibits 7, 8, 9, 10)

Based on the above information, it is recommended that this investigation be closed without further investigative action.

TABLE OF ATTACHMENTS/INDEXES

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5	[redacted] on release of report	6
6	IRF – Contact with AUSA	5
7	Email with [redacted] about referral	7
8	Proposal to Remove [redacted]	8
9	Dismissal Letter to [redacted]	9
10	Referral Return	11

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Falsification of EQs by [redacted] in Las Vegas, NV [redacted] Las Vegas, Nevada	FOP-DF-10-1046-I
	TYPE OF REPORT ☐ Interim ☒ **Final**

BASIS FOR INVESTIGATION

On July 9, 2010, the Office of Investigations (OI) received a complaint authored by an [redacted] The complaint was co-signed by [redacted] The complaint alleged enumerator questionnaires (EQs) were falsified by, or at the direction of, [redacted] for FOS office one (FOS01). The falsification alleged [redacted] altered EQs after the enumerators had certified them, stating, "These changes were not made to correct minor or careless mistakes, but rather they had the effect of changing the facts in a wholesale manner as to give rise to new or different Records of Contact information...". Furthermore, the complainants alleged records covered by Title 13 or which contained Personally Identifiable Information (PII) were stored in a manner inconsistent with Census policies for security and data stewardship. The complainants further cited various other false certifications of completed EQs and address binders, and interference by [redacted] in the ability of [redacted] to monitor performance of the employees under them. (Exhibits 1, 33)

RESULTS/ SUMMARY OF INVESTIGATION

This investigation confirmed that Title 13 and PII records were maintained in a locked storage room in an alarmed facility owned and operated by a private mobile home park. No Census personnel had the ability to access those records without the manager of the mobile home park, or one of three other maintenance or security personnel of the mobile home park, opening the storage room. None of those four people with access were Title 13 cleared, but while they

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):			
Signature of Case Agent: [redacted]	Date: 3/22/2011	Signature of Approving Official:	Date:
Name/Title: [redacted] Assistant Special Agent in Charge, DFO		Name/Title: [redacted] Special Agent in Charge	

potentially had access, there is no evidence they actually did access any Title 13 or PII material. However, since they have the keys and ability to manipulate the security systems, there is no way to confirm whether improper access was made. Except for the combined statements of the complainants, there is no other evidence to support the claim of any falsification of official documents. Furthermore, the claim of whistleblower retaliation could not be substantiated.

METHODOLOGY

This case was conducted through interviews and document review, including electronic mail, public domain documentation, Internet sources, correspondence from witnesses and the subject, and documents from Census. We took affidavits and/or made recordings of employee statements, and presented this matter to the United States Attorney's Office.

DETAILS OF INVESTIGATION

The original complaint letter signed by [redacted] was dated June 22, 2010. Because of some old addresses the complainants said they derived from Census training materials, OI did not receive this letter until complainant [redacted] contacted the complaint intake unit on July 9, 2010 (Exhibit 3). Contact by the complaint intake unit verified the complaint and obtained further details, including that all eight complainants allegedly witnessed [redacted] falsifying EQs by changing data (such as the response "vacant" to "occupied"), fabricating proxy information, and fabricating responses from residents who refused to provide answers to certain questions, (e.g., race, number of household members.) [redacted] suggested that as many as 3,000 EQs could contain fictitious information (Exhibits 2, 4, 33).

On July 12, 2010, SAC [redacted] and ASAC [redacted] were notified of the complaint while in travel status and diverted to Las Vegas, arriving the afternoon of July 13, 2010. That night they met with several of the complainants and individually interviewed them, subsequently reducing the results of those interviews into affidavits which were sworn to by the complainants. Much of the complainant's concerns revolved around the way [redacted] FOS01 and issues that were administrative in nature, including a potential labor concern in that many of them were expected to work over 40 hours per week without compensation. They claimed if they did not work those extra hours, they feared they would lose their positions as [redacted].[1] (Exhibits 9-15)

Clarification concerning the falsification issues found that nobody had actually witnessed [redacted] change population counts. Further, the conduct they all focused on was where [redacted] could use several enumerators at one time to write into the EQs precisely what she told

[1] The complainants said [redacted] threatened that they would lose their jobs if they worked overtime. The agent noted that Census handbooks provided by [redacted] (Exhibit 23) specifically state as Census policy, "If you work overtime without supervisory approval, you will be subject to termination." (pg 3-10, 11)

them. The complainants indicated that [redacted] would use the same proxy on many of these forms. The complainants said [redacted] had the enumerators certify the form, but some declined to do so since they did not actually go to the facility. (Exhibits 9-15) During an interview with [redacted] she explained that because of the high rate of timeshare, vacation or foreclosed properties, there would frequently be times when one manager or other proxy could vouch for several properties as to whether it was occupied. In these cases, [redacted] said it was within protocol to use the same proxy for all the properties he or she could vouch for (Exhibit 7). This was confirmed by [redacted] (Exhibit 8).

Some of the complainants claimed to have witnessed [redacted] change the status of a property from vacant to occupied. The complainants attributed various reasons to why [redacted] might do this, including that counting locations as occupied resulted in the city and/or county "making more money", which was a reference to tax dollars and similar benefits (Exhibit 9-15). [redacted] explained that the enumerators did not understand what they were doing, and often she would change question S2 on the EQ concerning whether a property was occupied or vacant. This was because timeshare, vacation and similar properties often were occupied as of April 1, 2010, but question S3 asks further details that categorizes such property differently. She clarified a timeshare is never considered an occupied property – it is always considered a seasonal property, so question S2 would be answered yes, but question S3 would qualify it as a vacation or seasonal property and therefore make it a "00" property for owned rather than vacant, but not occupied and used only as a seasonal property. [redacted] denied ever saying the county/city made more money if a property was occupied. She did recall saying that she saw an advertisement which said for every person counted in the Census in that area, it equated to about $10,000 per person over a ten year period (Exhibit 7).

The agent requested the Denver Regional Census office conduct a quality assurance analysis of the EQ activity for [redacted] FOS during the period of May 1, 2010 to July 1, 2010. This office reported that in addition to their regular QA audits, they selected by random sample a number of EQs for closer review, primarily from locations known as Bella Vita and Panorama Towers, which were two locations cited by the complainants. Their analysis looked at outliers or anomalies in what they expected and what other FOS' reported. Their findings uncovered no distinct patterns or evidence of variances that would suggest the Census has been tampered with. (Exhibit 35)

SECURITY OF TITLE 13/PII MATERIALS

The complainants alleged that [redacted] was able to secure storage space for Title 13/PII materials at Eldorado Estates Trailer Home Park, located at 4525 W. Twain Blvd in Las Vegas. They all specifically allege finished EQs, telephone logs, and similar materials were kept in a storage room at the community center in Eldorado Estates normally used to store tables, chairs and various decorations and cleaning supplies. The complainants stated the storage room was secured by the Eldorado Estates managers and maintenance personnel, who had the only keys;

access by Census personnel was not possible. The materials were kept in boxes in the storage room, not locked cabinets. (Exhibits 2, 4, 9-15)

On July 14, 2010, [redacted] of Eldorado Estates, was interviewed and showed the agents the space utilized by the Census. [redacted] said she agreed to donate space to the Census for work from about April 26, 2010 to June 26, 2010. She allowed them to use an all-purpose community room, as well as a storage room in one corner of that community room. [redacted] said she was aware that Census material was confidential and needed to be secured. She said the storage room was locked at night, and only she and three other people (security and maintenance) have keys to that room. Additionally, the space is secured by an alarm system and has cameras in which the digital tapes are kept for about two weeks before being erased. [redacted] said during the period Census occupied the space, she had no alarms or intrusions into the building. Furthermore, the mobile home park is a gated community, although during the first few weeks the Census was there, construction on the road caused them to leave that gate open. [redacted] said the entry gate was turned back on the first week of June 2010, and the Census employees given a code which allowed them entry. [redacted] said no Census personnel had keys to the storage room. She said they would open the storage space only after somebody from Census arrived. [redacted] said Census personnel were typically working from 9 am to 9 pm. The facility was locked at 9 pm. (Exhibit 5, See also photos)

One of the complainants, [redacted] said she routinely arrived at Eldorado Estates early because of transportation issues. [redacted] claims that from anytime from 7:30 am on the Eldorado Estates maintenance staff would open the storage room door and leave it open while no Census personnel were on-site. Census personnel did not usually arrive until just before 9 am. (Exhibit 12)

The [redacted] stated that her [redacted] had inspected the facility at Eldorado Estates and had "approved" [redacted] use of this space as a storage unit. The [redacted] said she thought Census personnel possessed the key to access those materials, but said this change of facts did not really cause her much concern (Exhibit 8). The [redacted] confirmed she gave specific approval to [redacted] for her to use this space for storage of Census materials. (Exhibit 30)

WHISTLEBLOWER RETALIATION

Furthermore, the complainants claim that because of their complaint, they have suffered retaliation by [redacted] Such retaliation has included everything from demotions to terminations. The witnesses all claim [redacted] made a statement in front of witnesses that the demotions were because they signed the complaint letter. In two cases, the witnesses [redacted] only to later receive an SF-50 noting they were instead [redacted] or [redacted] (Exhibits 9-15, 20, 21). Though the complainants claimed to have witnesses to [redacted] statements, interviews of those witnesses was unable to confirm any recollection by any of them that [redacted] said anything about the complaint letter or the demotions or

[redacted] being related to that. (Exhibits 26, 28, 29, 31, 32)

[redacted] said the reason for the personnel actions had nothing to do with [redacted] complaints because she did not even know about them until after the personnel actions were taken. She said on June 22, 2010, the LCO notified her and [redacted] in the area that contrary to their original plans, Census was going to move from the NRFU to VDC phases with less personnel. This meant for [redacted] that she had to let several people go, and reduce her number of Crew Leaders from ten to six. [redacted] said she had already been unsatisfied with several of her Crew Leaders performance. For instance, she pointed out that late into NRFU, [redacted] had completed only one of the required three visits on several of her EQs. This was unacceptable, and, along with an insubordinate attitude, was the basis for why she removed some from their Crew Leader position. Otherwise, she had to choose her best six Crew Leaders. (Exhibit 7)

[redacted] claims she never saw the June 22, 2010 complaint letter. [redacted] asked her about it on about June 30, 2010, but [redacted] said she had no knowledge of any letter. [redacted] said she never read it until July 14, 2010. [redacted] denied every making a statement in a meeting that demotions were a result of the complaint letter. (Exhibit 7)

[redacted] pointed out that as the Census is winding down, they deal with a lot of employees who are disgruntled that they are being let go, while others remain employed. [redacted] pointed out that the complaint letter was dated the same day as when the notice went out from the LCO that the reduction in force was coming. [redacted] said she was very surprised to see the names that had signed the June 22, 2010 complaint letter because on June 19, 2010, several of those [redacted] had been in her office praising [redacted] for the good work she was doing for the Census. [redacted] said this shocked her all the more when she learned that some of the signors had recanted, saying they had signed the letter without really reading it. [redacted] said one such person was [redacted] confirmed that everyone in their office had presumed they would move into the VDC portion of NRFU with the same staffing, but on June 22, 2010, it was made known to staff that Census HQ had opted to cut positions. [redacted] said this announcement was made public, and while the decisions about who to cut may not have been made exactly yet, she suspected the letter was a sort of preemptive attempt [redacted][2] [redacted] pointed out that following June 22, 2010, most of the signors of the letter have [redacted] (Exhibit 8)

The [redacted] office was asked to provide documentation about the reasons for the terminations where apparently the person had instead resigned. Those records included supporting documentation, and the [redacted] said that

[2] The agent notes that in materials provided by [redacted] (Exhibit 23), their Census handbook contained training related to whistleblower retaliation (Section B of Census Handbook for Enumerators), and [redacted] had highlighted and marked page B-9, 10 specifically related to whistleblower protections.

[redacted] had indeed resigned, and Census was in the process of changing his SF-50 to properly reflect this. The difference between [redacted] and [redacted] situation is that [redacted] rescinded her resignation within 13 hours[3] of its tender, though [redacted] internal reporting to her manager indicates [redacted] rescission was not accepted. The DAPPS D308 report from Census shows [redacted] last work day was June 23, 2010, reporting 5 ½ hours of work. (Exhibits 8, 31)

OTHER INFORMATION

Several other employees were interviewed, but none of them could confirm the deliberate falsification of any EQs. (Exhibits 24-26, 28-31, 33)

[3] Internal Census reports obtained during this investigation show [redacted] notified her immediate supervisor of her resignation at about 1930 hours on June 21, 2010, and asked by telephone to rescind that decision at 0820 hours on June 22, 2010. [redacted] report indicates [redacted] told her she resigned at about 1730 hours on June 21, 2010, but deferred equipment turn-in until June 23, 2010 at 9 am. [redacted] timeline indicates that [redacted] immediate supervisor, [redacted] called [redacted] on the morning of June 22, 2010 to tell her [redacted] changed her mind about the resignation. (Exhibits 8, 32)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

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REPORT OF INVESTIGATION

CASE TITLE: [redacted]	FILE NUMBER: HQ-CC-10-0021-I
DOB: [redacted] National Oceanic & Atmospheric Administration National Environmental Satellite, Data and Information Service Silver Spring, MD	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On August 29, 2006, the OIG received information from the National Oceanic & Atmospheric Administration (NOAA), Computer Incident Response Team (CIRT) alleging [redacted] was downloading and viewing pornography on his NOAA assigned computer. NOAA CIRT initiated network monitoring of the NOAA network connection used by [redacted] Upon review of the network traffic provided by NOAA CIRT, graphical images were discovered that appeared to be young nude children. NOAA CIRT referred the analysis to OIG and released the captured network data/traffic as well as the computer used by [redacted] for forensic analysis.

RESULTS/SUMMARY OF INVESTIGATION

A review of [redacted] computer network traffic and an examination of the hard drive removed from his desktop computer did not disclose evidence of validated child pornography. A CD-ROM containing 531 adult pornographic images obtained during the review of [redacted] computer data was provided to the Office of General Council, (OGC) Labor Law Division for their use in administrative actions. [redacted] voluntarily retired from government service on [redacted] prior to any adverse administrative actions.

DETAILS OF INVESTIGATION

Distribution: OIG _x_ Bureau/Organization/Agency Management __ ____ Other (specify):

Signature of Case Agent: [redacted]	Date: 5/25/2011	Signature of Approving Official: [redacted]	Date: 5/25/2011
Name/Title: [redacted] Director		Name/Title: [redacted] Director, Computer Forensics	

All Redactions Pursuant to b(7) (c) unless otherwise noted

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

On August 29, 2006, the OIG received information from the National Oceanic & Atmospheric Administration, (NOAA), Computer Incident Response Team (CIRT) alleging [redacted] was downloading and viewing pornography on his NOAA assigned computer. NOAA CIRT initiated network monitoring of the NOAA network connection used by [redacted] During the period September 22, 2006 through October 17, 2006, NOAA CIRT captured network traffic from the computer network connection used by [redacted] During the course of the review of the data, NOAA CIRT observed what appeared to be child pornography and referred the network traffic/data and [redacted] hard drive OIG for further review.

On October 20, 2006, Assistant United States Attorney [redacted] Eastern District of Virginia, Alexandria, Virginia, advised that [redacted] did not have a reasonable expectation of privacy (REP) for the data contained on his government issued computer; nor did [redacted] have REP for his network activity across the government owned network connection. AUSA [redacted] provided a search warrant to review these items was not necessary based on the NOAA warning banner and the ownership of the network.

(b)(7)(E) [redacted] was used to conduct computer forensic media analysis of the hard drive removed from [redacted] computer. The hard drive is identified as a Maxtor, Diamond Max Plus 9, 160GB, Serial number Y48Q2SWE. Forensic media analysis disclosed the hard drive contained a total of 13,853 graphical images of all types.

