

**Request for Leave or Approved Absence**

1. Name (Last, first, middle) **HUMPHREY, KENNETH DELANO** 2. Social Security Number [REDACTED]

3. Component/Office/Division (etc.)  
**DHS, U.S. Customs and Border Protection, A-TCET, 6601 NW 25th Street, Miami, FL 33122**

4. Type of Leave/Absence

Check appropriate box(es) and enter date and time below	From		To		TOTAL HOURS
	Date	Time	Date	Time	
<input type="checkbox"/> Accrued annual leave					
<input type="checkbox"/> Restored annual leave					
<input type="checkbox"/> Advance annual leave					
<input type="checkbox"/> Accrued sick leave					
<input type="checkbox"/> Advance sick leave					

Purpose (if requesting sick leave):

Illness/injury/incapacitation of requesting employee  
 Medical/dental/optical examination of requesting employee  
 Care of family member, including medical/dental/optical examination of family member, or bereavement  
 Care of family member with a serious health condition  
 Other

Compensatory time off

Other paid absence (specify in remarks) **6-15-08 1500 6-18-08 2300 32**

Leave without pay (specify in remarks)

5. Family and Medical Leave

If annual leave, sick leave, or leave without pay (or substituted annual/sick leave) will be used under the Family and Medical Leave Act of 1993 (FMLA), please provide the following information:

I hereby invoke my entitlement to family and medical leave for:

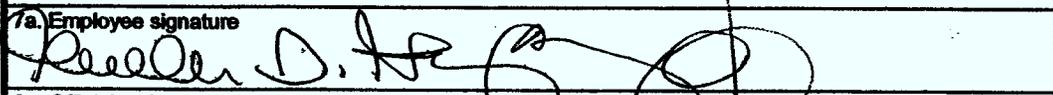
Birth/Adoption/Foster care  
 Serious health condition of spouse, son, daughter, or parent  
 Serious health condition of self

Contact an appropriate Human Capital office and/or your supervisor to obtain additional information about your entitlements and responsibilities under the FMLA.

Medical certification of a serious health condition may be required.

6. Remarks  
**ACUTE ALLERGIC REACTION TO TETANUS SHOT FOR WORK INJURY OF 6-12-08.**

7. Certification: I certify that the leave/absence requested above is for the purpose(s) indicated. I understand that I must comply with my employing agency's procedures for requesting leave/approved absence (and provide additional documentation, including medical certification, if required) and that falsification of information on this form may be grounds for disciplinary action, including removal.

7a. Employee signature  7b. Date signed **6-19-08**

8a. Official action on request  Approved  Disapproved (If disapproved, give reason. If annual leave, initiate action to reschedule.)

8b. Reason for disapproval

8c. Signature 8d. Date signed

**Privacy Act Statement**  
 Section 6311 of title 5, United States Code, authorizes collection of this information. The primary use of this information is by management and your pay office to approve and record your use of leave. Additional disclosures of the information may be: To the Department of Labor when processing a claim compensation regarding a job connected injury or illness; to a State unemployment compensation office regarding a claim; to Federal Life Insurance Health Benefits carriers regarding a claim; to a Federal, State, or local law enforcement agency when your agency becomes aware of a violation or possible violation of civil or criminal law; to a Federal agency when conducting an investigation for employment or security reasons; to the Office of Person Management or the General Accounting Office when the information is required for evaluation of leave administration; or the General Servk Administration in connection with its responsibilities for records management.

Public Law 104-134 (April 26, 1996) requires that any person doing business with the Federal Government furnish a Social Security Number or Identification Number. This is an amendment to Title 31, Section 7701. Furnishing the Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application. If your agency uses the information furnished on this form for purposes other than those indicated above, it may provide you with an additional statement reflecting those purposes.

**EXHIBIT F-F3**

# **EXHIBIT**

## **G-G**

**BLANCO, MARTA M**

**From:** MATTINA, THOMAS  
**Sent:** Wednesday, August 20, 2008 3:51 PM  
**To:** MASTON, CHRISTOPHER D  
**Cc:** BLANCO, MARTA M  
**Subject:** Hostile Work Environment Allegation; Action Required  
**Attachments:** Fw: Humphrey; Humphrey; FW: Request for assistance in converting sick days charged ; RE: Request for assistance in converting sick days charged ; FW: Request for assistance in converting sick days charged ; FW: Request for assistance in converting sick days charged

I met at 1500 HRS today with A-TCET Officer Humphrey (accompanied by a Union Rep) regarding the issues reported in the attachments;  
A-TCET Chief Marta Blanco was present as well.

