



Discipline Overview

Fiscal Year 2019



U.S. Customs and
Border Protection

Office of Human Resources Management
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U.S. Customs and Border Protection Discipline Overview Fiscal Year 2019

The release of the U.S. Customs and Border Protection (CBP) Discipline Overview for Fiscal Year (FY) 2019 supports CBP's goal to improve transparency by informing the public about the agency's management of misconduct allegations. As the largest law enforcement agency in the nation, CBP focuses on strategically recruiting, training, and retaining a wide range of personnel to meet the demands of its increasingly complex global mission. Regardless of rank, position, or duty station, every employee is accountable for upholding the highest standards of professional conduct, to personify CBP's core values of Vigilance, Service to Country, and Integrity.

Agency-Wide Actions at a Glance

The FY 2019 Discipline Overview includes comprehensive statistical analysis of disciplinary actions applied to CBP employees, compared to prior fiscal year data, with specific sections addressing:

- Disciplinary Breakdown by Program Office;
- CBP Information Center;
- Social Media Cases;
- Employee Arrests;
- Mandatory Removals of Law Enforcement Officers;
- Use of Force Allegations; and
- Drug-Free Workplace.

In FY 2019, the Office of Human Resources Management processed 7,964 discipline files. It is important to note that the number of cases received in a specific fiscal year is not correlated with the number of discipline files closed in that specific fiscal year. These cases may traverse fiscal years due to factors such as, due process timeframes, requests for extensions granted by deciding officials, investigative lead times, legal review timeframes, time to respond to requests for information, and review time required for presentation to the Discipline Review Board (DRB).

The amount of cases processed rose slightly from 7,239 in FY 2017 to 7,739 in FY 2018 and to 7,964 in FY 2019. Overall, approximately 10% of CBP employees were the subject of an allegation of misconduct that closed in FY 2019.

Table 1 illustrates actions pertaining to cases closed in FY 2019, including cases not warranting any disciplinary action.

Table 1: Agency-Wide Actions for FY 2019	
Allegation Unsubstantiated*	3,770
Counseling	1,744
Written Reprimand	838
Disciplinary Suspension (14 days or less)	491
Memorandum of Instruction (MOI)	341
Combined With Other Case	224
Resignation/Retirement	154
Probationary Termination	107
Leave Restriction	95
Removal	94
Adverse Suspension (15 days or more)	46
Indefinite Suspension	28
Last Chance Agreement (LCA)	17
Demotion	8
Reassignment	4
Non-Disciplinary Settlement**	3
Totals:	7,964

*Current CBP reporting requirements mandate or recommend employees report a variety of issues to the Joint Intake Center (JIC), regardless of whether the issue involves actionable misconduct. Additionally, a substantial number of outcomes reported as “discipline not warranted” include allegations of misconduct deemed unsubstantiated or unfounded.

**These are cases where CBP entered into a settlement agreement to resolve a disciplinary matter that resulted in a non-disciplinary action (e.g., where an employee agreed to give a presentation to coworkers instead of serving a suspension).