During the period October 20, 2006 through October 27, 2006, computer forensic media analysis of the data provided by NOAA CIRT disclosed twelve graphical images and two movie files that appeared to contain child pornography. On October 30, 2006, these files were referred to Inspector [redacted] United States Postal Inspection Service, National Center for Missing and Exploited Children (NCMEC) Alexandria, Virginia, for evaluation and validation. On November 6, 2006, NCMEC reported the images provided for analysis did not contain child pornography.

This investigation was coordinated with [redacted] NOAA Human Resources, Employee Relations. [redacted] requested OIG coordinate this investigation with Office of General Counsel (OGC) for potential administrative actions.

This investigation was coordinated with [redacted] OGC, Labor Law Division. On June 19, 2007, a CD-ROM containing 531 adult pornographic images was provided to [redacted] for use in administrative proceedings against [redacted]

On [redacted] voluntarily retired from government service. This retirement occurred prior to any adverse administrative actions being taken by NOAA.

This investigation is closed.

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE: [redacted] National Oceanic and Atmospheric Administration National Weather Service National Center for Environmental Protection Space Environment Center Boulder, Colorado	FILE NUMBER: HQ-CC-10-0023-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On July 19, 2006, OIG received information from [redacted] that [redacted] had been identified by the NOAA Computer Incident Response Team (CIRT) as viewing adult pornography from his assigned NOAA computer. [redacted] further related this had been an ongoing issue and [redacted] had been counseled by the previous Director on two prior occasions. Each time he was counseled [redacted] indicated that he knew he had a problem and would seek counseling and stop the activity. [redacted] is assigned as the [redacted] NOAA NWS [redacted] and his duties include [redacted] Due to [redacted] position as the [redacted] and his network access, [redacted] requested OIG assistance in this administrative matter.

This investigation concerns alleged violations of Title 5, United States Code, Sections 2635.101 and 2635.704, relating to Misuse of Government Equipment.

Distribution: OIG _X_ Bureau/Organization/Agency Management __ ___ Other (specify):			
Signature of Case Agent: [redacted]	Date: 5/31/2011	Signature of Approving Official: [redacted]	Date: 5/31/2011
Name/Title: [redacted] Special Agent		Name/Title: [redacted] Director, Computer Forensics	

All Redactions Pursuant to b(7)(c) unless otherwise noted

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

RESULTS/SUMMARY OF INVESTIGATION

Thirty-nine Images of adult pornography discovered in allocated files were provided to NOAA management to use during their administrative inquiry. [redacted] was interviewed by OIG and admitted to using his government computer and network access to view adult pornography.

METHODOLOGY

(b)(7)(E)

Computer Forensic Media Analysis using [redacted] was used to analyze the provided media in this investigation. Four computer hard drives were received for analysis, two of which were formatted as Unix based drives and did not contain any data. Computer forensics validated thirty nine images of adult pornography from allocated files on the computer hard drives. Note: Allocated files are those files recognized by the computer operating system as being "active" on the computer. They reside in disk space and are tracked by the operating system and have associated file dates and times. These associated dates and times report the date and time the file was accessed, created or modified by a user of the computer. At the request of NOAA Management, the original hard drives were imaged and returned to NOAA to permit [redacted] to continue working.

DETAILS OF INVESTIGATION

On July 19, 2006, [redacted] related [redacted] was using his assigned NOAA computer to view adult pornography. Based on [redacted] position as a [redacted] responsible for [redacted] requested OIG conduct a forensic review of the computer hard drives in [redacted] computer to determine if there was evidence of pornography. The Assistant Inspector General for Investigations approved OIG participation in this administrative inquiry. [redacted] sent four computer hard drives to OIG for review. They are identified as:

Seagate Barracuda, SN: 3HS12089, 37.3 GB
Seagate Barracuda, SN: 5MT1QVFN, 149 GB
Seagate Cheetah, SN: 3DF04X2X (Unix drive)
Seagate Cheetah SN: 3DG03WQM (Unix drive)

On August 21, 2006, the Seagate Barracuda hard drive, serial number 3HS12089 was imaged by Investigator [redacted] using [redacted] This image was stored on the Lacie storage drive, SN153009564 for analysis. (b)(7)(E)

On August 23, 2006, the Seagate Barracuda hard drive, serial number 5MT1QVFN was imaged by Investigator [redacted] using [redacted] This image was stored on the Lacie storage drive, SN153009564 for analysis. (b)(7)(E)

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During the period August 23, 2006 through September 4, 2007, computer forensic media analysis disclosed the presence of 39 unique adult pornographic pictures from allocated hard drive space that contained date and time file information associated with the picture files. The files were provided to NOAA management on CD-ROM. These files are identified as:

Name	Size	Date created	Date accessed	Date modified
a.jpg-27a99ccf-2335a8ee.jpg	5 KB	5/10/2004 7:02 PM	5/10/2004 7:02 PM	5/10/2004 7:02 PM
b.jpg-27b7b450-497e5215.jpg	5 KB	5/10/2004 7:02 PM	5/10/2004 7:02 PM	5/10/2004 7:02 PM
c.jpg-27c5cbd1-54935486.jpg	5 KB	5/10/2004 7:02 PM	5/10/2004 7:02 PM	5/10/2004 7:02 PM
d.jpg-27d3e352-22fa61e3.jpg	5 KB	5/10/2004 7:02 PM	5/10/2004 7:02 PM	5/10/2004 7:02 PM
DSCN0055.JPG	561 KB	11/4/2005 12:53 PM	11/4/2005 12:53 PM	11/4/2005 12:53 PM
DSCN0057.JPG	575 KB	11/4/2005 12:55 PM	11/4/2005 12:55 PM	11/4/2005 12:55 PM
DSCN0064.JPG	574 KB	11/4/2005 12:58 PM	11/4/2005 12:58 PM	11/4/2005 12:58 PM
DSCN0065.JPG	579 KB	11/4/2005 12:58 PM	11/4/2005 12:58 PM	11/4/2005 12:58 PM
e.jpg-27e1fad3-2ac5766a.jpg	5 KB	5/10/2004 7:02 PM	5/10/2004 7:02 PM	5/10/2004 7:02 PM
e7.jpg	164 KB	12/12/2005 4:38 PM	12/12/2005 4:38 PM	12/12/2005 4:38 PM
e71.jpg	164 KB	12/12/2005 4:38 PM	12/12/2005 4:38 PM	12/12/2005 4:38 PM
e72.jpg	164 KB	12/12/2005 4:38 PM	12/12/2005 4:38 PM	12/12/2005 4:38 PM
e73.jpg	164 KB	12/12/2005 11:58 AM	12/12/2005 11:58 AM	12/12/2005 11:58 AM
f.jpg-27f01254-1d69a767.jpg	4 KB	5/10/2004 7:02 PM	5/10/2004 7:02 PM	5/10/2004 7:02 PM
f4.jpg	160 KB	12/12/2005 4:38 PM	12/12/2005 4:38 PM	12/12/2005 4:38 PM
f5.jpg	156 KB	12/12/2005 4:38 PM	12/12/2005 4:38 PM	12/12/2005 4:38 PM
f41.jpg	160 KB	12/12/2005 4:38 PM	12/12/2005 4:38 PM	12/12/2005 4:38 PM
f42.jpg	160 KB	12/12/2005 4:38 PM	12/12/2005 4:38 PM	12/12/2005 4:38 PM
f43.jpg	160 KB	12/12/2005 11:56 AM	12/12/2005 11:56 AM	12/12/2005 11:56 AM
f51.jpg	156 KB	12/12/2005 4:38 PM	12/12/2005 4:38 PM	12/12/2005 4:38 PM
f52.jpg	156 KB	12/12/2005 4:38 PM	12/12/2005 4:38 PM	12/12/2005 4:38 PM
f53.jpg	156 KB	12/12/2005 11:55 AM	12/12/2005 11:55 AM	12/12/2005 11:55 AM
g.jpg-27fe29d5-5a7ce1db.jpg	4 KB	5/10/2004 7:02 PM	5/10/2004 7:02 PM	5/10/2004 7:02 PM
h.jpg-2801a156-5d2f9269.jpg	4 KB	5/10/2004 7:03 PM	5/10/2004 7:03 PM	5/10/2004 7:03 PM
img01.gif-6f8f12b1-4af40f9d.gif	30 KB	1/4/2006 4:58 PM	1/4/2006 4:58 PM	1/4/2006 4:58 PM
img02.gif-6f8d2a32-57677927.gif	31 KB	1/4/2006 4:58 PM	1/4/2006 4:58 PM	1/4/2006 4:58 PM
img03.gif-6feb41b3-77a08a15.gif	33 KB	1/4/2006 4:58 PM	1/4/2006 4:58 PM	1/4/2006 4:58 PM
img05.gif-6fc770b5-68e4cfd11.gif	35 KB	1/4/2006 4:58 PM	1/4/2006 4:58 PM	1/4/2006 4:58 PM
th_e7.jpg	6 KB	12/12/2005 4:42 PM	12/12/2005 4:42 PM	12/12/2005 4:42 PM
th_e71.jpg	6 KB	12/12/2005 4:42 PM	12/12/2005 4:42 PM	12/12/2005 4:42 PM
th_e72.jpg	6 KB	12/12/2005 3:12 PM	12/12/2005 3:12 PM	12/12/2005 3:12 PM
th_f4.jpg	5 KB	12/12/2005 4:42 PM	12/12/2005 4:42 PM	12/12/2005 4:42 PM
th_f5.jpg	5 KB	12/12/2005 4:42 PM	12/12/2005 4:42 PM	12/12/2005 4:42 PM
th_f41.jpg	5 KB	12/12/2005 4:42 PM	12/12/2005 4:42 PM	12/12/2005 4:42 PM
th_f42.jpg	5 KB	12/12/2005 4:42 PM	12/12/2005 4:42 PM	12/12/2005 4:42 PM
th_f43.jpg	5 KB	12/12/2005 3:12 PM	12/12/2005 3:12 PM	12/12/2005 3:12 PM
th_f51.jpg	5 KB	12/12/2005 4:42 PM	12/12/2005 4:42 PM	12/12/2005 4:42 PM
th_f52.jpg	5 KB	12/12/2005 4:42 PM	12/12/2005 4:42 PM	12/12/2005 4:42 PM
th_f53.jpg	5 KB	12/12/2005 3:12 PM	12/12/2005 3:12 PM	12/12/2005 3:12 PM

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
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On September 6, 2007, Special Agents [redacted] after providing Garrity warnings, interviewed [redacted] at the NOAA office in Boulder, Colorado. [redacted] admitted he had been using his government computer to view pornographic images and specifically admitted to the thirty-nine images discovered during forensic analysis. [redacted] related he believed pornography was an addiction and he was seeking counseling to overcome his addiction. He said he began viewing pornography after [redacted] and had been [redacted] since that time. [redacted] related he had been counseled by NOAA on previous occasions concerning viewing pornography at work. (Exhibit 1)

On October 18, 2007, OIG NOAA CIRT advised they intercepted computer network internet traffic from a user of the Boulder network indicating a user had logged into the wireless network and going into adult oriented chat rooms. CIRT investigation ultimately determined this user was [redacted] and provided the information to NOAA management for action.

On September 10, 2010, [redacted] was terminated due to misuse of Government Resources. (Exhibit 3) [redacted] appealed to the Merit Systems Protection Board (MSPB) and was allowed to resign in lieu of being terminated. (Exhibit 4)

This investigation is closed.

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Alaska Fisheries Science Center (AFSC) Seattle, Washington	FOP-DN-10-0039-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On November 4, 2009, the Office of Investigations (OI) received complaints alleging numerous supervisory abuses, mismanagement and fraud. (Serial 1) Most of those allegations were administrative in nature, however, some of the allegations required further investigation into potential criminal misconduct. Those issues which are the focus of this report include the:

- Fraudulent use of a government purchase card by AFSC employee [redacted] coupled with [redacted] collusion to cover-up the fraudulent use. Furthermore, it was alleged that [redacted] together with [redacted] deceptively changed records, destroyed the supporting purchase card records, and submitted falsified documents.
- Intentional and repeated breaches of security and improper computer security protocols, which jeopardized the integrity of Department-level systems.
- Misappropriation of federal funds in that AFSC [redacted] personnel used appropriated funds to build a "tie-down" for the personal yacht of a [redacted] named [redacted] The alleged potential loss was as much as $20,000.
- Irregular lease at the facility in Kodiak that was costing AFSC significantly more money, which even though identified and acknowledged as a problem in 2005, still continued without corrective action.
- Theft by conversion in that retired NOAA personnel were allowed to use NOAA facilities and equipment without cost in furtherance of private business interests.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ___ Other (specify):			
Signature of Case Agent: [redacted]	Date: 7/21/2010	Signature of Approving Official:	Date:
Name/Title: [redacted] Assistant Special Agent in Charge		Name/Title: [redacted] Special Agent in Charge	

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

All Redactions Pursuant to b(7) (c)

SUMMARY OF INVESTIGATION

This investigation confirmed the computer security allegation and the misuse of the government purchase card by [redacted] though neither of these issues generated criminal prosecutions. The purchase card charges were for personal use at convenience stores, cell phone bills, and an airline ticket to fly [redacted] However, no evidence was discovered to suggest [redacted] was complicit in this activity. Since the OIG visited AFSC, there have been multiple employee complaints of [redacted] which were referred to NOAA/NMFS.

DETAILS OF INVESTIGATION

GOVERNMENT PURCHASE CARD ALLEGATIONS

[redacted] was issued a government purchase card in about September 2008. By October 2008, she had two gasoline charges on her government purchase card at Union 76 gas station. Both transactions took place at the same gas station on Thursday, October 9, 2008[1] for a total of $85.89 in gasoline charges. [redacted] denied responsibility for the charges, claiming her car was broken into, and the government purchase card stolen. This was reported to Citibank security and documented by AFSC management - [redacted] was not required to pay these charges back. (Serials 30, 45)

The Seattle Police report indicated that [redacted] reported this crime occurred on October 9, 2008, claiming that between 8 pm and 10:58 pm, her car was broken into at [redacted] in Seattle, which was about 3 miles from [redacted] residence at the time. The report indicates another victim, [redacted] also had an item stolen from the car. [redacted] reported a BankOne Visa, Wachovia Visa, and the Bank of Delaware MasterCard stolen. The report does not indicate a Government purchase card or Citibank Visa, which was the government bankcard contractor at the time, was stolen. The location of the alleged theft is 15.4 miles from the site where the government purchase card was used.[3] [redacted] claimed to the police that three credit cards were stolen, with one, a Bank of Delaware MasterCard, being used at a gas station in Burien, Washington. She allegedly knew this because she called the credit card company, and subsequently cancelled all her credit cards. (Serial 45)

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[1] Note the theft occurred late on October 9, 2008, a Thursday, and the credit card statement indicated an October 9, 2008 transaction date, but further investigation found the transactions in question actually occurred just after midnight on Friday, October 10, 2008. (Serial 49)

[2] Who lists the same address and apartment number, and said she [redacted] said she was not with [redacted] at the time of the incident, but her belief is [redacted] was out with friends playing billiards. [redacted] stolen property was a thrift savings account form that [redacted] was supposed to fax from the AFSC, but had not yet returned to [redacted] (Serial 48)

[3] The OIG attempted to obtain the credit card receipt on these transactions, but found they were through an automatic fuel dispenser, so no signature exists to verify who initiated the transaction. There is also no video due to the age of the transaction. However, we found the transactions were recorded as taking place on October 10, 2008 at 12:52 am for the $52.79 transaction, and 1:16 am for the $33.10 transaction. The gas station is located at 14807 1st Avenue South, Burien, Washington. (Serial 49)