Officer Humphrey stated numerous times during our discussion that he feels a hostile work environment exists here, in A-TCET, and that this specific event is:

- "the culmination of hostilities towards him."
- "incompetence leading to hostilities towards him."
- "an abusive situation."
- "hostilities exist as evidenced by the treatment he is getting from the Supervisors."

When I asked Officer Humphrey why he wanted a Union Rep to be present yesterday when the A-TCET Supervisors were attempting to address his OWCP issue, he stated that "he was requesting the Union because this was a hostile occurrence; it was harassment; a violation of fair labor standards; and he was being reprimanded due to being asked to do something he wasn't trained to do."

Based upon the allegation made by Officer Humphrey that a "hostile work environment exists," I instructed the Officer to refrain from dealing with the specific Supervisors he feels are hostile towards him (those being Supervisors Chatfield and Prokolysheh) throughout his tour of duty today (1500-2300 HRS).

I advised Officer Humphrey that I will be recommending to the Port Director that he be re-assigned out of A-TCET (due to his allegation that a hostile work environment exists) pending a fact-finder review of this situation.

The Officer was told that my recommendation to the PD was that he be re-assigned to the Cargo branch since he could not remain in a hostile environment.

Therefore I am hereby requesting your approval to address this matter accordingly.

8/21/2008

**EXHIBIT G-G**

**CBP-000780**

# **EXHIBIT**

## **H-H**

EXHIBIT F5

UNSWORN DECLARATION

SUBJECT: Discrimination Complaint of Kenneth D. Humphrey and Janet Napolitano, Secretary, U.S. Department of Homeland Security, Case Number HS-09-CBP-003066-090104.

UNSWORN DECLARATION UNDER PENALTY OF PERJURY

In accordance with the following provisions of 28 U.S.C. 1746, I, the undersigned, do hereby make the following unsworn declaration, under penalty of perjury, pertinent to the above stated complaint:

1. What is your full name?

A: Marta M. Blanco

2. What is your current title, series, grade, division and duty location?

A: GS-13/Chief/A-TCET/MIA

3. For how long have you been in your current position? In the event that you were in a different position at any time between November 2008 and February 2009, please identify that position by title, series, grade, division and duty location.

A: Five years

4. Who are your immediate and second level supervisors? Were these your supervisors during the period November 2008 through February 2009? If no, please indicate who your immediate and second level supervisors were during that period.

A: APD Thomas Mattina  
PD Christopher Maston

5. Do you now have, or have you ever had, a direct work relationship to Kenneth Humphrey? If so, please describe the nature and duration of that work relationship.

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Initials MB

: 00123

EXHIBIT H-H 000123

A: Not a direct work relationship as a first line Supervisor I am a second line Supervisor

*INVESTIGATOR'S NOTE: For comparative purposes in EEO investigations, witnesses are asked to identify themselves by the protected bases delineated in the complaint (in the complaint in question, those bases are race, national origin, color and age). Please be aware that provision of this comparative information is voluntary. If you are comfortable providing this information, please identify yourself by bases in Questions 6 through 9.*

6. Please identify yourself by race.

A: White

7. Please identify yourself by national origin.

A: Hispanic

8. Please identify yourself by color.

A: White

9. Please identify yourself by date of birth.

A: 01-29-61

10. Did you have any role in the decision to remove Mr. Humphrey from AT-CET field duties and assign him to desk duties, effective November 12, 2008? If so, please describe your role in that decision.

A: Yes, On November 12, 2008, I was notified by the first line Supervisor SCBPO Marcnel Pierre of an incident at E-20 involving CPB Officer Humphrey and Miami Dade Aviation Officer Jose Andino to which the Miami Dade Police Department had responded. Based on the facts that were presented to me that night I instructed SCBPO Pierre to leave Officer Humphrey working inside in the Advance Targeting Unit for the remainder of the shift. I immediately contacted my Supervisor APD Mattina and informed him of what had occurred. The following day the decision was made by APD Mattina, PD Christopher Maston to leave Officer Humphrey on desk duty with the concurrence and guidance from the Labor Employee Relation.

