

U.S. Customs and Border Protection

Congressional Testimony on Authorized Uncontrollable Overtime violations

Distinguished members of the Oversight and Government Reform Committee's Subcommittee on National Security, esteemed guest, ladies and gentleman my name is John Florence, it is my honor to testify in front of this panel on the subject of Authorized Uncontrollable Overtime (AUO) abuse.

On August 20, 2012 I received a detailed email message (Exhibit # 1) which was also sent to the Field Operations Academy (FOA) Former Director Kevin Strong, Deputy Director Michael Brown, and Assistant Director Kevin Levan; this email identified serious concerns about AUO abuse by employees and senior managers at the FOA. The allegations were:

- AUO was being scheduled on a regular and reoccurring basis for work that was not uncontrollable and was primarily administrative and managerial in nature.
- AUO Employees shifts were being manipulated from the normal Academy business hours of 0730-1630 to 0700-1500 and then claiming AUO nearly every day from 1500-1700.
- AUO earners would receive 20 hours of AUO pay every two weeks or approximately 25 percent of their annual base salaries.
- Lunch breaks were not being taken to maximize AUO earnings during normal business hours.
- AUO was being claimed for work that should have been completed during their normal work schedule.
- AUO was being earned in violation of policy and was being used to calculate retirement annuities.

I discussed these concerns with Deputy Director Brown and stated I had equal concerns because it appeared these allegations were legitimate. I scheduled several official meetings on this matter with Deputy Director Brown and sent several comprehensive email messages (Exhibit # 2) including my message on September 11, 2012 concerning the blatant AUO violations being practiced at the FOA and continuing authorization of this pay; unfortunately it became apparent that the AUO violations were not receiving due diligence and would continue to be authorized by former Director Strong because he was also significantly benefiting from the AUO pay.

I filed a Joint Intake Center (JIC) investigation (Exhibit # 3) on September 04, 2012 for a comprehensive review by CBP Headquarters investigative components because of my concerns about mismanagement by senior level managers locally. This was even after they received comprehensive AUO guidance on August 14, 2012 from other senior level Border Patrol managers (Exhibit # 4). After I advised Deputy Director Brown that I filed a JIC investigation on the AUO abuses former Director Strong ordered that all AUO concerns and approvals would go through him directly until Assistant Director Kevin Levan reported for duty, Assistant Director Levan was also an AUO earner.

After almost one year and not receiving a response or any indication that anything was being done to stop the AUO violations that was being observed at the FOA and throughout the rest of the OTD training facilities and headquarters assignments, with the exception of headquarters sending out a training mandate on August 27, 2012 for all supervisors/managers to complete on AUO. (Exhibit # 5) However, this effort was ineffective because after this requirement was satisfied the AUO abuses continued as before, this reminded of the failed actions the agency took in response to the 2008 Lynden, WA Office of Special Counsel case DI-08-0663 on AUO abuse. This was causing low morale because many employees were working in the same work areas and in identical positions however the Border Patrol Agents were receiving an additional 25 % of their base pay. Many of the employees and managers that were not receiving any additional pay had serious concerns about equal pay for equal work; this was because they were also working 10-12 hour days but were not receiving additional compensation. After attempting to stop this abuse through my chain of command and through the agencies investigative branches with no success it became apparent that I needed to file outside the agency as a Whistleblower with Office of Special Counsel.

I would like to close by saying that this experience has been the hardest decision in my life concerning reporting the AUO violations and former Director Strong and Deputy Director Brown because they have been friends, colleagues, and mentors of mine for the last 15 years. It goes without saying "to do the right thing sometimes comes with a tremendous price is an understatement". Reporting the AUO violations has taken its toll on my career, personal life, and health. Because of the mental anguish, stress, and retaliatory treatment I have received since reporting the AUO violations to my superiors and due to the medications I was taking after a serious back surgery on February 10, 2013 I had a serious medical incident which caused me to be in an Intensive Care Unit for four days. My chances for survival were very low and I was in a fight for my life. Today I stand before you with my life irrevocably damaged, being permanently disabled, and unsure of my future with the agency.