[redacted] confirmed that [redacted] official time record shows she worked 7 ½ hours on October 9, 2008, taking 1 ½ hours sick leave for [redacted] and then took 9 hours of annual leave on October 10, 2008, citing "car was broken into" as the reason. (Serial 51)

Investigation confirmed that following the October 2008 claimed theft of her purchase card, [redacted] was issued a new purchase card. Once in possession of this new card, [redacted] charged the following items that were for personal purposes and not approved through formal procedures:

Transaction Date	Vendor	Amount
12/3/2008	Frontier Airlines	$ 172.70
4/27/2009	7-Eleven	$ 51.62
6/23/2009	Shell Oil	$ 64.80
6/23/2009	Tmobile	$ 63.17
6/24/2009	UW Gatehouse	$ 3.00
7/11/2009	Tmobile	$ 49.59

The Tmobile charge for $49.59 was credited back after the fact, as was the $3 University of Washington charge. (Serials 30, 34, 41)

Investigation found that in July 2009, the improper charges for the 7-Eleven, Shell and first TMobile charge were detected by AFSC management, and [redacted] wrote a personal check to pay those expenses back, per the standard procedure in place at AFSC. (Serials 30, 34, 41)

The Frontier Airlines Charge

On December 3, 2008, [redacted] used her government purchase card to purchase a ticket on Frontier Airlines in the amount $172.70. Investigation confirmed the charge for ticket number [redacted] was paid using [redacted] government purchase card. The ticket was issued for [redacted] on December 26, 2008 on Flight # [redacted] leaving [redacted] who is [redacted] lives with [redacted] (Serials 4, 5, 15, 18, 24, 34, 41)

Further, the ticket record shows the ticket was purchased by [redacted] and the $50.00 service fee and $15 baggage fee for the [redacted] was placed on a separate credit card. The ticket record shows, and Frontier Airlines personnel confirmed, the transactions took place concurrent with one another, thus, [redacted] would have provided two different credit card numbers to Frontier during the same transaction. (Serial 18)

Investigation discovered emails [redacted] received and sent at her NOAA email account, including emails between her and [redacted] about how costly the airline tickets

were in early December 2008. Among the emails was the flight itinerary and ticket receipt received at her NOAA email account. (Serial 50)

Cooperating witnesses provided to the OIG a copy of an October 15, 2009 email from [redacted] sent up the credit card purchases hierarchy to [redacted] and [redacted] asking for permission to accept the use of a credit card for freight/air cargo charges in-lieu-of submitting a purchase order modification. The employees allege [redacted] attempted to "cover-up" [redacted] Frontier Airlines charge to make it appear as though it was a shipping charge. They note that AFSC occasionally uses a small local shipping company named Frontier, but rarely uses Frontier Airlines, and they believe this was intentionally done to disguise the nature of the expense. The employees pointed out this email from [redacted] deliberately does not cite the purchase order by number or name, does not list the name of the air cargo/freight service airline, the dollar amount, date of charge nor is the name of the card holder provided. While the Frontier purchase, being made in December 2008, would be a FY 2009 expense, and [redacted] email in October 2009 suggests there were shipping charges they forgot to include in what would be the FY09 budget, this email is vague and does not specifically tie to the Frontier Airlines charge. Investigation could not confirm what this email concerns, nor could the employee's allegations be verified. (Serials 4-7, 18, 36, 47, 49-50)

[redacted] said he was unaware of the number of times [redacted] had misused her government purchase card. [redacted] confirmed in the AAIMS[4] system there was no approval for the Frontier Airlines charge in December 2008. He said this should have raised red flags, causing [redacted] to obtain documentation to support the expense. [redacted] said he does not recall being asked to assign an accounting code in the Commerce Purchase Card System (CPCS) for this expense, adding that it was an unusual accounting code that is most often used at the beginning of the fiscal year. The approved purchase card statement shows this expense was approved using the following accounting codes (Serial 31):

Organization Code: 30-61-0001-00-00-00-00, NMFS/AFSC/RACE Division
Project Code: 28LEF01, Fisheries Research and Management Programs
Task Code: PCX, RACE Executive Account
Object Class: 22-13-00-00 Shipping Expenses

Investigation confirmed through the DOC Bank Card Program Manager that [redacted] reconciled this transaction on March 20, 2009, and it was approved by [redacted] the same day. A group administrator did not exist during the time of this transaction. [redacted] said she was unfamiliar with the Frontier Airlines charge, and did not recall classifying this expense as a shipping charge. (Serial 47)

[redacted] said that [redacted] purchase card was currently suspended because of inappropriate charges that had not been repaid in over three months. [redacted] explained that [redacted] told her she had set up an "auto-charge" for her personal cell phone, not

[4] An unofficial, internal tracking and approval system used at the AFSC by some of the Divisions, including RACE.

realizing she used the wrong card.[5] [redacted] said she was with [redacted] when she went to the bank and received a check to pay the money back. However, she let [redacted] go unaccompanied to the Finance office to allegedly deliver the check. [redacted] later found that Finance had either lost or never received the check. [redacted] said she had in her purse (during our interview with her) another check that [redacted] had given to her to pay for the costs. That check was delivered to the Finance office after the OIG investigation became known. (Serial 30)

[redacted] displayed an understanding of how the purchase card system is supposed to work during our interview with her. She initially claimed she had accidentally used the purchase card only once to buy gas, but paid that back. After being confronted with multiple personal charges, [redacted] then remembered the 7-11 charge, stating she accidentally used the government purchase card. She also classified the Shell Oil and T-mobile purchases as accidental charges. She claimed the Frontier charge was for shipping and explained that they use a shipping company with the name Frontier. When confronted with receipts from Frontier Airlines, [redacted] told us she was not aware that this charge had been made via the government purchase card. She recognized the charge as when she flew [redacted] claiming that our contact was the first time it had been brought to her attention. She claims the person reconciling and approving her charges must have thought they were shipping charges. Further, she claims no one asked her for a receipt. (Serial 34)

Missing Purchase Card Records

[redacted] said the purchase card statements for the Administrative group are maintained in filing cabinets in the office where [redacted] are located, thus, [redacted] can access her own purchase card records. [redacted] said [redacted] is the reconciling official for [redacted] card. Following the interview, [redacted] took the agent to the filing cabinet where the records are stored and provided the original purchase card transaction statements and supporting documents for both herself and [redacted] She provided the FY 07, 08 and 09 records for herself.[6] The only records available for [redacted] were FY09 records. [redacted] said all the records should be in that location, and none should be missing, a policy that was affirmed by the managers we interviewed as well as [redacted][7] (Serial 30)

Upon inspection of the single manila folder for [redacted] there appears to be a significant number of account statements missing. The following records were the only ones in this folder (Serial 30):

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[5] During other interviews, it became clear that Division-wide, official-use cellular telephones are auto-billed on Government purchase cards.

[6] The investigating agent reviewed [redacted] purchase card records and found them to be in order, thus those original records were returned to the AFSC on Wednesday, January 27, 2010.

[7] [redacted] took the agent to both [redacted] currently taking care of [redacted] purchase card, and [redacted] and neither had any records for [redacted] purchase card file. [redacted] also said she checked with [redacted] who had no pending records. See Commerce Acquisitions Manual (CAM) §1313.301(3.12.2) for documentation requirements.

All Redactions Pursuant to b(7) (c) unless otherwise noted

(b)(6)

- Citibank card [redacted] statement date 11/03/2008
- Citibank card [redacted] statement date 12/03/2008
- Chase card [redacted] statement date 2/3/2009.
- Chase card [redacted] statement date 7/3/2009.
- Loose in the file, not attached to any statement, is a packing list and various receipts related to padlocks and locking bars for a filing cabinet dated in December 2008.

(b)(6)

[redacted] never provided the OIG or her managers with an explanation for why her records were incomplete. [redacted] AFSC, has provided copies of account statements and some receipts that were reconstructed after the discovery of the missing records. The following observations were noted related to these:

- Four of the missing original statements contained personal charges by [redacted]
  - The January 2009 statement contains the Frontier Airlines charge and included the name of [redacted] the departure date, and the city airport codes for both [redacted] This apparently is the statement that the loose papers related to security products found in [redacted] file would have been attached to.
  - The May 2009 statement contained the 7-Eleven charge.
  - The August 2009 statement contained a transaction involving T-Mobile and a credit for the University of Washington $3 charge.
  - The September 2009 statement contained a transaction involving T-Mobile.
- Two statement periods – March and June 2009 – [redacted] had no transactions to report, so there would have been no statements.
- The April 2009 statement contained an Amazon.com expense that had no AAIMS authorization, but [redacted] confirmed was for official business.
- There still seems to be one month missing as there are only eleven months accounted for. That month appears to be a statement date of October 2009, which would have contained September 2009 charges. (Serials 30, 41, 49)

National Seminars Charge

Investigation also uncovered an incomplete accounting of books purchased by [redacted] on her government purchase card. These charges appeared on [redacted] purchase card statement dated February 3, 2009, which is signed by [redacted] as the cardholder and [redacted] as the approving official. It contains a single charge for $249 from National Seminars/Rockhurst University. There was an after-the-fact AAIMS authorization entered on March 20, 2009 by [redacted] The receipt attached to the statement shows eight books purchased, including (Serial 30):

- Money Mastery, 2nd edition
- Secrets to De-Junking your Life
- Style Guide from Franklin Covey
- Communicate with Confidence and Credibility
- Stress Management, 60 minute training series
- How to Manage your Boss
- Being OK Just Isn't Enough
- 52 Ways to Build your Child's Self Esteem

[redacted] admitted to purchasing the books, and claimed [redacted] was involved in the purchasing of the books.[8] AFSC management has recognized that at least some of these titles are not work related and has indicated they are taking steps to administratively deal with this situation, including a reimbursement for the books that are not work related. (Serial 34, 50)

Purchase Card Policies

On July 7, 2008, [redacted] sent via email to all purchase card holders and administrative staff in the AFSC the NOAA Purchase Card Policy, titled NOAA Acquisition Hand Book (NAHB) Chapter 1313. This policy makes known approving official responsibilities, personal liability for improper purchases, and documentation requirements. According to the policies, [redacted] should not be allowed to approve her own purchase card transactions[9]. The agent received a report as late as February 17, 2010 that [redacted] continues to approve her own purchase card transactions and validate them through the CPCS system. (Serial 42)

COMPUTER SECURITY ALLEGATIONS

The investigation confirmed a widespread failure to follow security protocols for electronic business systems in use at the AFSC. Nearly every person interviewed knew about the regular compromise of login and password information, including supervisory level employees. These breaches included [redacted] placing a spreadsheet containing login, password, and security question answers for about seventeen people on a shared drive within AFSC. These included login information to both the Commerce Purchase Card System (CPCS) and Travel Manager system. The investigation also found login sharing occurred on the internal AAIMS system used to pre-approve purchases, and managers would email their user and password information, with passwords often being set for multiple managers using the same password. Employees consistently reported the sharing of login and password information. Sometimes it was because a new employee did not yet have their login authorization, but often, employees reported being puzzled concerning the need for or reasons behind why their supervisors asked them for their login information. (Serials 4, 5-7, 15, 23, 24, 26, 27, 37)

During interviews with managers[10], they said they knew it was improper security protocol to share login and password information, but approved of the practice. They admitted

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[8] [redacted] claims she did attend the same seminar, but purchased separate books under her own purchase card that, according to [redacted] are all for legitimate business purposes and were approved prior to purchase. A review of [redacted] purchases was outside the scope of our review. (Serial 24)

[9] The investigation found AFSC regularly uses "Group Administrators" who initially reconcile purchase card transactions. The approving official relies on these group administrators in large part to facilitate this work. (Serial 23) The NOAA Finance office said there are no rules on who can serve in this capacity, and thus, while not recommended, there is no prohibition from using part-time student interns, or even contractors, to serve in this function. (Serial 36) [redacted] used the login and passwords of her supervisors to approve CPCS purchases, including for herself. Refer to Commerce Acquisition Manual §1313.301(2.2.4) concerning separation of duties; §1313.301(2.11) on unauthorized use and penalties; §1313.301(3.8.3) on prohibition of personal expenses; §1313.301(3.15) on personal liability; and §1313.301(5.4.1-4) on fraud.

[10] Including [redacted]

that they had signed non-disclosure forms for the various Commerce Business Systems (CBS) computers. [redacted] said years ago the Division directors made the decision to share login and password data for CPCS to facilitate work. [redacted] said they were unaware of the spreadsheets containing login and password data on the shared "G" drive, but [redacted] did. [redacted] reported his intent was to share his login information only with someone he could delegate and trust to be in charge, and was unaware of the extent to which this information was available. (Serials 24, 25, 30, 31, 32)

Rules and Impact

The Management Analysis and Reporting system (MARS) is an enterprise budget execution and financial reporting application for line offices, staff offices, and financial management centers. MARS provides functionality which allows users to track commitments, forecast labor, plan execution year budgets, and conduct financial reporting and analysis. The primary data source MARS uses is the Commerce Business System (CBS), NOAA's financial accounting system. CBS includes the CPCS, as well as core financial data including accounts payable and receivable, budget, and similar data. (from https://mars.rdc.noaa.gov/index.php#)

NOAA's MARS rules of behavior specifically prohibit sharing passwords, and emphasizes the purpose of login and passwords is to create individual accountability. The rules also place responsibility on supervisors and managers to ensure adherence to the rules. Further, as previously mentioned, users are required to sign a non-disclosure agreement for MARS, CBS and CPCS, specifically promising not to divulge password information to any other person. In addition, processing actions in the CPCS system causes a warning banner to display in which the person has to certify compliance with the various policies. Furthermore, to obtain the user ID, mandatory IT security training must be completed by the employee. (Serials 4 [attachment 2 & 3], 5 [attachments 5 & 9], 6, 9)

In consultations with the Chief Information Officer for the Department, as well as IT security personnel within the MARS and CBS systems, they have confirmed that the potential exists in sharing login information that an employee could access Personally Identifiable Information (PII), would have access to labor related records, and in rare instances, could create an accounts payable for themselves (or related entities) using someone else's login. Further, by having access to the purchase card system, they could obtain personal banking information and approve fraudulent charges. (Serial 43)

The AFSC managers generally down-played the risks involved in login sharing. [redacted] conceded that once a subordinate had access through his travel manager login, they would have access to approving vouchers as well. He agreed that though emails are generated as a result of such an action, with the multiple emails generated every day, it would be easy to overlook if there was activity happening that he was unaware of under his login. (Serial 31) Through interviews, it appears that sharing of login information also sparked a shut-down of the AAIMS system in about June 2009. This apparently was caused because [redacted] had given her login and password to a newly hired college student intern [redacted] who used it

simultaneously with [redacted] This caused a security shutdown because of a possible breach until the administrators of the program could determine the cause. (Serials 4-7, 9, 15)

At the Department level, the Chief Information Officer provided Departmental policies concerning login and password security, including NIST 800-53[11] requiring information systems uniquely identify and authenticate users, and the Department of Commerce 2009 Information Technology Security Program Policy (ITSPP), which prohibits password sharing[12] and group passwords[13]. Further, users generally must not use the same password on multiple systems, applications, or websites[14] (Serial 43). Evidence found during the course of this investigation found that virtually all of the seventeen people listed on the spreadsheet found on the shared drive listing CPCS logins used the same password. (Serials 4, 5, 24, 30, 31, 32, 41)

MISAPPROPRIATION OF FEDERAL FUNDS

The complaint also alleged misappropriation of federal funds in that AFSC [redacted] personnel used appropriated funds to build a "tie-down"[15] for the personal yacht/sailboat of a [redacted] named [redacted] The complaint alleged this item, which would have been built in the NetLoft Division of AFSC, had a value of as much as $20,000. This allegedly happened in spring or early summer 2009. The investigation, which included interviews of NetLoft personnel and attempts to locate purchase orders or purchase card transactions which could be related, found no evidence to support this allegation. (Serials 4, 5, 21, 22, 35, 40)

IRREGULAR LEASE

The complaint also alleged a fraud dating back to 2005 in which AFSC paid too much for leasing the Kodiak, Alaska facility. The investigation confirmed through documentary evidence and confirmation through NOAA's Facilities and Property Services Division, who is working directly with GSA, that no violation exists. (Serials 4, 32, 33)

THEFT BY CONVERSION

The complaint alleged [redacted] gave [redacted] free use of a private office at the NOAA facility as a private office, including computer equipment, furniture and access to government supplies and printers. Preliminary investigation found that NOAA has extensive guidelines allowing former NOAA employees to use NOAA facilities for research, and [redacted] apparently filled out a volunteer agreement, thus there appears to be no issue to further investigate. (Serial 5, attachment 3)

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[11] Rev. 2, published December 2007: Security Control Identification and Authentication-2 (IA-2)
[12] Commerce Interim Technical Requirements (CITR) CITR-009: Password Requirements, Version: 1.1, § 7.1(4)
[13] CITR-009 Version 1.1, § 7.4 Administration and Application Development Standards, item 2
[14] CITR-009 Version 1.1., § 7.1, Password Management Requirements, items 13 and 14
[15] This term was used in the complaint, but nobody was able to define what this was. The most logical explanation was that it was probably a rope that ties a boat to the dock, which is normally called a "tie-up". Alternatively, it could be a cargo type net used to tie something down to a boat deck.