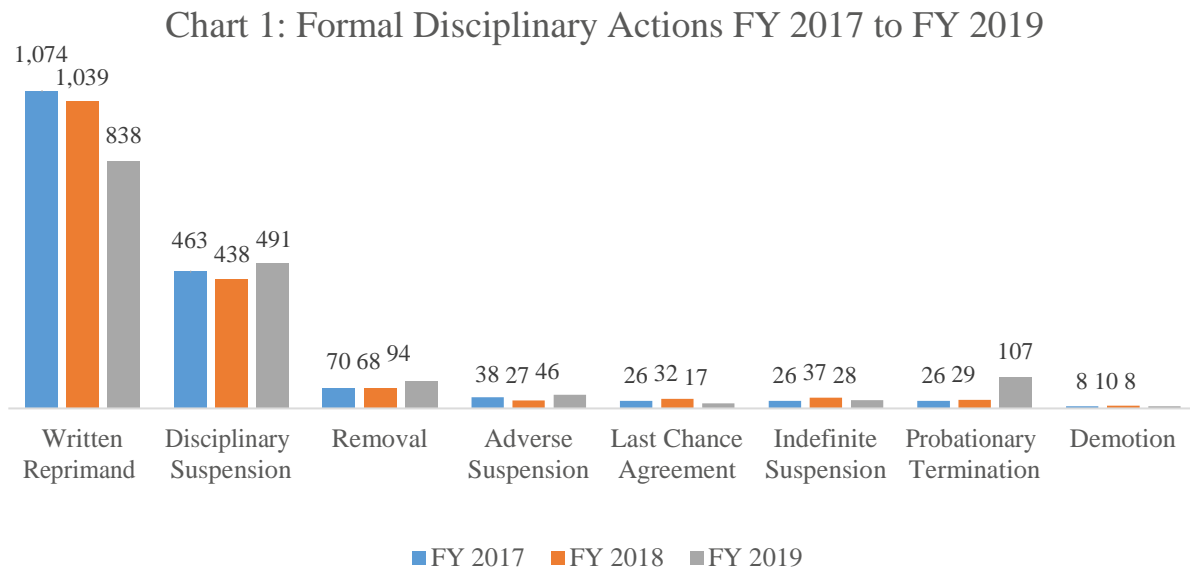
Comparison of Disciplinary Actions Taken in the Past Three Fiscal Years

In FY 2019, CBP reviewed and processed 7,964 cases, which represented more than a 2% increase from the 7,739 cases in FY 2018.

When comparing FY 2017 and FY 2018 data with that from FY 2019, CBP noted the following trends:

- Removal decisions increased nearly 34% over the three-year period;
- Written reprimands decreased by nearly 22% over the three-year period;
- Probationary terminations increased by 312% over the three-year period; and
- The remainder of formal disciplinary actions remained statistically neutral.

Chart 1 illustrates formal¹ disciplinary actions taken by CBP from FY 2017 to FY 2019.



In FY 2019, 1,627 formal disciplinary actions applied to 3% of the CBP workforce. These numbers have remained consistent over the past three years. CBP noted the following:

- Written reprimands accounted for 52% of formal disciplinary actions.
- CBP processed 1,744 cases in FY 2019 where management elected to address misconduct with counseling (informal discipline).
- The number of cases where management determined disciplinary action was not warranted totaled 3,770 in FY 2019. This equated to an aggregate decrease of 10% from 4,183 in FY 2018. In general, cases are closed in this manner when evidence shows the allegation is unsubstantiated or unfounded and therefore does not support taking action.
- Over 90% of the cases processed were employees from the Office of Field Operations (OFO) and U.S. Border Patrol (USBP), the two largest program offices of the CBP workforce. This number has remained over 90% since at least FY 2011.

A detailed breakdown of formal disciplinary actions by CBP program office follows, along with a separate breakdown by geographic location for OFO and USBP.

Table 2 includes discipline by program office, number of employees, type of discipline, and percentage of employees disciplined by program office.

¹ Formal disciplinary actions include reprimands, suspensions, demotions, and removals from federal service.

Table 2: Formal Disciplinary Breakdown by Program Office for FY 2019

Number of Employees²:	OFO 30,807	USBP 21,249	Enterprise Services 4,529	AMO 1,690	Commissioner 1,009	Trade 979	Operations Support 871	TOTALS 61,134
Percentage Disciplined:	2.4%	3.6%	1.1%	1.4%	0.8%	0.2%	1.7%	2.6%
Written Reprimand	394	393	23	12	7	1	8	838
Disciplinary Suspension	224	238	17	4	2	-	6	491
Removal	56	33	1	3	-	-	1	94
Adverse Suspension	21	21	3	1	-	-	-	46
Last Chance Agreement (LCA)	9	8	-	-	-	-	-	17
Indefinite Suspension	13	11	3	1	-	-	-	28
Probationary Termination	39	59	5	3	-	1	-	107
Demotion	4	4	-	-	-	-	-	8
Totals:	760	767	52	24	9	2	15	1,629

² Employee data as of Sept. 30, 2019.

Table 3 lists FY 2019 disciplinary actions within OFO including the location of the employee disciplined.