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Initials AP

: 00124

EXHIBIT H-H 000124

11. In the event that you had a role in the decision to remove Mr. Humphrey from field duties and assign him to desk duties, by whom was the decision made and what were the specific reasons for that decision.

A: The decision was made by me, APD Mattina and PD Maston with the guidance from the Labor Employee Relation. The decision was made pending the outcome of an internal investigation.

12. If you did not have a role in the decision to remove Mr. Humphrey from field duties and assign him to desk duties, do you know by whom that decision was made? If so, who was involved in that decision?

A: Please refer to the answer to question #11

13. If you did not have a role in the decision to remove Mr. Humphrey from field duties and assign him to desk duties, do you have any information as to the reasons why that decision was made? If so, please detail your understanding of the reasons for that decision.

A: Please refer to the answer to question #10

14. Mr. Humphrey states it is his understanding that he was removed from field duties and assigned to desk duties pending an investigation into incidents in which he was involved on November 2 and November 12, 2008.

Is this accurate? If so, please detail (if you have not already done so) your understanding of what occurred with Mr. Humphrey during the November 2 and November 12 incidents in question (to include how these incidents came to your attention).

A: I was not aware of the incident on Nov. 2<sup>nd</sup>, but I found out telephonically about the incident of Nov. 12<sup>th</sup>, by the first line Supervisor SCBPO Marcnel Pierre. Please refer to the attached police report for the November 12, 2009 incident.

15. Why, and by whom, was the decision made that an investigation would be conducted into the November 2 and November 12 incidents in question?

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Initials 

: 00125

EXHIBIT H-H 000125

A: By the Assistant Port Director Thomas Mattina and the Labor Employee Relation.

16. Mr. Humphrey states that it is not uncommon for AT-CET Officers to experience conflicts or confrontations with individuals whom they are evaluating or questioning. He asserts that, when white or white Hispanic Officers have some type of conflict or confrontation in the course of their duties, management treats it as a normal occurrence and no actions are taken against the Officers. He states this is not the case for non-white AT-CET Officers, evidenced by the fact that he was placed under investigation and assigned to desk duties for incidents which he describes as fairly routine.

Please respond to Mr. Humphrey's allegation that his race, color and national origin were factors in the decision to investigate him for the November 2 and November 12 incidents, and to remove him from field duties pending the outcome of that investigation.

A: To the best of my knowledge race, color and national origin were not factors in the decision to investigate the Nov. 2<sup>nd</sup> and Nov. 12<sup>th</sup> incidents and were not factors in my decision to have CBPO Humphrey work inside the Advance Targeting Unit for the remainder of his shift on November 12, 2008.

17. Mr. Humphrey further alleges that younger AT-CET employees were treated much more favorably than him. Please respond to Mr. Humphrey's allegation that his age was a factor in the decision to investigate him for the November 2 and November 12 incidents, and to remove him from field duties pending the outcome of that investigation.

A: To the best of my knowledge age was not a factor in the decision to investigate the Nov 2<sup>nd</sup> and Nov. 12<sup>th</sup> incidents and was not a factor in my decision to have CBPO Humphrey work inside the Advance Targeting Unit for the remainder of his shift on November 12, 2008.

18. Has the aforementioned investigation been completed? If so, what was the outcome of that investigation?

A: I am not aware of the status of the investigation or the

outcome.

19. Mr. Humphrey notes that a Canine Officer named Alfredo Flores was also present during the November 2 incident.

Was Mr. Flores also the subject of an investigation regarding his role in the November 2 incident, and was Mr. Flores removed from field duties pending the outcome of such investigation? If not, why not?

- A: Mr. Flores was not removed from the field on Nov. 2<sup>nd</sup> and I am not aware if Mr. Flores was investigated for his role in the Nov. 2<sup>nd</sup> incident.

20. Mr. Humphrey alleges that, following his assignment to desk duties, his requests to work overtime were repeatedly denied by Julian Acosta. Did Mr. Acosta discuss Mr. Humphrey's overtime requests with you and/or did you have any role in the decision to deny Mr. Humphrey's overtime requests? If so, please detail the reasons why Mr. Humphrey's requests to work overtime were denied during the period November 12, 2008 through mid-February 2009 (when he was reassigned to Passenger).