All Redactions Pursuant to b(7) (c)

OTHER INFORMATION

[redacted] at the AFSC has reported numerous actions the AFSC has already undertaken, or are in the process of taking, to address concerns raised during this investigation, including purchase card and password security control improvements (Serial 41). Furthermore, in coordination with the OIG, NOAA's Finance Office and the Oversight and Compliance Division will be conducting reviews of purchase card and purchase order processes at AFSC (Serials 8, 36, 40). We investigated an allegation of racial bias, finding no evidence to support the allegation (Serial 44). Numerous complaints of retaliation from AFSC employees have ensued since our visit to the AFSC. These were referred to management to insure actions are not based on employee cooperation with an OIG investigation.

All Redactions Pursuant to b(7) (c)

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

MEMORANDUM FOR: File

FROM: [redacted] ASAC/DFO [redacted]

DATE: August 6, 2010

REF: ACTION MEMORANDUM OF COMPLAINT - **CLOSURE**

RE: Alaska Fisheries Science Center
OI Case FOP-DF-10-0039-I

On November 4, 2009, the Office of Investigations (OI) received complaints alleging numerous supervisory abuses, mismanagement and fraud. Most of those allegations were administrative in nature, however, some of the allegations required further investigation into potential criminal misconduct, including:

- Fraudulent use of a government purchase card by AFSC employee [redacted] coupled with [redacted] collusion to cover-up the fraudulent use. Furthermore, it was alleged that [redacted] together with [redacted] deceptively changed records, destroyed the supporting purchase card records, and submitted falsified documents.
- Intentional and repeated breaches of security and improper computer security protocols, which jeopardized the integrity of Department-level systems.
- Misappropriation of federal funds in that AFSC [redacted] personnel used appropriated funds to build a "tie-down" for the personal yacht of a [redacted] The alleged potential loss was as much as $20,000.
- Irregular lease at the facility in Kodiak that was costing AFSC significantly more money, which even though identified and acknowledged as a problem in 2005, still continued without corrective action.
- Theft by conversion in that retired NOAA personnel were allowed to use NOAA facilities and equipment without cost in furtherance of private business interests.

This investigation confirmed the computer security allegation and the misuse of the government purchase card by [redacted] though neither of these issues generated criminal prosecutions. The purchase card charges were for personal use at convenience stores, cell phone bills, and an airline ticket to fly [redacted] However, no evidence was discovered to suggest [redacted] was complicit in this activity.

Since the OIG visited AFSC, there have been multiple employee complaints of retaliation by supervisors, which were referred to NOAA/NMFS.

An ROI has been completed. All allegations have been addressed, all logical leads have been investigated, and no further investigative activity is contemplated. All investigative activities have been documented in CIRTS. Based on the above information, it is recommended that this investigation be closed.

All Redactions Pursuant to b(7) (c)

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Office of Investigations

January 10, 2011

MEMORANDUM FOR: John Oliver
Principal Deputy Assistant Administrator
United States Department of Commerce
National Oceanic & Atmospheric Administration
National Marine Fisheries Service

FROM: Scott Berenberg
Assistant Inspector General for Investigations

SUBJECT: Results of Investigation – EXECUTIVE SUMMARY
Alaska Fisheries Science Center (AFSC)
OI Case #FOP-DN-10-0039-I

This memorandum reports on results of our investigation into allegations of misconduct at the Alaska Fisheries Science Center (AFSC) in Seattle, Washington. This is intended to provide you an executive summary of our findings; should you need additional information, a more detailed report is available for your review.

BASIS FOR INVESTIGATION

On November 4, 2009, the Office of Investigations (OI) received complaints alleging numerous supervisory abuses, mismanagement and fraud at the AFSC. Most of those allegations were administrative or managerial in nature, and as such, DOC OIG has already informed you of those issues so that you may initiate action as you deem necessary. Some of the allegations, however, required further investigation.

The focus of this report, supported by our investigative activities, includes the following:

- *Allegation #1* - Fraudulent use of a government purchase card by [redacted] AFSC. Furthermore, it was alleged that [redacted] together with [redacted] AFSC, deceptively changed records, destroyed the supporting purchase card records, and submitted falsified documents in order to cover up the alleged fraud.

- *Allegation #2* - Intentional and repeated breaches of security and improper computer security protocols, which jeopardized the integrity of Department-level systems.

All Redactions Pursuant to b(7) (c)

- *Allegation #3* - Misappropriation of federal funds in that AFSC [redacted] personnel used appropriated funds to build a "tie-down" for the personal yacht of a [redacted]

- *Allegation #4* - Irregular lease at the facility in Kodiak, which was identified and acknowledged as a problem in 2005, but still continued without corrective action.

- *Allegation #5* - Theft by conversion in that retired NOAA personnel were allowed to use NOAA facilities and equipment without cost in furtherance of private business interests.

Regarding allegation #1 - Our investigation substantiated that [redacted] did use her assigned Government Purchase Card (GPC) for personal use, including personal cellular phone, gasoline, parking charges, and an airline ticket for [redacted] The total of these charges validated by the investigation was $404.88. We did not substantiate collusion between [redacted] to change or destroy records or submit false documentation. However, the investigation did reveal that [redacted] failed to maintain proper records for GPC expenditures during the timeframe in question.

Regarding allegation #2 - We also substantiated that there were intentional and repeated instances of government computer system misuse including sharing of passwords, lack of hierarchical controls in which subordinates had supervisory access to financial systems, and posting of a spreadsheet of computer usernames and passwords on the AFSC shared storage drive.

We did not substantiate allegations #3, #4, and #5. Regarding allegation #3 that federal funds were misappropriated for personal use, interviews of identified witnesses and review of relevant documentation produced no evidence to corroborate the initial information provided. Regarding allegation #4 of irregular lease issues at the NMFS facility in Kodiak, document reviews along with interviews of personnel in NOAA's Facilities and Property Services Division found no violations. Finally, regarding allegation #5 that retired NOAA personnel used NOAA facilities and equipment without cost in furtherance of private business interests, we found NOAA guidelines that allow such use for research purposes. Furthermore, in this particular case, a formal volunteer agreement regarding facilities use between NOAA and the named individual was in place.

SUMMARY OF INVESTIGATION

Allegation #1:

Our investigation confirmed that following an October 2008 claimed theft of her purchase card, [redacted] was issued a new purchase card. Once in possession of this new card, [redacted]

[redacted] charged the following items that were for personal purposes and not approved through formal procedures (Attachments 5, 7, 8, 9, 10, 11):

Transaction Date	Vendor	Amount
12/3/2008	Frontier Airlines	$ 172.70
4/27/2009	7-Eleven	$ 51.62
6/23/2009	Shell Oil	$ 64.80
6/23/2009	Tmobile	$ 63.17
6/24/2009	UW Gatehouse	$ 3.00
7/11/2009	Tmobile	$ 49.59

The above referenced Tmobile charge for $49.59 was credited back by [redacted] after the fact, as was the $3 UW Gatehouse charge. Our investigation found the improper charges for the 7-Eleven, Shell and first Tmobile charge were detected by AFSC management, and [redacted] wrote a personal check to pay those expenses back, per the standard procedure in place at AFSC (Attachment 1, 2, 4, 7, 10). Although [redacted] advised her supervisor, [redacted] that the original gasoline charges were the result of [redacted] purse being stolen, during OIG's interview of [redacted] she advised the interviewing agents that these were accidental charges, contradicting her initial report to her supervisor after the reported theft of her purse (Attachment 11).

OIG's investigation revealed that AFSC management was not aware of the Frontier Airlines charge. Our investigation confirmed this charge was for an airline ticket issued for [redacted] (Attachment 7, 8, 10). We further found that the ticket record shows the $50.00 service fee and $15 baggage fee for [redacted] was placed on a separate credit card (Attachment 8). The ticket record shows, and Frontier Airlines personnel confirmed, the transactions took place concurrent with one another, thus, [redacted] would have had to provide two different credit card numbers to Frontier during the same transaction. Our investigation discovered emails [redacted] received and sent at her NOAA email account, including emails between her [redacted] about how costly the airline tickets were in early December 2008. Among the emails was the flight itinerary and ticket receipt received at her NOAA email account (Attachment 9). When questioned by OIG agents [redacted] stated that she was unaware she had purchased the airline ticket with her government purchase card and that this was the first time it had been brought to her attention (Attachment 11).

Resource Assessment and Conservation Engineering (RACE) Division [redacted] said he was unaware of the number of times [redacted] had misused her government purchase card. [redacted] confirmed in the Automated Approval Information Management System (AAIMS)[1] there was no approval for the Frontier Airlines charge in December 2008. He said this should

[1] An unofficial, internal tracking and approval system used at the AFSC by some of the Divisions, including RACE.

have raised red flags, causing [redacted] to obtain documentation to support the expense. [redacted] confirmed the accounting code in the Commerce Purchase Card System (CPCS) for this expense was for an unusual code typically used at the beginning of a fiscal year. The approved purchase card statement shows this expense was approved using an accounting code for shipping expenses (Attachment 7, 12).

Furthermore, purchase card statements for the Administrative group are maintained in filing cabinets in the office where [redacted] is located, thus, [redacted] can access her own purchase card records. We found at the time of our visit the only records available for [redacted] were Fiscal Year (FY) 09 records. FY08 and FY10 records were missing. Among the FY09 records provided, there were significant documentary gaps in [redacted] purchase card folder. [redacted] has not provided the OIG or her managers with an explanation for why her records were incomplete. Four of the missing original government purchase card statements contained personal charges by [redacted] (Attachments 3, 5, 10).

Allegation #2:

Our investigation also substantiated failure to follow security protocols for electronic business systems in use at the AFSC. During our investigation, nearly every person interviewed knew about the regular compromise of login and password information, including supervisory level employees (Attachments 1, 2, 3, 4, 5, 10, 11). These breaches included [redacted] placing a spreadsheet containing login, password, and security question answers for about seventeen people on a shared drive within AFSC (Attachment 10). This spreadsheet allowed multi-level access including subordinate and supervisory access to Department financial systems including WebTA, AAIMS, the Commerce Purchase Card System ("CPCS" GPC reconciliation system), and the Management Analysis and Reporting system (MARS), an enterprise budget execution and financial reporting application for line offices, staff offices, and financial management centers. In several cases, subordinates were able to access systems using the Director's username and password (Attachment 10). Prior to receiving access, users were required to complete a "Non-Disclosure Agreement for Systems Access" to the MARS and CPCS systems.

All other allegations were either unsubstantiated or proven to have no merit. I want to thank you for your efforts to aid our investigation, including traveling to Seattle to help ensure we had the cooperation and records we needed to accomplish our mission.

Based on our findings, we are closing this investigation. No further investigative activity is planned. In accordance with DAO 207-10, your written comments concerning this matter should be made to this office within 60 days, indicating the specific actions, if any, taken in response to this report. If you have any questions regarding the information or findings contained in this memorandum or if we can be of further assistance, please do not hesitate to contact me at (202) 482-[redacted]

All Redactions Pursuant to b(7) (c)

Attachments

1. Interview of [redacted] NOAA AFSC, Seattle, Washington
2. Interview of [redacted] NOAA AFSC, Seattle, Washington
3. Interview of [redacted] NOAA AFSC, Seattle, Washington
4. Interview of [redacted] NOAA AFSC, Seattle, Washington
5. Interview of [redacted] NOAA AFSC, Seattle, Washington
6. Email from [redacted] (via cc: block); Subject: Reconciliation Report Request, dated February 26, 2010
7. Purchase Card Statement for Approving Official [redacted] date prepared: November 17, 2009, page 14 of 14 annotating [redacted] personal expenses
8. Receipt from Frontier Airlines indicating use of both [redacted] GPC and personal credit card
9. Email capture of personal discussion between [redacted] and [redacted] on travel for [redacted] via Frontier Airlines.
10. Interview of [redacted] NOAA AFSC, Seattle, Washington
11. Interview of [redacted] NOAA AFSC, Seattle, Washington
12. Interview of [redacted] NOAA AFSC, Seattle, Washington

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE: [redacted] DOC International Trade Administration Foreign Commercial Service Madrid, Spain	FILE NUMBER: FOP-SF-10-0129 TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On June 9, 2004, the U.S. Department of Commerce Office of Inspector General (OIG), Office of Investigations (OI), received an allegation that [redacted] International Trade Administration, U.S. and Foreign Commercial Service, U.S. Embassy, Madrid, Spain, purchased child pornography via the Internet and paid for the child pornography with two different credit cards. Special Agent [redacted] U.S. Department of State, Diplomatic Security Service, Arlington, Virginia, provided printouts that were provided to him through Operation Falcon, a U.S. Customs Task Force based in Newark, New Jersey. Operation Falcon documented a total of ten inappropriate websites accessed between May 2002 and February 2003.

SUMMARY OF INVESTIGATION

Three Government laptop computers and one computer hard disk drive all known to have been used by [redacted] were seized after the receipt of the initial information from Operation Falcon. (Exhibit A) Credit card information pertaining to [redacted] was obtained by subpoena. Initial computer forensic analysis located suspected child pornography on each of the computers used by [redacted] These images were found despite the use of software programs designed to remove inappropriate material from the computer. Preliminary investigation identified many significant findings before competing investigative priorities forced an extended delay of further action. Among other findings, four images of known victim child pornography were confirmed through the National Center for Missing and Exploited Children (NCMEC). The credit card transactions identified by Operation Falcon were located within the records obtained by subpoena.

Distribution: OIG ___ Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):			
Signature of Case Agent: [redacted]	Date: 1-27-2011	Signature of Approving Official:	Date:
Name/Title: [redacted] Special Agent		Name/Title: [redacted] Director Computer Forensics	

All Redactions Pursuant to b(7) (c) unless otherwise noted

BACKGROUND

Operation Falcon was a large-scale taskforce operation focused on the commercially run websites offering child pornography. Operation Falcon documented the material offered by the website and examined membership data and credit card transactions to identify individuals who purchased child pornography on the Internet. The efforts of Operation Falcon identified [redacted] as one such individual, who may have used his credit card on more than one occasion to purchase child pornography. Downloading child pornographic images could constitute a violation of 18 USC, Section 2252(a), certain activities relating to material involving the sexual exploitation of minors.