Table 3: Disciplinary Breakdown by OFO Field Office for FY 2019												
	Allegation Unsubstantiated	Counseling	Written Reprimand	Disciplinary Suspension	MOI ¹	Probationary Termination	Removal	Adverse Suspension	Indefinite Suspension	LCA	Demotion	Totals
Atlanta	65	11	10	6	1	-	1	-	1	-	1	96
Baltimore	83	73	13	12	5	2	2	1	-	-	-	191
Boston	49	68	8	6	15	-	2	2	-	-	-	150
Buffalo	90	28	5	3	1	-	4	-	-	1	-	132
Chicago	104	30	17	6	9	2	2	1	-	-	-	171
Detroit	91	41	10	17	7	1	5	2	1	1	1	177
El Paso	89	42	38	31	4	1	1	2	-	3	1	212
Houston	108	30	38	7	8	1	-	1	1	-	-	194
HQ	47	11	3	6	7	-	-	-	-	-	-	74
Laredo	296	27	38	22	26	9	6	4	1	1	-	430
Los Angeles	73	46	24	10	5	2	8	-	2	-	-	170
Miami	130	67	37	16	2	-	2	1	1	-	1	257
New Orleans	16	11	4	3	-	-	1	-	-	-	-	35
New York	65	23	6	18	3	6	3	-	2	1	-	127
Portland	16	5	1	-	1	-	1	-	-	-	-	24
Preclearance	52	16	11	11	8	-	-	1	-	-	-	99
San Diego	240	297	54	21	4	5	11	2	-	-	-	634
San Francisco	57	20	15	5	2	2	1	-	2	-	-	104
San Juan	39	12	12	3	-	1	1	2	-	-	-	70
Seattle	64	59	40	12	8	4	5	-	-	1	-	193
Tampa	53	1	3	-	-	-	-	1	-	-	-	58
Tucson	163	105	7	9	31	3	-	1	2	1	-	322
Totals:	1,990	1,023	394	224	147	39	56	21	13	9	4	3,920

¹¹¹ Memorandum of Instruction

Table 4 lists FY 2019 disciplinary actions within USBP including the location of the employee disciplined.

Table 4: Disciplinary Breakdown by USBP Sector for FY 2019												
	Allegation Unsubstantiated	Counseling	Written Reprimand	Disciplinary Suspension	MOI	Probationary Termination	Removal	Adverse Suspension	Indefinite Suspension	LCA	Demotion	Totals
Big Bend	55	3	26	5	7	4	1	1	1	4	-	107
Blaine	22	3	13	11	2	-	-	-	-	-	-	51
Buffalo	3	7	15	4	5	-	1	1	-	-	-	36
Del Rio	90	58	37	20	20	11	2	-	1	-	-	239
Detroit	18	4	4	1	2	-	1	-	-	1	-	31
El Centro	69	22	11	16	27	1	1	-	-	-	-	147
El Paso	129	26	42	25	11	4	1	2	1	-	-	241
Grand Forks	9	5	-	1	-	-	-	-	-	-	-	15
Havre	10	8	6	1	-	-	1	-	-	-	-	26
Houlton	3	8	8	1	3	-	-	-	-	-	-	23
HQ	19	5	3	3	3	1	1	1	-	-	-	36
Laredo	181	104	28	19	20	12	2	-	1	-	-	367
Miami	5	4	2	-	-	-	-	-	-	-	1	12
New Orleans	9	-	3	-	1	-	-	-	-	-	-	13
Ramey	6	2	1	-	-	-	-	-	-	-	-	9
Rio Grande Valley	329	103	55	48	32	6	11	5	2	-	1	592
San Diego	121	66	33	22	-	8	7	4	-	1	-	262
Special Operations Group	9	1	1	1	-	-	-	-	1	-	-	13
Spokane	13	6	2	4	1	-	-	-	-	-	-	26
Swanton	8	8	6	3	1	1	-	2	-	-	-	29
Tucson	287	124	71	42	32	6	2	5	4	2	1	576
Yuma	81	8	26	11	6	5	2	-	-	-	1	140
Totals:	1,476	575	393	238	173	59	33	21	11	8	4	2,991

CBP Information Center

The CBP Information Center (CIC) is a centralized resource for the public to ask questions, register comments, compliments, and complaints related to travel, immigration, and trade issues involving CBP. CIC also receives tips about illegal activity or allegations of misconduct and refers that information to the appropriate authority. CIC analyzes trends and patterns for both compliments and complaints, and uses this data to inform leadership of possible opportunities for customer service improvements.