- A: Overtime assignments are offered based on the Officer's earnings in accordance to the National Inspectional Assignment Policy. I am aware that in some occasions Officer Humphrey was offered an assignment and voluntarily declined. I did not have a role in the decision to deny Mr. Humphrey's overtime requests.

21. Mr. Humphrey states he submitted a bid rotation request on January 1, 2009, on which he requested to remain in AT-CET. He asserts he learned on approximately January 17, however, that his request was denied.

Did you have any role in the decision to deny Mr. Humphrey's request? If so, what was your role, by whom was the decision made, and why was the decision made to deny his bid rotation request?

- A: No

22. If you were not involved in the decision to deny Mr.

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Initials 

: 00127

EXHIBIT H-H

000127

Humphrey's bid rotation request, do you have any information regarding the denial of that request? If so, by whom was the decision made and what were the reasons for that decision?

A: No, it is my understanding that the basis for his Bid submission not being granted is in the mutually agreed upon Bid Rotation and placement Policy.

23. Mr. Humphrey states he was informed that Section 1.D. of the Union Agreement indicates that bid rotation requests are not accepted for employees who were under investigation for "egregious acts."

23.1. Is it accurate that bid rotation requests submitted by employees under investigation for "egregious acts" are voided/denied?

A: I have no knowledge of the content of Section 1D of the Union agreement.

23.2. Was Mr. Humphrey under investigation for an "egregious act" at the time he submitted his bid request? If so, what was the egregious act for which he was being investigated, and was this a factor in the voiding of his bid request?

A: I was not involved at all in the Bid rotation process.

24. Were Mr. Humphrey's race, national origin, color and/or age in any way factors in the denial of his bid request?

A: I was not involved at all in the Bid rotation process.

25. Have you ever been involved in voiding/denying a bid request submitted by any other employee who was under investigation for an "egregious act"? If so, please identify those individuals by race, national origin, color and age.

A: No

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EXHIBIT H-H

000128

26. Mr. Humphrey states he learned that he had been reassigned to Passenger Control in the beginning of February 2009. Did you have any role in the decision to remove Mr. Humphrey from AT-CET and assign him to Passenger Control? If so, what was your role, by whom was the decision made, and why was that decision made?

A: No

27. In the event that you did not have a role in the decision to reassign Mr. Humphrey to Passenger Control, do you have any knowledge regarding that decision? If so, by whom was the decision made and what were the reasons for that decision?

A: Unkown

28. Mr. Humphrey alleges his race, national origin, color and age were factors in the decision to remove him from AT-CET, and asserts AT-CET management has demonstrated a pattern of removing older, non-white employees from the team. He contends Jose Victoria, Joseph Negron, Coretta Carr and Marnel Pierre have all been removed from AT-CET without being given any real explanation for their removal, while white AT-CET Officers have not been similarly removed from the team.

Please respond to Mr. Humphrey's allegation that his race, national origin, color and age were factors in his removal from AT-CET.

A: Jose Victoria: Unknown reason  
Jose Negron: Accepted a K-9 position  
Kareta Carr: Voluntarily requested to be reassigned to the Couriers facilities  
Marcnel Pierre: Based on local policy of rotating 25% of the Supervisor's each year

Mr. Humphrey's race, national origin, color and age were not factors in his removal from A-TCET.

29. Have you ever been involved in removing any other employee from AT-CET? If so, please identify those individuals by race, color, national origin and age, and indicate the reasons for their removal from the team.

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Initials *4/2*

: 00129

EXHIBIT H-H 000129

A: No

30. Are there any witnesses who can provide first-hand information to corroborate your testimony? If yes, please provide names, contact information, and a brief explanation of the first-hand testimony each witness will be able to provide.

A: SCBPO Marcnel Pierre he was the duty Supervisor on the night of the incident on November 12<sup>th</sup>, 2008.

Chief Sergio Bello

31. Is there any corroborating documentation that you would like to submit for inclusion in the file? If yes, please detail any documentation you will be providing.

A: No

32. Is there anything you would like to add into the record?

A: No

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Initials *u/s*

: 00130

EXHIBIT H-H<sup>000130</sup>

I have received and reviewed CBP Directive No. 51713-010 (Guidance for Witness Participation during the Processing of a Formal EEO Complaint), and I declare under penalty that the foregoing is true and correct.