DETAILS OF INVESTIGATION

When the investigation resumed, forensic analysis was concentrated on the computer events surrounding the four known victim images. Many complicating issues surrounded the ongoing computer forensic analysis. Among those issues was the lack of unique individual profiles on most of the computers involved. For example, any number of individuals could use the computer under the same profile of "user". Installed programs designed to remove images and evidence from the computer hard disk drive was also discovered on the machines. The four images of known victims as identified by NCMEC were located in unallocated space on the computer hard disk drives. Analysis was able to identify some time and date information about the files recovered from unallocated space. The methodology employed was to examine files accessed, created, or modified surrounding the time information of the known victim images. Analysis of that information was to be used to establish who was using the computer at the time the victim images were downloaded. With examination of the images, files and other computer artifacts, it was possible to reasonably conclude [redacted] was operating the computer when the images were downloaded. (Exhibit B)

Jurisdictional concerns and other legal matters surrounded this investigation. The offense identified and reported by Operation Falcon occurred in a foreign country. If the offense occurred on foreign soil it would fall to that country's jurisdiction (in this case, Spain). However, if the offence occurred at the embassy which is de facto U.S. soil, then the case could be pursued in the United States. Time and date analysis makes it seem likely much of the illegal activity was perpetrated on post, but that cannot be definitively proven [redacted] (b)(7)(E)

Much effort was devoted to locating [redacted] for interview throughout 2008 and 2009, ultimately without success. [redacted] retired from the Foreign Service and settled in the [redacted] It was later learned [redacted] maintained a residence in [redacted] All attempts to locate [redacted] for interview failed due to his aggressive professional travel schedule.

RECOMMENDATIONS

The information contained in this Report of Investigation was supplied to the United States Attorney's Office for the District of Columbia for consideration. The jurisdictional issues and other legal issues with the case were discussed. [redacted] (b)(7)(E) All logical investigative leads have been followed. This case is recommended for immediate closure.

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLEARED BY [redacted] Director Computer Forensics	APPROVED BY Scott Berenberg AIGI
Initials & Date	Initials & Date

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

TABLE OF EXHIBITS

A. Evidence Custody Documents for seized computers and hard disk drive.

B. Investigative Record Form (IRF) documenting computer forensic analysis, dated April 2, 2008.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
SINCE HARDWARE **Guangdong, China**	FOP-WF-10-0133-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

In December 2009, the International Trade Administration (ITA) reported that Since Hardware (Guangzhou) Co., Ltd. (SH), a Chinese producer and exporter of ironing boards, provided false documentation to ITA during three administrative reviews of an antidumping order issued by Commerce. ITA further alleged that during that period, SH exported more than $50 million in ironing boards to the United States. ITA stated that had SH reported accurate information regarding the manufacturing cost of the ironing boards, ITA would have charged them a duty for export to the U.S., thus making them more competitive in the U.S. marketplace.

RESULTS/SUMMARY OF INVESTIGATION

Our investigation found the false and forged documentation at issue was part of three separate submissions to the DOC in 2006, 2007 and 2008. The alleged fraud was reported to the DOC by [redacted] in September of 2008 (which was right after the third of the three allegedly false submissions was made by Since Hardware). The [redacted] Since Hardware in connection with each of these three submissions was [redacted] from the law firm of [redacted] in Washington, D.C. Our investigation has shown that shortly after the allegations of fraud were made, [redacted] flew to China in order to meet with representatives of Since Hardware; very shortly after his return from that trip, [redacted] withdrew [redacted] Since Hardware. The submissions at issue contained "Certifications of Accuracy" which were signed by [redacted] as the [redacted] Since Hardware. And the submissions also contained "Company Official Certifications" which were signed by the

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ____ Other (specify):			
Signature of Case Agent: [redacted]	Date: 9/7/11	Signature of Approving Official: [redacted]	Date: 9/7/11
Name/Title: [redacted] Special Agent		Name/Title: [redacted] Acting Special Agent in Charge	

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

[redacted] of Since Hardware, [redacted] Because of the falsified submissions, ITA assessed a 158.68% dumping margin against SH. Our investigation further indicates that [redacted] (b)(7)(E)
(b)(7)(E) [redacted] Based on these factors, this case was declined for prosecution.

METHODOLOGY

This case was conducted through reviewing volumes of documents, meetings with trade experts at the DOC who walked us through the documentation, the antidumping administrative review process, the economics behind the alleged damages, etc. After addressing various [redacted] and other confidentiality issues, we were also able to secure interviews of key participants in this case, including the [redacted] in the antidumping administrative proceedings before the DOC (and who also [redacted] fraud at issue); the [redacted] Since Hardware's primary U.S. client, Whitney Designs (who had the most U.S. contacts with Since Hardware during the relevant time periods); and [redacted] who works Whitney Designs and who also worked with [redacted] during the time periods when the submissions at issue were made. In addition we issued a subpoena to [redacted] retained counsel, only asserted attorney-client privilege in one limited area, and submitted to a voluntary off-the-record debriefing with DOJ.

DETAILS OF INVESTIGATION

When the Import Administration determines that certain goods are being sold at less than fair value (below the cost to produce the merchandise or below the price the good is sold in the home market) in the United States, and ITA determines that an industry in the United States is being materially injured or threatened with material injury because of the sale of such merchandise, the Department of Commerce issues an antidumping duty order on such merchandise. The effect of this order is that exporters of the subject merchandise must pay a duty on the goods they export to the United States. (Serials 2 & 3)

ITA may conduct yearly reviews of its antidumping duty orders to evaluate whether a firm continues to sell its merchandise in the United States at prices below what is considered fair value. During these administrative reviews, both the foreign producer and firms representing the domestic industry provide data, argument and documentation to Commerce to aid in its decision-making process. Any interested parties who participate in an administrative review can litigate Commerce's final determinations in the Court of International Trade. (Serials 2 & 3)

In August 2004, ITA published an antidumping duty order on ironing boards exported from China. Between 2006 and 2008, Commerce conducted three administrative reviews of SH's sales conduct under this antidumping duty order. In the third administrative review, Home Products International, a domestic producer of ironing boards, provided Commerce with information indicating that SH submitted false and fraudulent documents to Commerce to manipulate the review process. (Serials 2 & 3)

In conducting antidumping duty reviews of firms based in a non-market economy like China, Commerce employs a surrogate value methodology. Pursuant to this methodology, Commerce requests information concerning the foreign firm's factors of production; that is, the quantity of a particular input that firm requires to make the subject merchandise. Commerce then values the cost of that factor of production using prices from a market economy country with similar production and development to the firm in China. Commerce does this because it determined that competitive pricing does not exist in such non-market economies like China. Despite this, a foreign producer based in a non-market economy could purchase its inputs of raw materials from a market economy country. If it does, Commerce uses the firm's actual cost in constructing the cost of producing the subject merchandise, as it is the most representative data of a market economy purchase price. (Serials 2 & 3)

Based on materials submitted to Commerce for the third administrative review, SH claimed that it purchased certain steel inputs used in the production of ironing boards from Australia. The claimed steel is SH's largest input in its production of ironing boards and the most critical factor for Commerce in determining what "cost" to use in determining SH's duty margin. To support its claim, SH submitted Australian issued export certificates that it claimed to have received from its supplier of the Australian origin materials. Importantly, SH, by and through its General Manager, [redacted] also submitted numerous certifications to Commerce attesting that the export certificates and other information it submitted was true and accurate. (Serial 2 & 3)

In reviewing the evidence submitted by Home Products and others during the third administrative review, Commerce determined that: (Serials 2 & 3)

- SH's claimed purchase quantity of this steel input vastly exceeded the export data for the product from Australia to either China or Hong Kong (where SH's suppliers are based);
- The export certificates that SH claimed were issued by the Australian authority have flagrant misspellings that do not exist on the same blank export certificate forms provided by the Australian authority;
- The signature of the Australian authorizing agent on SH's export certificates do not match the signature on other valid Australian records; and
- The SH export certificates reflect that they were allegedly signed by the Australian authorizing agent on a date that precedes the date on which the agent began her employment with the Australian authority.

Based on these findings, Commerce determined that SH provided unreliable and incomplete documentation. Commerce also determined that SH failed to cooperate to the best of its ability in providing Commerce with accurate documentation. Therefore, Commerce imposed upon SH

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a new dumping margin using adverse inferences. By doing so, Commerce used the highest prices on record for SH's factors of production and calculated SH's antidumping duty margin at 158.68%. (Serial 3)

Because of the fines associated with the imposed 158.68% dumping margin, SH has reportedly ceased production of ironing boards. Additionally, Whitney Designs, Since Hardware's principal American client, was forced to declare bankruptcy because of its inability to pay the fees associated with the dumping margin. (Serials 5 & 6)

We interviewed [redacted] Whitney Designs who had the most U.S. contacts with Since Hardware during the relevant time periods and [redacted] who currently works for Whitney Designs and previously worked for [redacted] during the time periods when the submissions at issue were made. Both reported that [redacted] spoke little to no English and would have been unable to read the submissions he certified to ITA. (Serials 6 & 10)

Additionally, DOJ issued a subpoena to [redacted] who submitted documents to ITA on behalf of SH. [redacted] retained counsel but ultimately agreed to an interview. [redacted] claimed that he worked primarily through various accountants and a partner [redacted] based in China, took SH's submissions at face value, never directly spoke with [redacted] and fired SH as a client as soon as he learned of the falsified documents. (Serial 7)

In June 2011, the United States Attorney's Office issued a declination memo asserting the following conclusions: (Serial 11)

(i) [redacted] was likely negligent in the diligence he conducted before he signed the "Certifications of Accuracy" which were submitted to the DOC; however, we do not believe (nor do we have any proof) that [redacted] intentionally attempted to deceive the DOC;

(ii) [redacted] spoke very limited English during the time periods he signed the "Company Official Certifications," which themselves were written in English;

(iii) [redacted] probably directed someone (likely in China) to create the false documentation at issue; [redacted] (b)(7)(E)

[redacted] (b)(7)(E)

TABLE OF ATTACHMENTS/INDEXES

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OFFICE OF INVESTIGATIONS

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Caribbean Fisheries Management Council St. Thomas, U.S. Virgin Islands	FOP-AF-11-0207-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On January 12, 2010, [redacted] provided information to the OIG concerning how the CFMC has been compensating government representatives on the Council at the rates paid to private-sector members, in violation of the Magnuson-Stevens Act (Act) which according to [redacted] specifically prohibits direct compensation to "State" officials by Councils. Such compensation was at a rate higher than their regular pay. The complainant further alleged that the individuals claimed they were on leave when they received the compensation; however, the complainant believed this to be untrue, and in some cases that these officials received double compensation. According to the complainant, [redacted] Virgin Islands Division of Fish and Wildlife received in excess of $30,000 between 2000 and 2005 to which she was not entitled. It was further alleged that [redacted] U.S. Virgin Islands Fish and Wildlife Department, used improper cash payments from CFMC to purchase a truck. [redacted] was the [redacted] prior to the year [redacted] when [redacted] was hired to replace him when he obtained federal employment.

RESULTS/SUMMARY OF INVESTIGATION

The allegations were partially substantiated. Our Office of Counsel provided a legal opinion that the Directors would be allowed to receive payments if on LWOP and not receiving dual payment from their employing agency while attending Council business. The Department of Commerce's Office of Special Counsel was also contacted and provided an opinion advising the payments to

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ___ Other (specify):			
Signature of Case Agent: [redacted]	Date: 9/30/11 ~~9/6/2011~~	Signature of Approving Official: [redacted]	Date: 9/30/11
Name/Title: [redacted] Special Agent		Name/Title: [redacted] Acting Special Agent in Charge	

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Directors of the CFMC were proper as long as the individual was on a Leave Without Payment status. Our investigation found [redacted] did claim Compensatory and Annual Leave for a total of 96 hours, which might have resulted in double payment to her. However, based upon the last date of Compensatory Time claimed by [redacted] in August 2006, this is outside the six-year collection timeframe. A total of 408 hours of LWOP were properly documented per the requirement under the Magnuson-Stevens Act.

METHODOLOGY

This investigation was conducted through a series of interviews and document reviews.

DETAILS OF INVESTIGATION

On January 12, 2010, [redacted] provided information to the OIG concerning how the CFMC had been compensating government representatives on the Council at the rates paid to private-sector members, in violation of the Magnuson-Stevens Act (Act). According to [redacted] the Act specifically prohibits direct compensation to "State" officials by Councils. Such compensation was at a rate higher than their regular pay. The complainant further alleged that the individuals claimed they were on leave when they received the compensation. The complainant believed this to be untrue, and in some cases, that these officials received double compensation. Directors were only authorized payment from CFMC if they were on leave and not being compensated by their respective agencies. According to the complainant, the [redacted] of the Virgin Islands Division of Fish and Wildlife received in excess of $30,000 between 2000 and 2005 to which they were not entitled. (Serials 1 and 2)

On March 2010, the Office of Audit and Evaluation (OAE) declined to assist in reviewing whether the Councils are reimbursing state employees for their participation as appointed members. Our office requested an opinion from the Office of Counsel as to whether the Department could recoup any allegedly overpaid funds from non-federal employees. The Office of Counsel advised there is a six-year period in which misappropriated payments may be collected from an individual in certain circumstances. The opinion also advised if the individual were a federal employee additional provisions would be available to collect any improper payments but these named individuals were not federal employees and therefore do not fall under the provisions. (Serials 3, 4 and 7)

On May 25, 2010 [redacted] identified the specific individual in his complaint as [redacted] U.S. Virgin Island Division of Fish and Wildlife. [redacted] advised [redacted] retired from her position with the Fish and Wildlife Division in [redacted] advised he now serves [redacted] and was concerned with the potential conflict of interest. The complainant also alleged [redacted] U.S. Virgin Islands, Fish and Wildlife purchased a truck with similarly

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received payments from the CFMC while [redacted] explained that [redacted] was the predecessor to [redacted] and also served on [redacted] (Serial 12)

According to [redacted] he and [redacted] became aware through conversations at NOAA sponsored meetings that [redacted] and possibly other Fish and Wildlife [redacted] were receiving payments directly from NOAA for their time when attending meetings. In particular, [redacted] was receiving a daily allotment from NOAA each time she attended meetings. [redacted] and others believed this was unfair because his cost of attendance and that of the local fishermen came out of their individual pockets. [redacted] was later informed by [redacted] that payments to State employees such as [redacted] were prohibited from NOAA under the Magnuson-Stevens Act. [redacted] explained that [redacted] and her counterparts in Puerto Rico, St. Johns, U.S. Virgin Islands are considered state employees. (Serial 12)

On May 25, 2010, [redacted] CFMC, was interviewed and acknowledged he read the entire Magnuson-Steven Act and found that state employees were prohibited from receiving payments from NOAA under the act unless they were on leave at the time of the meetings. [redacted] said that if they were on leave and attending a meeting they were not representing the state and therefore not entitled to payment. [redacted] said he and [redacted] were involved in making the FOIA request to NOAA for documents to determine whether any state Fish and Wildlife Directors were paid by NOAA based on the information they had. [redacted] said [redacted] recently approached him at a meeting and admitted she was not supposed to receive payments. [redacted] said they were alone when this statement was made and it could not be corroborated. (Serial 13)

On September 10, 2010, [redacted] NOAA, Southeast Regional Office was interviewed. [redacted] advised he is responsible for the [redacted] explained the Fishery Councils prepare management plans for their respective areas regarding habitat and protective issues as well as work in conjunction the U.S. Coast Guard and U.S. Fish and Wildlife. Each Council is comprised of State Fish and Wildlife Directors who are typically the heads of the various states Fish and Wildlife Services. (Serial 15)