The Joint Intake Center (JIC) serves as the central "clearinghouse" for receiving, processing, and tracking allegations of misconduct involving personnel and contractors employed by CBP.

Based upon referrals from the CIC, the JIC opened 342 cases in FY 2019. The number of cases in FY 2019 marked an 8% increase compared to the 316 cases opened in FY 2018.

As of Sept. 30, 2019, the discipline outcomes for the cases referred to the Office of Human Resources Management (HRM) from CIC in FY 2019 were as follows:

- 3 cases were closed with a suspension;
- 1 case was closed with a written reprimand;
- 11 cases were closed with counseling;
- 190 cases were closed without disciplinary action; and
- 137 cases remained open.

Social Media Cases

In July 2019, a media organization uncovered a Facebook page purporting to have thousands of CBP employees as members. The page included racist, sexist, and other offensive material, much of which was aimed at migrants and politicians. CBP investigated the Facebook page and opened disciplinary cases on certain individuals who were members of the group³. CBP elected to send all of these cases through its DRB and use a single deciding official to ensure the cases were handled consistently, fairly, and expeditiously.

In FY 2019, CBP sent 64 of these cases through the DRB. As of March 27, 2020, all 64 cases were completed, resulting in the following outcomes:

- 4 removals;
- 3 last chance agreements;
- 2 adverse suspensions;
- 27 non-adverse suspensions;
- 7 reprimands;
- 5 counselings;
- 14 cases closed as unsubstantiated; and
- 2 cases where the employee retired after receiving a proposed removal.

Employee Arrests

The CBP Standards of Conduct state that CBP employees must sustain the trust and confidence of the public they serve in order to fulfill CBP's mission. As such, any violation of law by a CBP employee is inconsistent with and contrary to the agency's law enforcement mission. CBP's Standards of Conduct specify that certain conduct, on- and off-duty, may subject an employee to disciplinary action. These standards serve as notice to all CBP employees of the agency's expectations for employee conduct whenever and wherever they are.

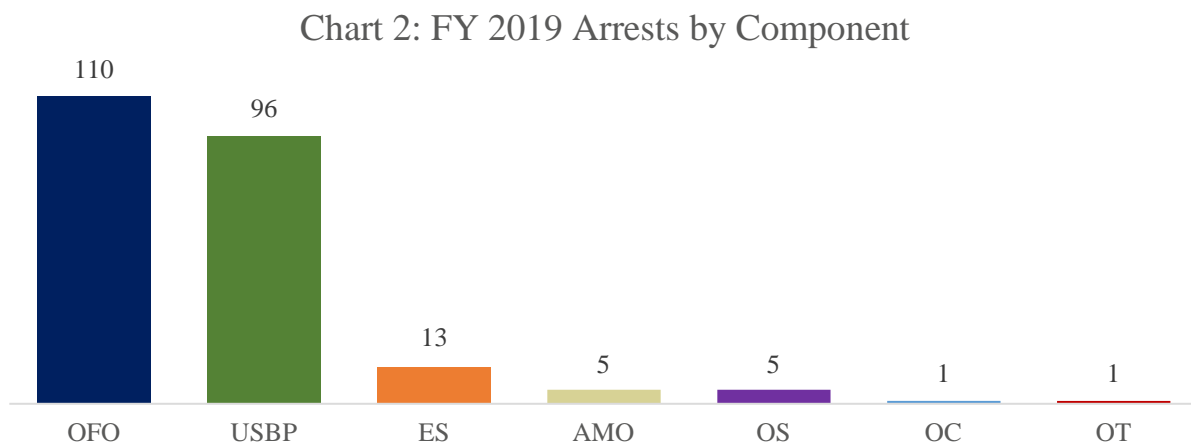
³ CBP determined that membership in the Facebook page alone did not constitute misconduct. Cases were opened on members who posted inappropriate content or who likely saw inappropriate content and did not report it. Individuals such as senior leaders and investigative personnel had cases opened on them for membership alone.