Executed on 4/20/09 at Miami Florida  
(Date) (City/State)

Signature: [Handwritten Signature]  
Name (Please print): MARTA M. BLANCO  
Title: Chief  
Address: 6601 NW 22 ST RY 114  
Miami FL 33122

Initials [Handwritten Initials]

.00131

EXHIBIT H-H 000131

# **EXHIBIT**

## **I - I**

\*\*\*\*\*  
 \*\*\* ERROR TX REPORT \*\*\*  
 \*\*\*\*\*

TX FUNCTION WAS NOT COMPLETED

TX/RX NO 0458  
 DESTINATION TEL # 12023443390  
 DESTINATION ID  
 ST. TIME 11/13 18:07  
 TIME USE 00'00  
 PAGES SENT 0  
 RESULT NG #0018 BUSY/NO SIGNAL

U.S. DEPARTMENT OF HOMELAND SECURITY  
 Bureau of Customs and Border Protection

FACSIMILE TRANSMITTAL

CD 2110-035

Date: 11/13/2008

Control Number:

<b>TO</b>	Name:	Joint Intake Center
	Organization:	
	Fax Number:	(202) 344-3390
	Number of Pages (including cover):	3

<b>FROM</b>	Sender:	A-TCET Chief Sergio Bello
	Originating Location:	MIA
	Return FAX Number:	305-869-2644
	Voice Number:	305-525-1595

<b>REMARKS</b>	Police Report concerning CBPO Kenneth Humphrey concerning earlier email
	EXHIBIT I-I

CBP-000840

# **EXHIBIT**

## **J-J**

**JOB RESPONSIBILITIES, DUTIES, TASKS**

**IHC-191448-SJC OCA/MP**

**Human Resources Specialist (Labor and Employee Relations)**

**MAJOR DUTIES:**

**You will be responsible for performing the full range of labor and employee relations activities in support of managements goal to establish and maintain effective relationships with labor organizations that represent agency employees and improve the performance and efficiency of the organization. Specifically, you will modify guidelines to resolve complex, precedent-setting labor and employee relations issues; proposing new policies regarding labor and employee relations; conducting extensive research into labor and employee relations cases to identify trends, patterns, or aggravating/mitigating circumstances; negotiate and administer precedent setting settlement agreements; and serve as managements representative in grievances, arbitration cases, and unfair labor practice/impasse hearings. You will also provide guidance and consultation to management on administration of the negotiated agreement(s) and a variety of labor relations issues; and apply a wide range of labor and employee relations` theories, principles, methods, and techniques sufficient to address substantive precedent setting issues or problems characterized by complex, controversial, and sensitive matters, and ascertain their impact on the labor and employee relations program.**

**EXHIBIT J-J**

# **EXHIBIT**

## **K-K**

**BLANCO, MARTA M**

**From:** BLANCO, MARTA M  
**Sent:** Friday, November 28, 2008 10:21 AM  
**To:** MASTON, CHRISTOPHER D  
**Cc:** MATTINA, THOMAS  
**Subject:** FW: REQUEST FOR FAIRNESS

Chris,

FYI- I received this e-mail from Officer Humphrey and I forwarded it to Lenny for guidance. This is the Officer assigned to desk duty awaiting the result of the investigation or fact finding.

MB

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**From:** DORMAN, LEONARD  
**Sent:** Friday, November 28, 2008 8:24 AM  
**To:** BLANCO, MARTA M  
**Cc:** MATTINA, THOMAS; BELLO, SERGIO J  
**Subject:** RE: REQUEST FOR FAIRNESS

I am happy that you understand what his e mail means! I would just respond that it is the intention of the agency to treat him and all employees in a fair manner.

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**From:** BLANCO, MARTA M  
**Sent:** Friday, November 28, 2008 7:35 AM  
**To:** DORMAN, LEONARD  
**Cc:** MATTINA, THOMAS; BELLO, SERGIO J  
**Subject:** FW: REQUEST FOR FAIRNESS

Lenny,

I received this e-mail from Officer Humphrey; apparently he perceives his temporary re-assignment to the ATU as an unfair treatment. Please advise as to how or should I respond to his message?  
Thank you for any assistance/guidance you can provide.