[redacted] said he first became aware of the Caribbean Management Council's concerns about payments to State Fish and Wildlife Directors in their Freedom of Information Act filing back in 2008 or 2009. According to [redacted] State Directors serving on the Fishery Councils are not typically paid for their time when serving on the council. Back in the 1980's a former Director for the Virgin Islands had sued NOAA because he was not being paid for his time on the Council. The former Director won his suit and NOAA paid him approximately $3,000. After this, the Virgin Islands paid their directors for participation during Council business. The Directors were authorized payment via the Magnusson Steven Act for their time as long as they were not also receiving payment from their respective government entity. In essence, they could not be paid twice for participating in Council business. [redacted] said now most government

agencies pay for their Directors to participate and thus have eliminated this clause or at least made it somewhat obsolete within the Magnuson Stevens Act. As best he can recall the last [redacted] with the U.S. Virgin Island to receive payment would have been [redacted] back in 2005. (Serial 15)

Under the Magnuson Stevens Act, [redacted] said [redacted] were authorized payment for their time as long as they were not also receiving payment from their respective agencies for participation in council business. [redacted] explained his office does not maintain any records regarding payments made to any of the former directors. Payments made to [redacted] would have come from [redacted] CFMC, who has been in this position for years. He would have all the records. [redacted] provided some records he received from [redacted] relative to the FOIA requests and he noticed [redacted] did receive several possible improper payments because she marked she was on Comp Time on her Certification. This certification would indicate she was paid twice; once by her agency for the comp time and once by the council. [redacted] said [redacted] were required to sign a certification form stating they were not being paid twice for participating in Council business. [redacted] explained the CFMC receives annual line item funding via NOAA which serves as the pass through for the funding. (Serial 15)

On January 19, 2011, [redacted] CFMC was interviewed. [redacted] provided records associated with payments to [redacted] by the CFMC which revealed that [redacted] documented via time sheet forms, the meetings she attended on behalf of the CFMC. [redacted] submitted numerous payroll forms signed by her supervisor from the Government of Virgin Islands of the United States indicating [redacted] took days of Leave Without Pay or Compensatory Time to attend CFMC meetings. Other documents provided included letters from [redacted] in which she requested payment for her attendance at CFMC meetings and indicated she had attached the necessary approval forms. [redacted] said he never had reason to question the character of [redacted] or the forms submitted. (Serial 17)

[redacted] advised he knew [redacted] who served as the [redacted] recalled [redacted] left his position over 10 years ago and now [redacted] He has never doubted the credibility of [redacted] and has known him for years. According to [redacted] would have received payments from the CFMC in the same manner as [redacted] If [redacted] purchased a truck with his payments from CFMC, it would have been over 10 years ago because [redacted] replaced him as [redacted] in the year [redacted] (Serial 17)

A review of the documents revealed that [redacted] submitted time and leave related forms as documentation to [redacted] between the years 2000 and 2006 for CFMC meetings she attended. [redacted] stated the forms submitted by [redacted] to NOAA were certifications she was not receiving duplicate payments. During this time period [redacted] received $34,749 based upon W-2's from 2000 to 2006. (Serial 24)

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On February 10, 2011, [redacted] was questioned about documents from 2005 and 2006 contained in his file which listed [redacted] as taking Compensatory time and still receiving payment from NOAA for attending CFMC meetings. [redacted] stated whether payments were proper when using Compensatory Time came up nearly fifteen years ago when one of the former Directors sued NOAA for not paying him. He ultimately won the case and the agency had to pay. [redacted] recalled contacting [redacted] Office of Counsel, NOAA who provided a verbal approval to make these payments. According to [redacted] had referenced the 1980 lawsuit which NOAA had to make payments to Directors. [redacted] said [redacted] left NOAA nearly 15 years ago to [redacted] but recalled him saying as long as the requestor was taking Annual Leave, Compensatory Time or Leave Without Pay he could make the payments. (Serial 18)

On February 10, 2011, [redacted] NOAA/CFMC [redacted] was interviewed. [redacted] advised she knew [redacted] because he actually hired her 20 years ago. [redacted] recalled [redacted] was an [redacted] the Caribbean Fishery Management Council when she was hired. [redacted] left NOAA nearly 18 years ago to become [redacted] and she has no contact information for him. [redacted] was not familiar with the decision [redacted] made regarding payments to Directors, but did recall the 1980's lawsuit referenced. (Serial 20)

On February 14, 2011, [redacted] NOAA/CFMC [redacted] was interviewed. [redacted] advised he was employed by NOAA as [redacted] back in the 1980's and 1990's and provided [redacted] to the Caribbean Fishery Management Council of which [redacted] was the [redacted] said he did not advise [redacted] concerning payments being made to Directors. He has always considered [redacted] an above-board individual and perhaps he just got that issue confused with something else, given this was close to 20 years ago. [redacted] stated he did advise [redacted] on a number of issues but does not recall this one. [redacted] said he left NOAA back in 1994. (Serial 19)

On July 26, 2011, the reporting agent requested an opinion from the U.S. Department of Commerce, Office of Special Counsel as to the appropriateness of payments to former [redacted] Attorney, Office of Counsel provided the following response: (Serial 22)

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. Section 1801 et seq. created eight councils from regional groups of coastal States and gave them certain authority concerning ocean fisheries to the seaward of their member States. The Secretary of Commerce appoints a majority of the voting membership for three-year terms. The remaining members, voting and nonvoting, are State and Federal officers who serve ex officio. Section 1852(d), which addresses compensation and expenses, provides in pertinent part:

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"The voting members of each Council who are required to be appointed by the Secretary and who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-15, step 7 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council ... shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses. "

Each fishery management council is required to develop standard operating procedures. The Caribbean Fishery Management Council incorporated the requirements of Section 1582(d) into its Statement of Organization, Practices and Procedures (SOPPs), but included an internal policy decision to the text. Section 12.4 of the Caribbean Council's SOPP which addresses Council Member Compensation provides in pertinent part:

"The voting members of each Council who are not employed by the Federal Government or any State or local government (that is, anyone who does not receive compensation for any such government for the period when performing duties as a Council member) receives compensation at the daily rate for the [sic.] GS-15, step 7 of the General Schedule, when engaged in the actual performance of duties as a Council member. Actual performance of duties, for the purpose of compensation, may include travel time. ... State officials may be compensated at the daily rate for the [sic.] GS-15, step 7 of the General Schedule, if they can document they are on leave without pay (LWOP)."

The Caribbean Council's SOPP does not contradict the terms or the intent of the Act, but rather supplements them through internal policymaking. The SOPP, coupled with the personnel practices of the VI Government, ultimately allow a state employee to claim leave without pay status, so that s/he may request salary reimbursement from the Council. From the facts presented above, it appears that the former [redacted] simply followed the rules and complied with both requirements in order to get paid.

The complainant also alleged [redacted] another [redacted] the U.S. Virgin Island Fish and Wildlife Department who held the position prior to [redacted] had purchased a truck with improper payments he received CFMC. (Serial 1)

[redacted] was interviewed and advised he left his position with the Fish and Wildlife Department in 1999 and began working for the [redacted] did recall purchasing a used truck in 1992 or 1993 but said it was with his own money. He stated he purchased another truck in 2005, which again was with his one money. (Serial 23)

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

RECOMMENDATIONS

Supervisory review determined this investigation did not warrant further investigative resources due to the lack of prosecutorial merit. Therefore, it is recommended this matter be closed.

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Case Disposition Considerations

Case Number: 11 0207 Case Agent: [redacted]

Days Open: 1/10 ≈570 days

[redacted]

Closure Recommended? X YES ____ NO

Case Agent Signatu[redacted] Date 9/29/11

Reviewing Supervisor Signature: [redacted] Date 9/27/11

Concur / Non-concur [redacted] Date: 9-29-11

[redacted] for PAIGI

All Redactions Pursuant to b(7) (c)

UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C 20230

April 2, 2010

MEMORANDUM FOR: **Dr. Jane Lubchenco**
Under Secretary of Commerce
for Oceans and Atmosphere

FROM: Todd J. Zinser

SUBJECT: OIG Investigation #PPC-SP-10-0260-P, Re: Destruction of OLE Documents During an Ongoing OIG Review

Presented for your information, and any action deemed appropriate, are the results of our investigation in the above-captioned matter. Our investigation was predicated upon an anonymous OIG Hotline complaint in November 2009 alleging that [redacted] Office for Law Enforcement (OLE) within NOAA's National Marine Fisheries Service (NMFS), held a "shredding party" on November 20, 2009, which occurred "during the middle of the investigation by the Office of Inspector General." The investigation to which the complaint referred was the nationwide review of OLE you requested, which was predicated upon concerns raised by Members of Congress about reports of heavy-handed and unfair enforcement activities, particularly in NOAA's Northeast Region. We were subsequently contacted by a confidential source who registered concerns similar to those in the anonymous complaint.

Our investigation included sworn, audio-recorded interviews of [redacted] We also interviewed other OLE staff, as well as [redacted] who is [redacted] and [redacted]

Results in Brief

We determined that in October 2009, [redacted] approved the shredding of OLE headquarters documents, office-wide, which was carried out when a truck from a mobile document destruction company arrived on November 20, 2009, and spent an hour shredding multiple large bags of documents on the street outside OLE headquarters. From what we were able to determine, about six of OLE headquarters' 40 employees participated, with [redacted] contributing the majority of documents shredded, consisting of the contents of 140-plus files from his office, which he estimated to be 75-80% of his total files. Such office-wide document destruction was not a routine function for OLE; rather, the [redacted] told us this was the first such exercise in their ten-plus years with OLE.

[redacted] is equivalent to [redacted] is equivalent to [redacted] is equivalent to [redacted]

We found that [redacted] along with certain senior and administrative staff, undertook this document destruction without regard to the careful, deliberate management of records required by federal regulation and Department of Commerce (DOC) policy. Such non-compliance is particularly troubling given OLE's obligation to ensure the proper management of its own records—especially as a federal law enforcement agency that enforces recordkeeping violations by the fishing industry it regulates. Moreover, the shredding occurred in the face of OIG's ongoing review of OLE, which required OLE to provide us with numerous records, and also during ongoing litigation. As such, the shredding implicates an appearance of impeding both the OIG review and the litigation. OLE's senior management had an obligation to ensure retention of the agency's records while under OIG review,[2] as well as during the pendency of litigation. We note that we did not find sufficient evidence to establish that the shredding was intended to obstruct our ongoing review of OLE, although it posed an adverse impact to our ongoing review.

The shredding was done without the responsible OLE officials vetting it with their superiors in NMFS and NOAA, consulting NMFS' designated Records Management Official or NOAA's Office of General Counsel, or informing OIG in advance. Any or all of these would have been prudent steps that could have prevented the shredding. In hindsight, [redacted] expressed regret for not recognizing the problems with the shredding before it was carried out. [redacted] admitted that a reason he chose not to shred anything was because he recognized it posed an appearance issue given OIG's ongoing review of OLE; however, he said he did not think to alert the [redacted] to this risk, which he now regrets.

[redacted] while advising in retrospect that such shredding would not occur again given the same set of circumstances, refused to answer the question of whether he should have recognized at the time that the shredding was problematic, commenting that records management was not his area of responsibility. The [redacted] each answered this question in the affirmative. [redacted] refusal was made despite a Department of Commerce (DOC) directive requiring employees to be fully cooperative and forthcoming with the OIG.[3]

Findings

[redacted] and members of his senior and immediate staff told us the plan for shredding originated with [redacted] in October 2009 after she remembered [redacted] mentioning to her a year or so earlier that he someday wanted her to handle a project to get rid of old documents

[2] Section 6(a)(1) of the Inspector General Act of 1978, as amended, provides that each Inspector General, in carrying out the provisions of the Act, is authorized "to have access **to all records, reports, audits, reviews, documents, papers, recommendations, or other material** available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act." [emphasis added]

[3] Department of Commerce Administrative Order (DAO) 207-10 states, "Employees and officials shall cooperate fully with OIG and provide the information or assistance that is necessary for OIG to fulfill its obligations under the Inspector General Act."

that had accumulated in his office. [redacted] told us this recollection was prompted by her retrieving an office travel file in response to a Freedom of Information Act (FOIA) request and realizing that there were numerous old travel files that could probably be destroyed. She and [redacted] then coordinated arrangements for office-wide shredding, and [redacted] sent an email to all OLE headquarters' staff on October 27, 2009, inviting them to take advantage of professional shredding if they had a substantial amount of material. Over three weeks elapsed between the invitation to shred and when the scheduled shredding truck arrived on November 20, 2009.[4]

Neither [redacted] participated in the shredding. [redacted] told us he was too busy at the time to gather documents for shredding, despite having instructed [redacted] that "she must...let the entire office know this was going to happen, and give everyone an opportunity because...I wanted to make sure that we were efficient...in spending the money." [redacted] said he did not have any documents to be shredded at the time, while [redacted] was out on sudden, extended sick leave beginning November 16, 2009, and had not yet assembled any documents. The [redacted] told us it did not occur to them that the shredding could be problematic in relation to OIG's review.

[redacted] also did not participate in the shredding. As shown below, the [redacted] account of his knowledge and actions regarding the shredding changed, markedly, during and between our interviews with him:

- When interviewed, [redacted] initially told us that he did not shred because he did not have time to assemble documents, but would have if he had the time since he did not see an issue with it. He added that he would probably do so now because he still did not think it would be improper.

- Later during this interview, [redacted] admitted that a reason he chose not to shred anything was because he recognized it posed an appearance issue given OIG's ongoing review of OLE. Despite this recognition, he told us he did not think to alert [redacted] or anyone else to this risk, which, in hindsight, he regrets.

- Over two weeks following our interview, [redacted] sent an unsolicited email message to our lead investigator in this matter retracting his above admission. In this email he stated, "[When interviewed] we discussed whether or not I made this decision [not to shred] based on facts that included the current OIG investigation and then did not share my concerns with others prior to the shredding. This was not the case. If I would have recognized this action would have been perceived as it has, I would have spoken up."

- When reinterviewed the next day, again under oath [redacted] told us that his admission during his prior sworn interview was correct and the email was inaccurate. His explanation for the email assertion was that in reflecting on this matter in the time following

[4] [redacted] purchasing official for OLE headquarters, procured the mobile document destruction services directly using the office credit card, at a cost of $206.

our interview, without having a copy of the interview transcript, he experienced an incorrect recollection.

[redacted] admitted that he did not review and apply required records disposition schedule criteria in deciding which of his own file documents to shred; consequently, he could not definitively say whether any documents that were destroyed were required to have been retained. He also could not rule out that some shredded documents may have been pertinent to OIG's review, but said he did not believe any would have been relevant.

After we initially addressed the hotline complaint with [redacted] on December 14, 2009, he sent us an email in which he stated, "...I would never have imagined that anyone would seriously suspect that this [shredding] activity was in any way inappropriate, regardless of the ongoing review by your office...Nothing that would have been relevant to the matters subject to the ongoing review by your office was disposed of..." When we interviewed him on March 5, 2010, and asked how he knew that none of the files he shredded were of potential relevance to OIG's review, the [redacted] advised that it was a presumption that, in hindsight, he should not have made.

While providing us a topical listing of the 140-plus files he shredded and the approximately 42 files he retained (which he prepared after-the-fact in December 2009), the [redacted] could not describe shredded documents in detail, telling us he simply looked over his files, not page-by-page, and made his own judgments on what to shred and what to retain. He estimated that he spent a total of about three hours over several days assembling documents for shredding. The [redacted] list includes multiple shredded files of his that, on their face, would have been relevant to our review (e.g., "Funds", "GCEL Case Guidance", "Operating Plans–NOAA", "Purchasing", "Reports", "Seizures", "Travel," and "Workforce Analysis".)

The [redacted] acknowledged that OLE staff was not provided policy guidance or limitations on what they could and could not shred. The only instructions staff received were the shredding contractor's "Do's & Don'ts" for shredding (e.g., paper clips are acceptable, rubber bands are not.) They could not definitively tell us who all in headquarters participated in the shredding, and did not know what all had been shredded—telling us determinations for shredding were left to individual discretion, relying on staff to follow retention/destruction requirements.