The number of employees arrested in FY 2019 represented a small percentage of the overall CBP workforce of approximately 61,000.

A closer examination of CBP employees arrested in FY 2019 revealed:

- 223⁴ CBP employees were arrested in FY 2019. Of this number, eight employees were arrested twice in the same year, resulting in 231 total arrests;
- 48% of employee arrests were attributable to alleged criminal conduct of OFO employees, 110 in total. This reflects an increase from FY 2018, when OFO employees accounted for 40% of all arrests;
- 42% of employee arrests were attributable to alleged criminal conduct of USBP employees, 96 in total; and
- 11% of employee arrests were attributable to alleged criminal conduct by employees assigned to other CBP program offices, including AMO, Enterprise Services (ES), the Office of the Commissioner, Office of Trade, and Operations Support—25 in total.

Chart 2 illustrates the breakdown of CBP employee arrests by program office in FY 2019



A review of the arrest data revealed the following statistics for FY 2019:

- The number of CBP employee arrests decreased from 269 in FY 2018 to 223 in FY 2019;
 - Drug/alcohol-related offenses and domestic/family offenses accounted for 50 and 20% of all arrests, respectively; and, alcohol-related driving arrests and domestic violence arrests decreased from FY 2018 totals.⁵

Table 5 provides a breakdown of employee arrests for FY 2019.

⁴ Arrest data was provided by the Office of Professional Responsibility on Jan. 8, 2020 and is current as of that date.

⁵ These two categories of misconduct are subsets of the two arrest categories noted above.

Table 5: Employee Arrest Totals by Arrest Type in FY 2019	
Type of Arrest	Number of Arrests
Drug/Alcohol-Related	116
Domestic/Family	47
Impeding the Criminal Justice System	11
Corruption	10
Crimes Involving Children	10
Traffic/Driving	8
Assault	7
Sexual Misconduct	7
Weapons Violations	4
Minor Offenses	3
Violent Crimes	3
Miscellaneous Misconduct	2
Property Crimes	2
Civil Rights Violations	1
Totals:	231

As shown in Table 5, the most common type of arrest was drug/alcohol-related misconduct. Within this category, alcohol-related driving offenses accounted for 93 arrests, making these the most common type of arrest, followed by domestic/family violence with 47 arrests; 23 arrests were attributable to other drug or alcohol-related misconduct. These three categories were also the most common types of arrest in FY 2018.

As of June 16, 2020, the Labor and Employee Relations Division (LER) had received cases on 192 of the 231 arrests from the Office of Professional Responsibility (OPR); the remaining cases are still under investigation. Of the 192 cases, 38 were pending management action as of June 16, 2020. The remaining 154 cases resulted in the following disciplinary actions⁶, as shown in Table 6:

Table 6: FY 2019 Employee Arrest Disciplinary Outcomes	
Type of Arrest & Discipline	Closed Cases
Drug/Alcohol-Related	97
Removal	13
Last Chance Agreement (LCA)	3
Demotion & suspension	1
Adverse suspension	12
Non-adverse suspension	47
Reprimand	1
Counseling	4
Memorandum of instruction	1
Retired/Resigned	5
Unsubstantiated	7

⁶These represent management's decisions that were implemented, not the proposals.

Removed via unrelated case	2
Combined with a second DUI case	1
Domestic/Family	26
Removal	2
Non-adverse suspension	6
Reprimand	2
Counseling	1
Retired/Resigned	1
Unsubstantiated	13
Removed via unrelated case	1
Impeding the Criminal Justice System	5
LCA	2
Non-adverse suspension	1
Counseling	1
Unsubstantiated	1
Corruption	5
Removal	1
Retired/Resigned	3
Unsubstantiated	1
Crimes Involving Children	4
Unsubstantiated	2
Retired/Resigned	2
Traffic/Driving	5
Non-adverse suspension	1
Counseling	2
Unsubstantiated	2
Assault	4
Removal	2
Reprimand	1
Counseling	1
Sexual Misconduct	1
Retired/Resigned	1
Weapons Violations	2
Non-adverse suspension	1
Retired/Resigned	1
Minor Offenses	3
Non-adverse suspension	1
Unsubstantiated	1
Memorandum of instruction	1
Miscellaneous Misconduct	1
Reprimand	1
Property Crimes	1
Non-adverse suspension	1

Mandatory Removals of Law Enforcement Officers for Felony Convictions

Pursuant to 5 U.S.C. § 7371, law enforcement officers convicted of a federal or state felony are subject to mandatory removal from federal service. Discipline data reflects that four CBP employees were removed under this authority in FY 2019.