Committee members I have asked myself this question a number times, would I do it again? Would I report these blatant AUO violations knowing what I do now? The answer is yes and the reason why is that it is my duty to do so, it was the right thing to do, it was completely in violation of CBP's Integrity Policy, and it was serious fraud, waste, and abuse of tax payers' dollars.

I sincerely thank you for your time and allowing me to testify.

John A. Florence

U.S. Customs and Border Protection

John A. Florence
Branch Chief Supervisory Customs and Border Protection Officer
Field Operation Academy

Mr. Florence's Federal Law Enforcement career began in 1986 with the United States Air Force (USAF) holding the position as a Law Enforcement Specialist based at F.E. Warren, AFB Cheyenne, Wyoming. I served five years in the military including active duty participation in Operation Desert Storm. During his tenure in the Air Force Mr. Florence attained the rank of a Non Commissioned Officer (Sergeant), and was awarded several meritorious service and accommodation awards and was honorable discharged from the USAF in 1990.

Mr. Florence continued his Federal Law Enforcement career excepting a position with the Department of Justice (Federal Bureau of Prisons) assigned to the Metropolitan Correctional Center (MCC San Diego).

In January of 1991 Mr. Florence accepted a position with the former US Customs in San Diego, CA working in several key positions which included numerous Narcotics Enforcement Teams, Joint Tasks Force Assignments, and numerous Special Operation Teams. During his tenure in San Diego Mr. Florence was assigned to narcotics enforcement teams which involved the seizures of tens of thousands of pounds of narcotics and disrupted major narcotics smuggling operations by both seizing assets and arresting major figures in the organizational structure.

Mr. Florence transferred from San Diego to Glynco, GA in 2001 to accept a position as a Physical Techniques Defensive Tactics Instructor. From 2001 until 2005 he instructed defensive tactics and intermediate force device training to all of the Customs and Border Protection Basic trainees. In 2006 he was promoted to GS-14 (Senior Instructor) where he supervised all Instruction of basic tactics instruction for the entire US Customs and Border Protection basic training academy. In 2008 Mr. Florence was promoted to the position of assistant Director of Use of Force training for the US Customs and Border Protection Field Operations Academy. This position included the oversight of Use of Force training in both the basic and advanced training environments.

Mr. Florence accepted a position as Chief Customs and Border Protection Officer Nassau, Bahamas Preclearance in 2009 and was also appointed as the Acting Area Port Director and US Embassy liaison for CBP to the US Embassy Nassau, Bahamas.

Mr. Florence returned to the Field Operations Academy in 2012 accepting a position as an Acting Assistant Director and then being assigned as a Branch Chief. Mr. Florence has served in many key management positions throughout his government career and is a dedicated and distinguished Federal Government employee of 27 years. Mr. Florence has been married to his wife Suzanne Florence for 13 years, and has two stepsons Kevin, and Kurt Olson.

Branch Chief Wilder's Message about AUO violations

From: WILDER, JAMES M

Sent: Monday, August 20, 2012 11:21 AM

To: STRONG, KEVIN J; BROWN, MICHAEL K; FLORENCE, JOHN ANTHONY; LEVAN, KEVIN D

Cc: WILDER, JAMES M; LARSON, WANDA L

Subject: FW: AUO

Gentlemen,

I am back from family leave and want to thank those of you that have expressed condolences regarding the loss of Darlene's mom.

On the matter of AUO: This morning, after speaking with A/D Florence regarding this issue...as directed, I spoke with Wanda Larson. Wanda informed me that during the orientation with the new employees she told them (Conley, Cordova and Rodriquez) that their work schedules will be in COSS as a 730-430 with a one hour lunch. The "master" still reflects 730-1630. Since these employees are required in input AUO activities, they are able to make changes in COSS. That being said that is how their schedules have gone from a 730-1630 to a 700-1500. The employees have been making these changes when they input their AUO. Employees do not dictate their work schedules, according to the PPT, the employee should recognize circumstances to remain on duty, management determines work schedules based on such things as staff to workload, needs of the agency, and reduce/eliminate reoccurring overtime, I believe their schedules should remain as a 730-1630 with a one hour lunch taken. I do not support paying an employee to eat lunch. Should the need arise after 1630 that is administratively uncontrollable, conforms to the guidelines as outlined in the PPT and can be compensated through the use of AUO (work is not administrative in nature) then the employee can claim AUO for that work and document their justification on the CBP 203. With the possible exception of a student failure that requires "same day" remediation or an incident that requires a CDI to remain to complete sit-room reports or other administrative tasks, the work performed here at the FOA is very structured, has little to no issues that are not within the control of the academy administration (management). The MLETP schedule provides Mr. Conley, Cordova, Rodriquez well in advance what "overtime" assignments will be performed. Can they be compensated through the use of 45 ACT. ?