As carried out, the shredding was non-compliant with a federal records management regulation (36 C.F.R. § 1220), along with DOC and NOAA policy (Departmental Administrative Orders 205-1 and 205-3, and NOAA Administrative Order 205-1). These directives expressly require the retention and safeguarding of agency records, and prohibit destruction of records without following approved disposition schedule criteria. Key pertinent provisions are excerpted below:

- 36 C.F.R. § 1220.32(e) prescribes that, "Records, regardless of format, are protected in a safe and secure environment and removal or **destruction is carried out only as authorized in records schedules.**" [emphasis added]

- DAO 205-1, Section 4.04 requires that, "All records of the Department shall be listed and described in an approved records schedule and **shall be disposed of only as authorized by that schedule.**" [emphasis added]

- DAO 205-3, Section 5.02 requires that, "All offices and employees shall cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the Department, and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the Department's activities. **No records shall be removed except as authorized by this Order.**" [emphasis added]

- DAO 205-3, Section 5.11 requires that, "Records authorized for disposal under an approved Records Disposition Schedule or List **may be removed only in accordance with the procedures set forth** in...DAO 205-1..." [emphasis added]

- NAO 205-1,[5] Section 5.08 identifies, "NOAA's Records Disposition Handbook – document listing NOAA's records disposition schedules. **These authorities are mandatory in NOAA.**" [emphasis added]

- NOAA's *Records Disposition Handbook* provides disposition schedules specifying required retention periods (e.g., two years, five years, permanent) for the various types of records maintained by NOAA organizations such as OLE.

In addition to not complying with the above-referenced records disposition regulation and policy, the shredding implicates an appearance that it was done to conceal information from the OIG. As noted above, [redacted] recognized this appearance problem in advance of the shredding, yet did not intervene. [redacted] and other officials also acknowledged that the shredding posed such an appearance issue, as did other OLE staff with whom we spoke. Compounding this appearance problem is that beyond the invitation to shred being extended to all headquarters employees through [redacted] initial and reminder emails, it could also have had the effect of signaling to OLE's field staffs that shredding was acceptable during OIG's ongoing review of OLE. This appearance issue, along with that posed in relation to pending litigation, implicates the following provision of the Standards of Ethical Conduct:

- 5 C.F.R. § 2635.101(b)(14) provides that, "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

We also investigated whether there may have been a violation of 18 U.S.C. 1516 – Obstruction of a Federal Audit. Proof of such criminal violation requires evidence of intent to obstruct. [redacted] and the other OLE managers we interviewed adamantly denied any intent to obstruct OIG's

[5] NAO 205-1, dated May 30, 1997, was in effect at the time of the shredding. It has since been superseded by revision dated January 19, 2010.

review of OLE. Absent additional information, there is not sufficient evidence at this time to establish that the shredding was intended to impede our efforts. Notwithstanding, the shredding necessarily limited our access to OLE records, thus posing an adverse impact to our ongoing review.

[redacted] told us he was surprised the shredding raised any concerns because there was no attempt to be "clandestine" with it, and, at the time, he simply did not think of it in relation to the ongoing OIG review. [redacted] told us he now regrets not having considered this and not ensuring adherence to the records disposition requirements, expressing that it discredits him and OLE. When we asked [redacted] about his December 14, 2009, email response after we first addressed the shredding issue with him, he stated:

> "[W]hen you raised it that day [in December 2009], I told you then, I was shocked. And I should not have been. And when I sat in that hearing the other day [March 3, 2010] and listened to the Chairwoman describe that and the way she took it and the way it was characterized, I mean, I felt terrible because, you know, like she said, you're a law enforcement official, why didn't you think of that. I don't know. I mean, I've been doing this for 32 years."

He further stated, "[I]t was just something that...I see now was poor judgment and I certainly would never, ever have done it...given the consequences here. And I think it's put some great jeopardy on me..." Beyond subjecting the agency and themselves to liability, because the [redacted] did not provide employees with guidance on the rules and regulations for document destruction, this also exposed staff to potential personal liability for non-compliance with the applicable regulation and policy—despite the shredding being a function sanctioned by OLE management.

Both [redacted] suggested to us that any staff having concern about the shredding, namely the OIG hotline complainant, had a duty to raise it before the shredding took place. In our view, this is misplaced responsibility; the fact is that the [redacted] had over three weeks to recognize that the scheduled shredding was ill-advised from both the standpoint that it was non-compliant with applicable regulation and policy, and because it implicated an adverse appearance in light of the ongoing OIG review of OLE. It is also the case that, by law and DOC policy, employees have the right to contact the OIG and blow the whistle on suspected fraud, waste, and abuse, without fear of reprisal and they are not required to first address their concerns internally with agency management.

We also interviewed the [redacted] in NMFS at the time of the shredding; [redacted] They each said they had no advance knowledge of the shredding. However, [redacted] recalled that in about December 2009 or January 2010, either [redacted] called and advised him, in general terms only, that OLE got around to purging some old files, and they were letting him know just in case this was reported in the press, in light of all the "noise" surrounding OLE at the time, particularly in the Northeast.

[redacted] told us because he did not connect it to OIG's review at the time, and did not recall the advisement making reference to any complaint or being raised by OIG, he did not apprise any NMFS or NOAA officials above him. He also said he assumed OLE followed proper records management protocols in purging the files. [redacted] told us he thought he advised [redacted] that OIG had raised the issue, but said he could not be sure.

[redacted] who had relocated to [redacted] confirmed that he was not advised of the shredding in advance, telling us he first learned of it through a media report following the March 3, 2010, Congressional hearing. [redacted] aptly stated during our interview, "Shredding is so final; once a document is shredded, it's gone." As [redacted] have acknowledged, it is not possible to know definitively what all documents were destroyed in the shredding.

Recommendations

1. Federal law enforcement officers are held to a high standard of conduct. OLE's own disciplinary policy, issued by [redacted] in 2008, states that "because law enforcement employees occupy positions of special trust and responsibility, they must maintain the highest standards of conduct." In our view, the Under Secretary should not have to remind NOAA's senior law enforcement officials of the need to cooperate with OIG and other investigations, and retain all relevant documents and follow records disposition requirements. As OLE's and NOAA's top law enforcement officer, the [redacted] is most accountable for the regulation and policy non-compliance shown by these findings, along with the adverse appearance implicated. Accordingly, we recommend that you consider appropriate administrative action for [redacted] based on their respective levels of involvement and responsibility.

2. Significantly, the only person we spoke to within OLE headquarters who thought to check the rules and regulations on record disposition, prior to the shredding, was [redacted] equivalent [redacted] employee. Based on this and our other findings, we recommend that NOAA reinforce with its management and overall workforce the importance of adhering to records retention/destruction requirements.

3. Because our findings show non-compliance with a government-wide records disposition regulation promulgated by the National Archives and Records Administration (NARA), we recommend that you determine whether notification to NARA is required, and make such notification as appropriate.

4. Given litigation involving OLE enforcement matters was pending at the time of the shredding, we recommend that you determine whether these findings present any issues in relation to any current discovery order or any active litigation hold on NOAA records, and address them as appropriate.

The appendices to this memorandum contain summaries of the evidence for our findings in this matter, presented by accountable official and regulations/policies implicated. Referenced therein

are our interviews and other pertinent documentation, which are contained in the separate packet of attachments to this memorandum, consisting of over 450 pages.

Please apprise us within 60 days of any actions taken or planned with respect to our findings and recommendation in this matter. If you have any questions, or if we can be of further assistance, please do not hesitate to call me at (202) 482-4661.

All Redactions Pursuant to b(7) (c)

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER:
Bering Sea Crab Rationalization **Kodiak, Alaska**	FOP-WF-10-0405-I
	TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

On March, 18, 2010 the OIG received information during a walk-in interview of [redacted] alleging that Bering Sea crab crewmen have lost approximately $400 million in harvest quota shares as a result of unjust actions taken by License Limitation Permit (LLP) holders. Additionally, approximately 1,000 crab crewmen in the Bering Sea fisheries have lost their jobs due to the Bering Sea Aleutian Island Crab Rationalization (BSAI/CR) program which was passed despite alleged jurisdictional and legislative violations and non-adherence to the National Standards (NS) of the Magnuson-Stevens Act (MSA), specifically NS numbers four (4), five (5), and eight (8). The BSAI/CR also resulted in processor quotas that require crab fishermen to sell 90 percent of their crab harvests to pre-determined processing companies, potentially violating anti-trust laws [Serial 1].

RESULTS/SUMMARY OF INVESTIGATION

The complaint involves programmatic issues resulting from legislation that the complainant disagrees with. Further, discussions with the U.S. Department of Justice (DOJ) suggested that the viability of an anti-trust suit regarding crab rationalization is limited because U.S. Government-created monopolies are condoned under current anti-trust statutes and case law. Based on the foregoing, no further investigative action is warranted at this time.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ DOJ: ___ Other (specify):

[redacted] Date: 9/20/11	Signature of Approving Official [redacted] Date: 9/20/11
Name/Title: [redacted] Special Agent	Name/Title: [redacted] Special Agent in Charge

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

METHODOLOGY

This case was conducted through interviews and review of documentation including electronic mail, regulations, articles, and documents from the National Oceanic and Atmospheric Administration (NOAA).

DETAILS OF INVESTIGATION

On March 18, 2010 we received information during a walk-in interview of [redacted] alleging that Bering Sea crab crewmen have lost approximately $400 million in harvest quota shares as a result of unjust actions taken by License Limitation Permit (LLP) holders [Serial 1].

On May 17, 2010, [redacted] further detailed complaints against NOAA's Crab Rationalization program, specifically the allegation of potential anti-trust issues. He pointed out that crabbers must abide by a 90% / 10% rule; where crabbers must take 90% of their catch to the required processor and 10% can go to a processor of their choice. Based on this allegation, there was a potential violation of 15 USC § 2, Allocation of Effort:

> *"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court"* [Serial 2].

Further, noting such potential anti-trust issues, the DOJ has voiced an opinion on this aspect of the BSAI/CR and processor quotas. According to the Statement of [redacted] Deputy Assistant Attorney General, Antitrust Division before the Committee on Commerce, Science and Transportation of the U.S. Senate on February 25, 2004 the DOJ opposed the individual processor quota element of the BSAI/CR. Specifically, [redacted] states:

> *"We recommended that NOAA oppose the individual processor quotas, or IPQ, element of the council's proposed program. Processor quotas would impose new regulatory requirements that produce anticompetitive results in the processing market"* [Serial 13].

Despite such recommendations, the North Pacific Fisheries Management Council (NPFMC) included this element in the regulations. However, the regulations do include a requirement that NOAA report to DOJ on any anti-competitive behavior within crab fisheries. Specifically, 16 U.S.C. 1862 was amended to include the following:

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> *...The Secretary of Commerce, in consultation with the Department of Justice, shall develop and implement a mandatory information collection and review process to provide any and all information necessary for the Department of Justice to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quotas under the Program* [Serial 5].

[redacted] also argued that National Standard (4) and (5) under the Magnuson Stevens Act (MSA) prohibits such an inequitable allocation of resources. National Standard (4) states:

> *Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges* [Serials 2 and 5].

National Standard (5) states:

> *Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose* [Serial 5].

In addition, [redacted] alleged the fisheries council does not follow due process in drafting and issuing regulations. The Governmental Accountability Office, in its report: *Fisheries Management: Core Principles and a Strategic Approach Would Enhance Stakeholder Participation in Developing Quota-Based Programs* (GAO-06-289) reported similar findings. GAO reported that "*[National Marine Fisheries Service (NMFS)] has neither developed a formal stakeholder participation policy nor provided the councils with guidance or training on how to develop and use a strategic approach to enhance stakeholder participation*" [Serial 6].

Added to a lack of due process, [redacted] also alleged coercion of crewmembers by skippers to not testify before the council against the rationalization program. He further alleges Council members' inherent bias and disregard of the crew's concerns over this and other proposals. He alleges that "*holding the crew off for 5 years and avoiding a political demagogue, and killing all motions for change that would recognize the contractual, historical participation of crew was designed to defraud other rights holders (given that anyone should have such quota rights at all).*" As a result, he states that due process is not practiced on the part of the Fisheries Management Council [Serial 11].

He gave three examples of crew members being coerced into remaining silent on which he bases this allegation:

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- In 2002, at one NPFMC council meeting the skippers that were present went on record to advocate a change in share allocation from 10 – 12% to 3% for the crew. The crew members that were present were held against the wall by skippers threatening that if they go on the record as against this new program they would be fired from the boat. A [redacted] witnessed these incidents and has photos.

- In 2007, crew members went to a NPFMC meeting where a [redacted] wanted to get into the fishery, but he did not have a quota because he did not have a "history". He was told that if he went on the record at the meeting he would have his licenses revoked.

- [redacted] who was going to speak at a NPFMC meeting and according to [redacted] received a call before the meeting telling him that if he were to speak he would lose his job [Serial 2].

On May 27, 2010 we contacted NOAA Office of Law Enforcement (OLE) agent [redacted] who is stationed in Alaska. SA [redacted] stated that he was aware of the discontent among the crew members and has received similar complaints in the past from [redacted] with regard to coercion. However, he noted that he was never given much detail into the specific threats. He advised [redacted] to report the threats to local law enforcement which would have jurisdiction over such allegations [Serial 3].

On June 3, 2010 [redacted] provided contact information for the crew members above. We attempted to contact a number of crew members regarding the allegations but many were unable to be reached. We were able to reach [redacted] who were unable to give us specific instances of coercion [Serials 4 and 16].

On September 20, 2010 we discussed the issue the complainant raised above with regard to the crab rationalization program with AUSA [redacted] Antitrust Division. He stated he is familiar with the program and noted that current U.S. Government-created monopolistic behaviors are condoned. As such, there are few remedies in such situations [Serial 10].

On March 15, 2011 a supervisory review resulted in direction for this case to be closed because of the facts to date and competing case priorities. The primary issues involve dissatisfaction with legislative changes [Serial 12].

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

TABLE OF ATTACHMENTS/SERIALS

IG-CIRTS Serial	Document Description
1	Initial Complaint Information
2	IRF - [redacted]
3	Mem[redacted]OLE
4	IRF - [redacted]
5	Memo - Review of Applicable Laws and Regs.
6	Memo - Review of GAO Quota-share Report
10	Memo - Discussion with AUSA [redacted]
11	Email - Alaska - 5-year crab ratz review
12	IRF – Case Review Discussion
13	DOJ Statement to Congress re: Processor Quotas
16	IRF – [redacted]

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

REPORT OF INVESTIGATION

CASE TITLE: [redacted] DOB: [redacted] National Oceanic & Atmospheric Administration [redacted]	FILE NUMBER: HQ-CC-10-1311-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

The NOAA vessel [redacted] is a government oceanographic research vessel based in [redacted] just completed a forty-eight day mission to the Gulf of Mexico, returning to [redacted] on August 28, 2010. [redacted] served as [redacted] for the entire forty-eight day mission. While at sea, personnel aboard the [redacted] are able to use their personal computers to connect to the internet through the vessel's government computer network. The vessel's network then sends the traffic through a router to a satellite and then on to a ground station. The traffic then travels through an indeterminate number of intermediary routers to the NOAA Network Operations Center (NOC). All traffic coming across the NOC is copied to the Computer Incident Response Team (CIRT) equipment, as well as being sent on to its final destination such as a website. Traffic back from the final destination to the computer on board the vessel follows the same route in reverse. The copied traffic stream received by the CIRT equipment is subsequently examined for the presence of malicious software or other suspicious activity. If such activity is found, the data is then saved to a disk for later analysis. As part of the NOAA Acceptable Use Policy, employees are warned against downloading, viewing and storing sexually explicit or sexually oriented materials. Employees were also advised that any use of government communications resources is not secure, private, nor anonymous and that systems managers employ monitoring tools to detect improper use. [redacted] completed training on the Acceptable Use Policy on March 31, 2010.