Use of Force Allegations

Each year, CBP receives and reviews hundreds of allegations pertaining to use of force incidents. Authorized employees may use objectively reasonable force only when it is necessary to carry out their law enforcement duties. When these cases involve excessive force or civil rights abuse allegations, and prosecution is declined by the U.S. Attorney's Office or the local prosecutor, the matter is then subject to an administrative investigation to determine if an employee's actions, although not unlawful, violated agency policy or procedure.

CBP's National Use of Force Review Board (NUFRB) reviews all lethal use of force incidents, including the use of firearms and uses of force that result in serious injury or death. The Local Use of Force Review Board (LUFRB) reviews all less-than-lethal use of force incidents not addressed by the NUFRB. If there is a determination that an employee's use of force was outside of agency policy, the case returns to HRM for potential disciplinary action.

During FY 2019, three National UFRBs convened reviewing a total of eight incidents. All eight incidents were found to be within policy. These boards resulted in six recommendations regarding tactics, training, and equipment. During FY 2019, 52 local UFRBs were held, reviewing a total of 401 less-than-lethal UoF incidents. These boards resulted in 10 recommendations regarding tactics, training, and equipment.

The remaining cases involving an alleged use of force that are not handled through the NUFRB or LUFRBs, including allegations of excessive force, are referred to OPR or component management for review and consideration of disciplinary action. In FY 2019, those resulted in the following disciplinary outcomes:

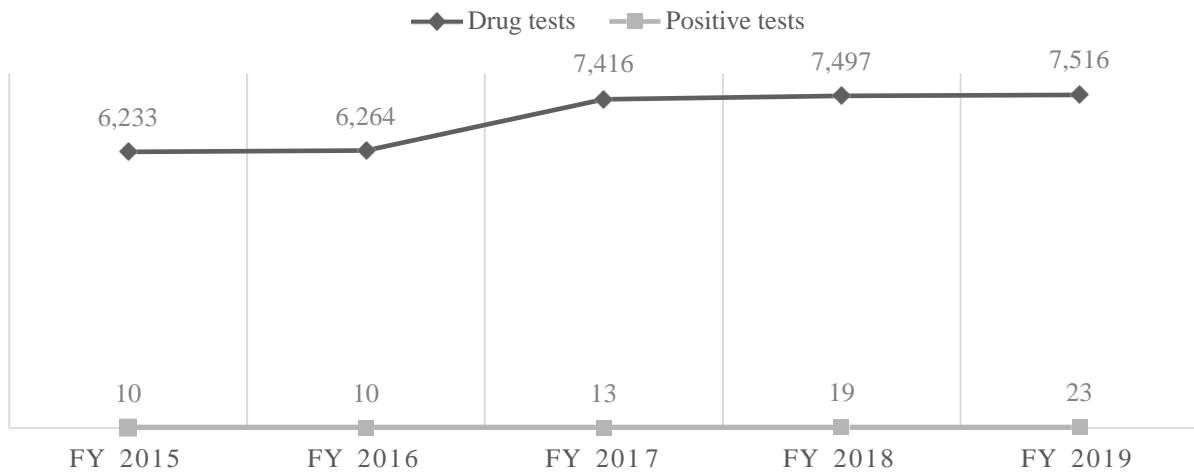
- 1 employee received a Last Chance Agreement;
- 6 employees received a suspension;
- 3 employees received a reprimand; and
- 3 employees received counseling.

Drug-Free Workplace

CBP is committed to the Federal Drug-Free Workplace Program and mandates a drug-free workplace. As the guardians of our nation's borders, CBP is a leader among other federal agencies in the interdiction of illegal drugs. By the very nature of CBP's mission, illegal drug use is unacceptable.