When the FLETC marine staff works away from the center (on the river) they make every effort to have the students and staff back on center prior to 1630. The FLETC staff work the “night operations” (day 11 & 13) on overtime, in some cases FLETC staff will basically work a 16 hour day. That being said, based on information taken from the attached PPT and review of the information in the links in Mr. Garrets email, as their first line supervisor and since administration of overtime is key to a supervisors job I believe we should have Wanda review previous T/A’s of these employees and if they were entitled to 45 act, then compensate then accordingly for any “scheduled” overtime. As for future pay-periods, their schedules should be 730-1630. Comply with the ppt when claiming AUO and justify its use on the CBP 203. As this is the last week in PP 17, we have a graduation, the Deputy is out, the Director will be out ...perhaps we can meet today to discuss if you wish.....

Thank you,

Wilder

James M. Wilder

Branch Chief,

CBP Driver Training Branch

CBP Field Operations Academy

Glynco, GA.

(912) 554-4962-office

(912) 577-0391- B/B

(912) 506-7961-personal cell

Joint Intake Center Report

From: FLORENCE, JOHN ANTHONY

Sent: Tuesday, September 04, 2012 12:47 PM

To: JOINT INTAKE

Subject: Overtime, Premium Pay, and Compensation alleged violations

To whom it may concern,

I have been advised of potential serious violations regarding overtime, premium pay, and compensation through my Branch Chief (BC) Jim Wilder. In addition through guidance of Customs and Border Protection (CBP) Office of Chief Counsel and my own observations/findings I respectfully submit the following.

Currently, I have three (1896 Border Patrol Agent's) that are under my unit of command (Use of Force, Training Operations/Driver and Marine Branch). Being 1896 employees their overtime, premium pay, and compensation is primarily (Authorized Uncontrollable Overtime (AUO) - 45 Act) which they are claiming and being paid premium pay for work assignments that appear to be in violation of policies and procedures.

Please allow me to explain, on a reoccurring basis they are/were working shifts which precipitate the following:

- Revising their shifts to a (0700-1500) with no lunch break to accommodate overtime, premium pay, and compensation within the normal Field Operations Academy (FOA) duty hours of 0730-1630.
- Two hours (1500-1700) of scheduled and reoccurring overtime, premium pay, and compensation daily.
- Regular and reoccurring overtime, premium pay, and compensation for administrative and other miscellaneous duties that are not irregular or uncontrollable and should be accomplished during normal duty hours.
- The above practices have added up to well over \$50,000 in questionable annual premium pay and compensation for these employees.

- Recently after identifying the above their work schedules were ordered to be changed by the FOA Director to a 0700-1600, this still incurs a guaranteed (30) minutes of daily scheduled reoccurring overtime, premium pay, and compensation during normal FOA operational hours.

Branch Chief Jim Wilder has officially advised me of his serious concerns both through email and conversations that the above appears to be violation of Federal Laws, Policies and Procedures which pertain to the overtime, premium pay, and compensation systems. Furthermore, BC Wilder has advised me that his emails and conversations went up to the FOA Directors level during a time I was absent from work and he was acting in my behalf. He stated this resulted in him being verbally admonished for not understanding the AUO system which precipitated him being relieved of his management responsibilities over his direct subordinates concerning their work schedules, overtime, premium pay and compensation. BC Wilder feels this was a direct result of him applying due diligence to his responsibilities concerning the management of his employees, and for identifying and reporting what appears to be serious violations surrounding their premium pay and work schedules.