Marta

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**From:** HUMPHREY, KENNETH D  
**Sent:** Thursday, November 27, 2008 10:20 PM  
**To:** BLANCO, MARTA M  
**Cc:** BELLO, SERGIO J  
**Subject:** REQUEST FOR FAIRNESS

Chief Blanco;

This is a request for fairness, in reasons behind job placement and removal from field operations. Please insure a fair process in reviewing, what is perceived and what is actually happening in field operations activities. Actions that might not be viewed as penalization, might be taken by all as such. Serious issues are rotten out the foundation of superficial services (meaning that major gaps really exist in BASE coverages).

11/28/2008

**EXHIBIT K-K**

CBP-000781

I can attest in this note, that preconceived notions of my job value, have no knowledge of what I have been witnessing for some time (as a truly experienced operant), as to the sifting of A-TCET coverages.

Again I ask for fairness in knowing the grounds or accusations, and equity in the handling of whatever said matters exist.

Thanks, Kenneth D. Humphrey

11/28/2008

EXHIBIT K-K

CBP-000762

# **EXHIBIT**

## **L-L**



# **EXHIBIT**

## **M-M**

shipment, and which shall be certified by a certificate of the United States consul or legally authorized deputy.

(R.S. §2904.)

CODIFICATION

R.S. §2904 derived from act Mar. 2, 1861, ch. 68, §28, 12 Stat. 197.

PART 2—REPORT, ENTRY, AND UNLADING OF VESSELS AND VEHICLES

**§§ 241 to 256. Repealed. June 17, 1930, ch. 497, title IV, §651(a)(1), 46 Stat. 762, eff. June 18, 1930**

Sections, act Sept. 21, 1922, ch. 356, title IV, §§431-446, 42 Stat. 950-953, related to form and contents of manifests, clearance documents, bonds, permits and penalties for violation of same.

Provisions of Tariff Act of 1930 corresponding to sections 241 to 256, see sections 1431 to 1446 of this title, respectively.

**§§ 257, 258. Repealed. Pub. L. 91-654, §3, Jan. 5, 1971, 84 Stat. 1945**

Section 257, R.S. §3114; acts Sept. 21, 1922, ch. 356, title IV, §466, 42 Stat. 957; June 17, 1930, ch. 497, title IV, §466, 46 Stat. 719, related to duties on equipments or repair parts for vessels. See section 1466(a) of this title.

Section 258, R.S. §3115; acts Sept. 21, 1922, ch. 356, title IV, §466, 42 Stat. 957; June 17, 1930, ch. 497, title IV, §466, 46 Stat. 719; Aug. 8, 1953, ch. 397, §11(c), 67 Stat. 515, related to the remission of duties for necessary repairs. See section 1466(d) of this title.

EFFECTIVE DATE OF REPEAL

Section 3 of Pub. L. 91-654 provided that the repeal by Pub. L. 91-654 is effective with respect to entries made in connection with arrivals of vessels on or after Jan. 5, 1971 (or treated under section 2 of Pub. L. 91-654, set out as a note under section 1466 of this title, as made on the day after such date).

PROVISIONS INAPPLICABLE TO ENTRIES MADE IN CONNECTION WITH ARRIVALS BEFORE JANUARY 5, 1971, OF VESSELS OPERATED BY OR FOR AGENCY OF UNITED STATES; REFUNDS AFTER AUGUST 7, 1974, BARRED AS TO DUTY PAYMENTS MADE BEFORE JANUARY 5, 1971, UNDER SECTION 257

Pub. L. 93-368, §§1, 2, Aug. 7, 1974, 88 Stat. 420, provided: "That sections 3114 and 3115 of the Revised Statutes of the United States (19 U.S.C. 257 and 258) [former sections 257 and 258 of this title] shall not apply to entries made in connection with arrivals before January 5, 1971, of vessels owned by the United States, or bareboat chartered to the United States, and operated by or for the account of any department or agency of the United States.

"SEC. 2. On or after the date of the enactment of this Act [Aug. 7, 1974], no department or agency of the United States shall be entitled to a refund of any duties paid before January 5, 1971, by any department or agency of the United States under section 3114 of the Revised Statutes of the United States [section 257 of this title]."