Distribution: OIG _x_ Bureau/Organization/Agency Management __ ___ Other (specify):

Signature of Case Agent: [redacted]	Date: 5/26/11	Signature of Approving Official: [redacted]	Date: 5/26/2011
Name/Title: [redacted] Special Agent		Name/Title: [redacted] Director, Computer Forensics	

All Redactions Pursuant to b(7) (c) unless otherwise noted

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

On August 27, 2010, NOAA IT security personnel discovered a NOAA IP address had been the source of a Google search containing keywords indicating that the object of the search was child pornography. Further investigation established that this computer address was located aboard the NOAA ship [redacted] based in [redacted] (Exhibit 13)

This investigation concerns alleged violations of Title 18, United States Code, Sections 2252 and 2252A, relating to material involving sexual exploitation of minors. 18 U.S.C § 2252(a) prohibits a person from knowingly transporting, shipping, receiving, distributing, reproducing for distribution, or possessing and/or attempting to receive any visual depiction of minors engaging in sexually explicit conduct when such visual depiction was either mailed or shipped or transported in interstate or foreign commerce by any means, including by computer, or when such visual depiction was produced using material that had traveled in interstate or foreign commerce. 18 U.S.C § 2252A(a) prohibits a person from knowingly transporting, shipping, receiving, distributing, reproducing for distribution, or possessing and child pornography, as defined in 18 U.S.C § 2256(8), when such child pornography was either mailed or shipped or transported in interstate or foreign commerce by any means, including by computer, or when such child pornography was produced using materials that had traveled in interstate or foreign commerce.

RESULTS/SUMMARY OF INVESTIGATION

(b)(7)(E) [redacted] identified a total of 321,021 graphic files and 773 images of adult pornography on [redacted] personal computer. A review of the [redacted] annual cruise schedule and [redacted] Time and Attendance (T&A) records disclosed 113 pornographic images associated with internet activity that were downloaded during Days At SEA (DAS) in April 2010 and August 2010. Of the 113 pornographic images associated with internet activity 17 images identified by NOAA CIRT on the activity logs were validated by computer forensic media analysis as residing in the user created My Documents/My Pictures/XXX/DL folder on [redacted] personal computer. No images of child pornography or child erotica were discovered. The final forensic report was provided to NOAA Office of Marine and Aviation Operations, Resource Management Branch for administrative action. [redacted] resigned from government service on [redacted] prior to any adverse actions. (Exhibit 18)

METHODOLOGY

(b)(7)(E) [redacted] identified a total of 321,021 graphic files and 773 images of adult pornography on [redacted] hard drive. Of the 113 pornographic images associated with internet activity 17 images identified by NOAA CIRT on the activity logs were validated by computer forensic media

analysis as residing in the user created My Documents/My Pictures/XXX/DL folder on [redacted] computer. (Exhibit 18)

Computer Forensic Media Analysis was performed on all hardware as permitted by the search warrant. No images of child pornography or child erotica were discovered. All computer forensic results were validated by a second analysis using Encase Version 6. The final Forensic report was provided to NOAA Office of Marine and Aviation Operations, Resource Management Branch for Administrative Action. (Exhibit 18)

DETAILS OF INVESTIGATION

On [redacted] Special [redacted] with the assistance of NCIS agents [redacted] boarded the NOAA vesse[redacted] when it made port at the [redacted] With the assistance of the Captain [redacted] and the vessel's Electronics Technician, [redacted] it was determined that the target computer had been assigned IP address 10.48.21.115, which was later found to be the same IP address identified by NOAA CIRT as being assigned to the suspect computer (each computer aboard the vessel is assigned its own unique IP address). The logs maintained by the [redacted] also listed the identification data for the suspect computer as "Admin-f953747fa". Based upon this information, the Electronics Technician was able to determine that the suspect computer was a personal computer owned by one of the crew members and not one of the government computers located on the vessel. SA [redacted] asked the crew members if any of them had personal computers on board the vessel. Nine crew members identified themselves as possessing personal laptop computers. Written consent was received from all nine crew members, including [redacted] to search his laptop to find the Media Access Control address (MAC address). The nine consent searches led to the discovery of the MAC address assigned to the suspect computer, 000802DC0348, being found on a Compaq Evo 620 laptop computer owned by [redacted] Exhibits 3, 4, 6-12) [redacted] was advised of his rights and was provided Garrity and Weingarten Warnings and interviewed by Special Agents [redacted] (Exhibits 1 & 2)

During the interview [redacted] admitted he owned the suspect computer and had used that computer on at least two occasions in the past three days to search and view pornography on the NOAA network while he was on board the ship. [redacted] stated that he had been conducting searches for girls aged 18-22, "young chicks," "barely 18", and "teen something." When asked to explain how the phrase "9, 10, 11, 12 year old jailbait pics" appeared in his network traffic, [redacted] responded that he did not know how that happened. [redacted] acknowledged that he was the sole user of this computer and it is password protected. He further indicated that he had seen pictures of young children during his web surfing but said they were wearing bathing suits. (Exhibit 5)

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All NOAA personnel are informed prior to boarding a NOAA vessel that all personnel give implied consent to conform with safety and security policies of the vessel's command and all spaces are subject to inspection or search. At the direction and with the consent of the vessel's Captain, the cabin used by [redacted] was searched for evidence of child pornography. [redacted] also provided consent to search his personal belongings on the vessel. SA [redacted] searched [redacted] cabin and located a backpack and duffle bag. [redacted] also retrieved and produced two black trash bags from a storage closet in the ship's gymnasium. [redacted] offered to show the SA's the contents of the two trash bags, the backpack and the duffle bag and he removed items which he allowed the agents to seize. SA [redacted] seized a Fujitsu external computer hard drive (Model MHT2060AT, Serial Number NNSWT4112NA7). This hard drive was formerly a laptop hard drive that [redacted] had converted into a portable hard drive that could be connected to his laptop via a USB cable. [redacted] also released to SA [redacted] Sony DVDs with hand written labels, ten compact discs with hand written labels, and eighteen commercially produced DVDs. The commercially produced DVDs bore labels indicating that they contained adult pornography. [redacted] subsequently declined to continue with the interview and the interview was terminated and [redacted] departed the ship.

On August 31, 2010, United States Magistrate Judge [redacted] issued a search warrant, case number 1:10MJ192A for [redacted] laptop computer and Fujitsu external hard drive. (Exhibit 17)

During the period September 3, 2010 through November 22, 2010, computer forensic media analysis was performed on Fujitsu Hard Drive Model Number MHW2040AT, Serial Number K000T822BYBL, 40 GB removed from the Compaq Evo 620 Lap top computer, Serial Number 2UA446P1SZ and Fujitsu external hard drive Model Number MHT2060AT, Serial Number NN7WT4112NA7, 60 GB, all hardware as permitted by the search warrant. Forensic (b)(7)(E) examination using [redacted] identified a total of 321,021 graphic files of all types and 773 images of adult pornography on [redacted] hard drive. No child pornography images were found. A review of the [redacted] annual cruise schedule and [redacted] Time and Attendance (T&A) records disclosed 113 pornographic images associated with internet activity that were downloaded during Days At SEA (DAS) in April 2010 and August 2010. Of the 113 pornographic images associated with internet activity 17 images identified by NOAA CIRT on the activity logs were validated by computer forensic media analysis as residing in [redacted] user created My Documents/My Pictures/XXX/DL folder. (Exhibit 18)

Once criminal allegations were not substantiated the final forensic report was provided to [redacted] NOAA, NOAA Marine and Aviation Operations, Marine and Aviation Operations Centers, Marine Operations Center, Resource Management Branch, for use in administrative actions. (Exhibit 18)

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On [redacted] voluntarily resigned from government service. This resignation occurred prior to any adverse administrative actions being taken by NOAA. (Exhibit 20)

On May 12, 2011, Assistant United States Attorney (AUSA) [redacted] was presented the details of this investigation. Based on the reported details AUSA [redacted] formally declined this case for prosecution. (Exhibit 21)

This investigation is closed.

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REPORT OF INVESTIGATION

CASE TITLE:	FILE NUMBER
[redacted] National Institute of Standards & Technology (NIST) [redacted] Division Gaithersburg, MD	FOP-WF-10-1331-I TYPE OF REPORT ☐ Interim ☒ Final

BASIS FOR INVESTIGATION

In September 2010, the Department of Commerce (DOC), Office of Inspector General (OIG), received information alleging that NIST [redacted] without authorization, transferred two circuit boards from a NIST mass spectrometer to [redacted] Karlsruhe, Germany. Based on shipping records, [redacted] transferred the first circuit board on April 17, 2009, and the second one on May 8, 2009. [redacted] valued the two circuit boards at "$50.00" each when he shipped them with a stated purpose of "loan for testing."

SUMMARY OF INVESTIGATION

Our investigation substantiated the allegation that [redacted] transferred two circuit boards from a NIST mass spectrometer to [redacted] Karlsruhe, Germany, without following established administrative policy for the removal and transfer of NIST property.

METHODOLOGY

This case was investigated by conducting multiple witness interviews and reviewing documentation, including internal correspondence and applicable administrative regulations.

Distribution: OIG _X_ Bureau/Organization/Agency Management ___ DOJ: ___ Other (specify):			
[redacted]	Date: 9/12/11	[redacted]	Date: 8/24/11
Name/Title: [redacted] Special Agent / Investigator		Name/Title: [redacted] Acting Special Agent in Charge	

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DETAILS OF INVESTIGATION

On September 7, 2010, the OIG Hotline received a complaint from [redacted] alleging that in January 2010, another NIST [redacted] misappropriated a NIST-owned circuit board from a NIST mass spectrometer, and sent it overseas. The complainant alleged the value of the circuit board was approximately $15,000. Subsequently, on September 16, 2010, the complainant informed OIG that [redacted] had sent a second circuit board approximately one month after sending the first circuit board. The value of the two boards was undetermined because they are component parts to a machine that is no longer manufactured; thus, the components have no readily determinable market value. (Serials 22, 23) The shipping papers list the purpose for the shipping as a "loan." (Serials 10, 11) This investigation focused on determining whether [redacted] transferred two circuit boards from a NIST mass spectrometer overseas to [redacted] and the circumstances surrounding the alleged transfer. (Serial 1)

The NIST Administrative Manual which regulates "Personal Property Acquisition, Accountability, Control, and Utilization," covers, among other things, loans outside NIST and states, in part: "All loans outside NIST must be documented on Form NIST-393, Equipment Loan Authorization, Receipt, and Property Pass, and require approval by the Personal Property Office. Loaned personal property must have a NIST bar code or a blue label to identify it as NIST U.S. Government personal property." (Serial 20)

OIG received NIST shipping paperwork showing that on April 17, 2009, and again on May 8, 2009, [redacted] shipped, in each instance, one circuit board he valued at "$50.00" with a stated purpose of "loan for testing" to [redacted] Germany. (Serials 10, 11) OIG, after speaking with Division Office Manage[redacted] was not able to find any corresponding authorization paperwork, such as a Form NIST-393, for the two shipments. (Serial 17)

On November 24, 2010, during an OIG interview, [redacted] confirmed that he had shipped the two circuit boards in question to [redacted] in Germany. [redacted] stated that he had done so because [redacted] had reached out to colleagues in the field for replacement parts for his mass spectrometer, and that the circuit boards in question were sitting in a hallway at NIST, with NIST having no intention of repurposing them. [redacted] stated that he did not complete a Form NIST-393 at the time he shipped them; specifically, [redacted] stated ***"I did not process a loan form at that time..."*** [emphasis added]. [redacted] explained this oversight: "possibly because I just didn't think to do so in my eagerness to expedite the shipping to help get [redacted] instrument back into operation as soon as possible. It is also possible that I thought that the value of these items was so small after eight years of use, or because they were not part of the NIST property inventory system, that a loan form was not required." (Serial 26)

In his statement of November 24, 2010, [redacted] states "[i]t should be clear that I received no personal monetary or material benefit from the transfer of this equipment. The only benefit I derived

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was the satisfaction of knowing that these circuit boards that were worthless to NIST and would have eventually been discarded, were instead allowing a laboratory that supports a critical international mission to continue its important work." (Serial 26)

On December 10, 2010, [redacted] Material Measurement Laboratory, NIST, who is [redacted] chain, stated that he had reviewed [redacted] statement and based upon his review and knowledge of the circumstances he sees no problems with the fact that [redacted] sent the circuit boards to [redacted] He acknowledged that [redacted] did not follow appropriate procedure by not filling out the appropriate loan paperwork and by not working with the division property manager, [redacted] (Serial 34)

On December 17, 2010, [redacted] forwarded to OIG an email from [redacted] sent to both him and the complainant), wherein [redacted] stated, among other updates, that he would be returning the two circuit boards to NIST because he had gotten his machine operating and that the two circuit boards were no longer of any use to him. (Serial 28) On January 24, 2011, [redacted] confirmed that [redacted] had returned the two circuit boards. (Serial 31)

Because the two circuit boards were returned to NIST and [redacted] stated that [redacted] actions were not of significant concern, OIG has concluded that this matter needs no further investigation.

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UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

MEMORANDUM FOR: File

FROM: [redacted] Special Agent

THROUGH: [redacted] Acting Special Agent in Char[redacted]

DATE: September 26, 2011

SUBJECT: ACTION MEMORANDUM OF COMPLAINT - **CLOSURE**

RE: [redacted] Government Services Group (GSG)
OI Case FOP-AF-11-0560-P

On August 15, 2011, [redacted] contacted the DOC OIG Hotline and filed for Whistleblower Reprisal (WBR) protection under the American Recovery and Reinvestment Act (ARRA) §1553. [redacted] alleged that [redacted] made numerous comments to [redacted] (see OIG Case #11-0551)) alluding to [redacted] ability to influence State authorities to terminate [redacted] employment. [redacted] believes the threats were made because [redacted] told the FBI GSG and other contractors were committing grant fraud on Broadband Technology Opportunities Program (BTOP) grants awarded to the North Florida Broadband Authority (NFBA) and the Florida Rural Broadband Alliance (FRBA).

We conducted an interview of [redacted] on September 20, 2011. [redacted] with Florida's State Board of Administration, Investment Programs and Governance division. [redacted] has never been employed with any of the principal entities associated with the BTOP grants. [redacted] only affiliation with GSG is through [redacted] who was a [redacted] employee. [redacted] stated [redacted] has not taken any action against him. [redacted] filed for WBR protection as a proactive measure in case [redacted] attempted to effect his [redacted] believes [redacted] has high level State contacts including contacts within the Florida Governor's office which [redacted] may use to [redacted] as a result of [redacted] disclosure to federal authorities.

ARRA §1553 requires the following burdens of proof be met in order for an individual to qualify for WBR protection: (1) the person seeking WBR protection must make a disclosure to federal authorities (ARRA §1553(a)), (2) the official in question undertook a reprisal against the employee (ARRA §1553(a)), (3) the employee was discharged, demoted or otherwise discriminated against ((ARRA §1553(a)) and (4) a disclosure occurred where the official undertaking the reprisal knew about the disclosure or there is "evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal" (ARRA §1553(c)(1)(i)).

The DOC OIG/OI investigation revealed [redacted] did not satisfy the first three legal elements of proof to qualify for WBR protection: (1) [redacted] made the disclosure to

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federal authorities, (2) [redacted] did not undertake a reprisal against [redacted] and (3) [redacted] was not discharged, demoted or otherwise discriminated against by [redacted] or any entity associated with the NFBA or FRBA grants. Since the first three elements of proof were not met, it is immaterial if [redacted] was aware [redacted] made a disclosure to federal authorities.