Recently all FOA managers were ordered from the Assistant Commissioner (OTD) and the FOA Director to complete AUO training both in power point and VLC formats. After completing this mandatory training and after thoroughly accessing BC Wilders concerns I scheduled a meeting with Deputy Director Brown to discuss the situation. I advised that I did not feel the overtime, premium pay, and compensation for these employee's was within policy nor was it justified and therefore did not feel comfortable approving it in the future. I also advised I did not feel it was equitable concerning 1895 and 1896 overtime/premium pay regarding equal pay for equal work in the Academy environment. Deputy Director Brown advised me that he would conduct his own research and then provide me with a response. What resulted was being advised via email and landline that all (1896) employees' overtime, premium pay, and compensation (203's) would be sent directly to the FOA Director's level for approval until such time as SBPA Kevin Levan arrived to assume the position of Assistant Director of Use of Force, Training Operations.

My concerns are what appear to be violations of the previously identified overtime, premium pay, and compensation processes, concerns and facts brought to my attention by BC Wilder, and my own assessment of the questionable practices concerning scheduling, overtime, premium pay, and compensation of the affected employees.

My message to Deputy Director Brown

From: FLORENCE, JOHN ANTHONY

Sent: Tuesday, September 11, 2012 10:49 AM

To: BROWN, MICHAEL K

Subject: FW: Payroll Approval/Certification for AUO earners

Importance: High

(A) Director Brown,

Sir I respectfully submit the following: I feel as if I'm caught in the middle of this Administratively Uncontrollable Overtime (AUO) and scheduling of the Marine Program Border Patrol Agents (Cordova, Conley, and Rodriguez) please allow me to explain. BC/Wilder and I have essentially been relieved of all management control concerning the scheduling, premium pay, and compensation for the aforementioned employees. This was precipitated by the Directors orders to put them on a (0700-1600) work schedule, and to send all AUO documentation (203's) directly through him for approval until AD/Levan arrives.

I'd be remiss if I didn't mention as I've voiced in the past I agree with BC/Wilder's concerns regarding alleged violations of 5 C.F.R. 550.151-163; and the CBP Payroll Systems for approving and scheduling the employees on a (0700-1600) shift that results in a minimum of (30) minutes of predictable premium pay and compensation daily. I am also concerned they are improperly benefiting from AUO and overtime pay by claiming two hours nearly every work day for work that is not administratively uncontrollable as required by regulations and the work appears to be primarily administrative in nature. Furthermore, I feel that being in the Academy environment the employees should be on a (0730-1630) work schedule which aligns with normal business hours, minimizes unnecessary AUO and premium pay, and is consistent with the other CDI's.

Sir, I have the utmost respect for the Director and clearly understand his mandates, as such I will follow his orders, however because of the aforementioned concerns I respectfully request to be relieved of the schedules, payroll, and compensation approvals for the Marine Program employees specifically pertaining to their work schedules, AUO earnings, certification, and approvals.

Please advise, this is time sensitive because of COSS approval mandates

VR

John A. Florence
(A) Assistant Director (Use of Force)
Department of Homeland Security
Office of Training and Development
Field Operations Academy

AUO Guidance from Senior Level Border Patrol Managers

From: MESSER, CLARK J

Sent: Tuesday, August 14, 2012 6:33 PM

To: STRONG, KEVIN J; BROWN, MICHAEL K

Cc: WESTBERRY, JANICE; LARSON, WANDA L; DECOTEAU, TAMMY S

Subject: AUO

Director Strong,

In regards to the AUO issue we spoke about with SBPA Conley. Attached is an email that has a screenshot of his COSS worksheet. He had a 7A-3P schedule and on two different days he worked 7A-12M and 7A-11P. What he claimed was 8 hours of AUO from 7A-3P and then regular time (01) and regular time with Night Differential (11) for time after 6P.

Therefore, instead of claiming his AUO at the end of the shift as he was supposed to, he claimed it at the beginning of the shift which paid him more in Night Differential.

Also attached is a Powerpoint about AUO from OBP's SBPA Technical Training Course and guidance is below from Associate Chief Scott Garrett. Chief Garrett who recently left Miami Sector also verified that nothing has changed from years ago and that AUO is a continuation of the regular shift and does not occur at the beginning of the shift. His worksheet could be amended if you choose to do so. If I can assist in any other way, let me know.