Chart 3 displays the number of drug tests conducted since FY 2015. Although the number of tests conducted has increased, the rate of employees testing positive for drugs has consistently remained less than one-half of one percent.

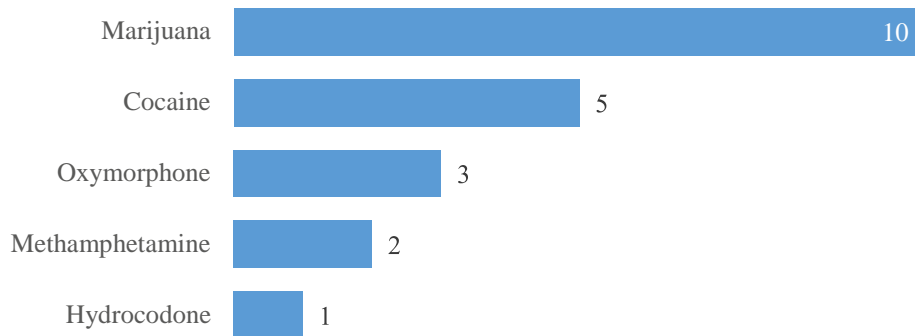
Chart 3: Drug Tests Performed in FY 2019



In FY 2019, CBP performed 7,516 random drug tests. Fifteen were performed due to reasonable suspicion of drug use while three were done following an accident and one was a follow-up. These tests resulted in 23 employees testing positive⁷ for drug use, all of which resulted from a random test or one based on reasonable suspicion. Two of the 23 positive results were due to the employee refusing to undergo a drug test.

Chart 4 illustrates the categories of drugs for which employees tested positive in FY 2019.

Chart 4: Positive Tests in FY 2019



Employees who tested positive included 16 employees of OFO, six employees of USBP, and one employee of AMO.

In FY 2019, LER closed a total of 21 cases involving positive drug tests, regardless of when the employee tested positive. Excluding the six cases where the employee retired or resigned prior to a decision being issued, deciding officials issued decisions on 15 cases involving positive drug tests. Deciding officials sustained removals in 12 cases, and issued counseling in another case. Deciding officials mitigated the penalty in two cases resulting in one counseling and one LCA.

⁷ It is considered a positive result when an employee refuses to undergo a drug test.

One of the counselings was the result of an accidental exposure to cocaine in the workplace, which resulted in a positive drug test. The other counseling was the result of an employee's spouse providing him with her prescription pain medication without his knowledge.

Conclusion

Integrity is a core value that guides all CBP employees and is reflected in the successful work the agency performs each day securing our nation's borders and protecting its citizens from harm. The public has placed its trust in CBP and with that trust comes an expectation that its employees will perform their duties with transparency, accountability, and professionalism. All CBP employees are guided by these principles both on- and off-duty. Those who breach public trust are held accountable for their actions.

The number of employees arrested continues to be a concern. CBP is addressing employee arrests through its ongoing efforts promoting education and resilience services to employees and their families, reducing the use of administrative leave or indefinite suspension when employees are subject to a criminal proceeding, and by ensuring appropriate discipline is applied.

In FY 2019, CBP implemented changes to the discipline process to improve consistency and accountability. In FY 2019, CBP implemented quarterly reporting to senior-level leadership highlighting certain proposals and decisions rendered on disciplinary cases to increase leadership transparency into the discipline process. Additionally, CBP held quarterly briefings for senior-level leadership to discuss best practices and lessons learned from recently concluded disciplinary cases.

Based upon continuing analysis of the discipline process, CBP has implemented changes to the scope of the cases presented to the DRB in FY 2020. Specifically, the DRB will review cases that fall into the DRB misconduct categories *and* warrant adverse action. The acting Commissioner also established workgroups to address domestic violence and DUI, the most common types of arrest of CBP employees.

CBP will continue to increase its transparency efforts with annual discipline overviews, publication of NUFRRB results, and through public engagement on policies and operations. CBP's internal complaints and discipline systems will remain focused on case investigation and administrative processing timelines, consistency in handling misconduct allegations, and arriving at discipline case decisions in a timely manner.