Thank you,

Clark Messer

Acting Director

Basic Training, Mission Support Division

575-746-8317

575-308-2333 (BB)

From: GARRETT, SCOTT D [mailto:SCOTT.D.GARRETT@cbp.dhs.gov]

Sent: Tuesday, August 14, 2012 4:13 PM

To: MESSER, CLARK J

Subject: FW: G1012

From: GARRETT, SCOTT D

Sent: Thursday, July 26, 2012 4:11 PM

To: MANGINO, STEPHEN J (STEPHEN.J.MANGINO@cbp.dhs.gov)

Subject: G1012

Steve,

Attached is the G-1012 and the PPT that is used at the TTC.

Below are some relevant websites regarding AUO.

1. Authorization of premium pay on an annual basis is based on Title 5.
2. Eligibility requirements or basis for determining positions for which AUO is authorized are: an average of at least 3 hours a week of irregular or occasional overtime work; continual requirement averaging more than once a week; and a definite basis that the work will continue over an appropriate period with duration and frequency to meet 3 hours a week, every week. Further, the circumstances involved must be a definite, official, and special requirement of the position.

INS Policy

In October 1992 the INS Commissioner established guidance to clarify INS policy on AUO. The following criteria and conditions govern the designation of positions for AUO coverage. The work:

- cannot be completed the next day;
- cannot be taken home;
- schedule cannot be adjusted;
- is not administrative in nature;
- cannot be accomplished by another employee;
- requirement is definite, official, and special;
- requirement is at least 3 hours;
- requirement is more than once a week; and

- requirement continues frequently.

I particularly like the section from Fish and Wildlife Service. Although it is different, it has some comparison with BPAs and some good explanation of the types of duties that qualify for AUO.

I have copied that section here:

8.7 What kind of duty qualifies for AUO? Work qualifying for AUO is based on the occurrence of compelling circumstances or reasons inherently related to the continuance of duties. Occurrences of this nature include special events, conditions, or situations inherent in the performance of duties that cannot be postponed to the next workday and that require employees to recognize, generally without supervision, the need to remain on duty or to return to duty. The need to function outside of normal duty hours must be so compelling that the employee's failure to do so would constitute negligence in the performance of duties. The compelling nature of the work is decided before, not after it is performed. When determining whether or not overtime meets AUO criteria, supervisors must consider the reason for which a duty is being performed and not necessarily what duty is being performed. Following are examples of overtime work qualifying for AUO. These examples are provided for further guidance and clarification and are not all inclusive.

A. Conduct of Investigations. In this broad area of duty, numerous situations requiring that the employee work overtime could arise.

(1) Surveillance of suspects. Whenever an employee engaged in law enforcement work has some control over a situation, surveillance of a suspect may begin. However, if it is essential that the surveillance continue until a crime has been committed or other evidence has been obtained, overtime performed as a result of the need for continued surveillance is creditable as AUO work.

(2) Meeting with informants. A meeting with an informant qualifies as AUO when the employee has no control over the time or place the informant desires to meet and if the employee's failure to meet with the informant to further an investigation would constitute negligence.

(3) Observation of baited areas or other areas of suspected illegal activity. An employee may be aware of a baited pond or waterfowl hunting club, but may not know who is responsible for placing the bait or when the shooting will commence. Consequently, several days of more than 8 hours may be required before an apprehension is made and the investigation is completed. Similarly, an employee may have information that unknown subjects are smuggling illegal wildlife at a particular border crossing or other remote location. It is conceivable that an employee would have to continue observation for several hours to further or complete the investigation.

(4) Working in an undercover capacity or providing back-up in a covert case. Employees assigned to an undercover role or to assist special agents in a covert investigation can seldom plan the time they may have to report to duty. In many instances, undercover investigations continue based upon reactionary responses to the events and circumstances emerging in a case. Examples of qualifying administratively

uncontrollable events include waiting for suspects to deliver illegal wildlife, securing and preserving evidence of covert wildlife purchases, and meeting with special agents at discreet locations.

(5) Responding to crime-in-progress reports and/or requests for assistance. This includes any call an employee receives from another law enforcement officer or from a private citizen who reports a crime in progress or requests assistance. An employee's failure to respond under these conditions constitutes negligence.

(6) Examination of records and evidence. The examining of records and evidence qualifies as AUO work when an employee must commence or continue to work after regular working hours and the work cannot be practically performed at a later date or during normal working hours (e.g., the third party witness could make the material unavailable at any time). Because records and evidence are often critical to criminal cases, an employee's failure to take advantage of the limited opportunities for such examinations could be construed as negligence.

(7) Preparation of Reports. Generally, the preparation of reports is a necessary duty that can be scheduled during a normal 8-hour workday or during periods of regularly scheduled overtime that are approved in accordance with governing regulations. This duty qualifies for AUO only when compelling circumstances require that report preparation be accomplished during overtime hours. For example, the United States Attorney's Office may require an employee to submit a completed case report or other documents on relatively short notice (e.g., the request was made after the beginning of the employee's administrative workweek), and overtime is needed to prepare and assemble the report or to otherwise respond to the request within the prescribed deadline. This example qualifies for AUO because the request was made after the beginning of the employee's administrative workweek and the response involves the immediate analysis, preparation, and dissemination of investigative information supporting critical, time-sensitive actions and the use of irregular or occasional overtime. Although time and one-half overtime is appropriate for hours of work that can be administratively scheduled, 5 CFR 550.163 prohibits the payment of irregular or occasional overtime authorized under 550.111 of the same title to an employee receiving premium pay for irregular or occasional overtime work on an annual basis. This situation would not qualify for AUO if the requirement is made timely enough to allow for the scheduling of regular overtime. Another example may involve the necessity to make an immediate record of an interview conducted with a witness or an informant to ensure an accurate account of the meeting for prosecution purposes.

B. Executing search and/or arrest warrants. Generally, an employee knows or can reasonably plan the time for executing or assisting in the execution of warrants. However, if time outside of duty hours is required to complete the search, inventory and secure evidence, transport (a) prisoner(s), secure the premises, or complete essential case documents, such time may qualify for AUO.

C. Courtroom Duty. Participation in a grand jury proceeding or giving testimony in a court case before or after duty hours is creditable as AUO when the employee has no prior knowledge or control of the court schedule and the duty is conducted during overtime hours.

D. Equipment Maintenance. Employees typically perform duties involving equipment or vehicle maintenance during the regular tour of duty. On rare occasions, situations may arise that necessitate an immediate response after duty hours. For example, an employee completes a regular 8-hour tour of duty and secures a truck for use in an undercover fish buy the following morning. The brakes on the truck fail and the employee spends 3 hours of after hours duty arranging for the necessary repair. This becomes a qualifying compelling circumstance because the truck is needed for use in an administratively uncontrollable covert operation that could not be postponed to a later date.

E. Migratory Bird Surveys and Banding. There is often a requirement for migratory bird survey and banding crews to work overtime in accordance with the biology of waterfowl. The crews must complete spring breeding pair surveys during the relatively brief interval when ducks are paired on territories and/or before drakes leave nesting hens. The production survey must be completed between the time the first broods appear and the time surveys are terminated prior to the annual meetings on the status of waterfowl. The pre-season banding program starts when flying young and adult ducks begin to gather in early August and a week before the commencement of hunting seasons in the local area (September 1 in much of Canada). During the fall, winter, and early spring, crews conduct periodic surveys of waterfowl populations in cooperation with numerous State and Federal agencies. These surveys have strict time limits that are determined by migratory bird concentrations and the availability of multi-agency personnel committed over large geographic areas. Premium pay for AUO is authorized to meet these time limits and to avoid unnecessary expenditures of funds and personnel. In Mexico, crews conduct these surveys within itinerary guidelines approved months in advance by the Government of Mexico, and AUO is authorized to comply with these international requirements. Such work qualifies as AUO since these employees have to work the hours necessary to complete daily survey or banding work and to work as many consecutive days as possible to complete the project within the time available.

F. Travel. Travel outside the days and hours of the regularly scheduled workweek qualifies for AUO if it involves the performance of actual work (e.g., guarding prisoners in transport or conducting a mobile surveillance), or it results from an event that could not be scheduled or controlled administratively (e.g., time spent traveling to meet an informant). Return travel from an event that could not be scheduled or controlled administratively also qualifies for AUO. The above examples are not all inclusive; other circumstances may meet the criteria for including travel time as AUO.

G. Supervision. Supervision or coordination of any of the above qualifying or similar activities also qualifies for AUO when performed outside of regular duty hours on an irregular or occasional basis, with the supervisory or coordinating official generally determining the need to remain on duty or to return to duty.

8.8 What are examples of duty that does not qualify as AUO? Work activities and other related occurrences that are not the result of compelling circumstances do not qualify as AUO and are not creditable for determining eligibility for AUO or for increasing the percentage rate. Some examples of work that does not qualify for AUO are provided below.

A. Arriving early or departing late from the office without official cause or sanction. This includes situations in which the employee has the option of taking work home for completion or extending the regular workday in order to complete such work in the office. Also included are situations in which the employee has the latitude to vary the arrival and departure times of a regular 8-hour workday to better accomplish a given objective. Specific examples are included below.

(1) Changing a tour of duty to achieve an early arrival or late departure from the worksite to accommodate a carpool or to avoid transportation problems. Early arrivals of this nature are merely for the employee's personal convenience and benefit; they are not required for official reasons.

(2) Remaining late at the office to accomplish work (e.g., writing or preparing reports or cases) that could be performed during regular work hours or during periods of approved regularly scheduled overtime.

(3) Conducting routine liaison work with field offices in different time zones. If this presents a problem, the employee's hours can be changed to conform with those of the field office. This situation differs from one in which the employee is required by an unforeseen occurrence (e.g., late-breaking raids or arrests) to remain after regular duty hours to coordinate investigative activities occurring at field offices that demand immediate attention.

B. Working through lunch hours for personal reasons, including eating lunch at the desk.

C. Performing work that could be scheduled during regular duty hours or that could be accomplished using regularly scheduled overtime.

D. Attending basic law enforcement training (e.g., Criminal Investigation School), including the time spent traveling to and from Government-sponsored training classes.

E. Spending time as a full-time instructor of a scheduled training course in cases where classroom instruction is the primary or only duty.



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

AUG 23 2012

MEMORANDUM FOR: See Distribution

FROM: Assistant Commissioner
Office of Human Resources Management

SUBJECT: Mandatory Training: Administratively Uncontrollable Overtime

Administratively Uncontrollable Overtime (AUO) is a form of premium pay provided on an annual basis in an amount of up to 25 percent of basic pay for positions requiring a substantial amount of irregular or occasional overtime work. Employees are responsible for recognizing, generally without supervision, when to remain on duty. Some circumstances also require that the employee must remain on duty when the failure to do so would be considered negligent. It is management's responsibility to properly certify, document, and monitor employee use of AUO.

To ensure compliance with laws and regulations governing AUO and to address several external and internal audits and reviews of U.S. Customs and Border Protection's (CBP) use of AUO, CBP is requiring all personnel who are designated as supervisors and managers to take AUO training. The Administratively Uncontrollable Overtime Training Course (TRAEN Code 059710) is currently available in the Virtual Learning Center and must be completed by Friday, September 21, 2012. The Office of Human Resources Management will ensure compliance and certify that all required CBP employees have completed the AUO training.

Management may determine additional staff or that others on the staff would benefit from this training. If so, we encourage managers to have those individuals complete the AUO training. This determination and directive would come from management, as does any other staff directive. As these employees would not fall under the mandatory group, taking the training would be considered optional.

Tracking:

Through the management of the training coordinator(s) in your office, supervisors are required to ensure that individuals designated as supervisors and managers complete the training by September 21, 2012. Upon your office's completion of the required training or prior to the specified completion date, please instruct your training coordinators to provide a completion report from the TRAEN II eReporting system and to complete the attached tracking form, scan it, and return it to Ms. Tamara Hargrove at Tamara.Hargrove@dhs.gov by September 21, 2012.

Please feel free to contact me if you have any questions. If your staff members have any questions, they can contact Ms. Hargrove at (202) 863-6414 or via e-mail.


Katherine M. Coffman

Attachments

Distribution: All Assistant Commissioners
Chief, Office of Border Patrol
Chief Counsel
Executive Director, Office of Diversity and Civil Rights
Executive Director, Office of Policy and Planning
Executive Director, Joint Operations Directorate
Principal Executive, Office of Strategic Integration
Director, Office of Trade Relations
Director, Office of the Executive Secretariat
Chief of Staff
Deputy Chief of Staff