**§§ 259, 260. Repealed. June 17, 1930, ch. 497, title IV, §651(a)(1), 46 Stat. 762**

Sections, act Sept. 21, 1922, ch. 356, title IV, §§447, 448, 42 Stat. 953, related to place of entry and unlading before entry or report of arrival.

Provisions of Tariff Act of 1930 corresponding to section 259, see section 1447 of this title; section 260, see section 1448 of this title.

**§ 261. Omitted**

CODIFICATION

Section, acts Feb. 13, 1911, ch. 46, §5, 36 Stat. 901; Feb. 7, 1920, ch. 61, 41 Stat. 402; Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 990; June 2, 1970, Pub. L. 91-271, title III, §315, 84 Stat. 293, provided extra compensation for boarding officers performing services at night or on Sundays and holidays, prior to the general revision of section 5 of act Feb. 13, 1911, by section 13811(a) of Pub. L. 103-66, title XIII, Aug. 10, 1993, 107 Stat. 668. Section 5 of act Feb. 13, 1911, as amended by section 13811(a) of Pub. L. 103-66, is classified to section 267 of this title.

**§§ 262 to 266. Repealed. June 17, 1930, ch. 497, title IV, §651(a)(1), 46 Stat. 762, eff. June 18, 1930**

Sections, act Sept. 21, 1922, ch. 356, title IV, §§449-453, 42 Stat. 954, 955, related to emergency cases of unlading bonds for special licenses and penalties for violation.

Provisions of Tariff Act of 1930 corresponding to section 262, see section 1449 of this title; section 263, see section 1450 of this title; section 264, see section 1451 of this title; section 265, see section 1452 of this title; section 266, see section 1453 of this title.

**§ 267. Overtime and premium pay for customs officers**

**(a) Overtime pay**

**(1) In general**

Subject to paragraph (2) and subsection (c) of this section, a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the officer. For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b) of this section.

**(2) Special provisions relating to overtime work on callback basis**

**(A) Minimum duration**

Any work for which compensation is authorized under paragraph (1) and for which the customs officer is required to return to the officer's place of work shall be treated as being not less than 2 hours in duration; but only if such work begins at least 1 hour after the end of any previous regularly scheduled work assignment and ends at least 1 hour before the beginning of the following regularly scheduled work assignment.

**(B) Compensation for commuting time**

**(i) In general**

Except as provided in clause (ii), in addition to the compensation authorized under paragraph (1) for work to which subparagraph (A) applies, the customs officer is entitled to be paid, as compensation for commuting time, an amount equal to 3 times the hourly rate of basic pay of the officer.

**(ii) Exception**

Compensation for commuting time is not payable under clause (i) if the work for which compensation is authorized under paragraph (1)—

EXHIBIT M-M

(I) does not commence within 16 hours of the customs officer's last regularly scheduled work assignment, or

(II) commences within 2 hours of the next regularly scheduled work assignment of the customs officer.

**(b) Premium pay for customs officers**

**(1) Night work differential**

**(A) 3 p.m. to midnight shiftwork**

If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

**(B) 11 p.m. to 8 a.m. shiftwork**

If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

**(C) 7:30 p.m. to 3:30 a.m. shiftwork**

If the regularly scheduled work assignment of a customs officer is 7:30 p.m. to 3:30 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate for the period from 7:30 p.m. to 11:30 p.m. and at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate for the period from 11:30 p.m. to 3:30 a.m.

**(2) Sunday differential**

A customs officer who performs any regularly scheduled work on a Sunday that is not a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 50 percent of that basic rate.

**(3) Holiday differential**

A customs officer who performs any regularly scheduled work on a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 100 percent of that basic rate.

**(4) Treatment of premium pay**

Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose.

**(c) Limitations**

**(1) Fiscal year cap**

The aggregate of overtime pay under subsection (a) of this section (including commuting compensation under subsection (a)(2)(B) of this section) and premium pay under subsection (b) of this section that a customs offi-

cer may be paid in any fiscal year may not exceed \$25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.

**(2) Exclusivity of pay under this section**

A customs officer who receives overtime pay under subsection (a) of this section or premium pay under subsection (b) of this section for time worked may not receive pay or other compensation for that work under any other provision of law.

**(d) Regulations**

The Secretary of the Treasury shall promulgate regulations to prevent—

(1) abuse of callback work assignments and commuting time compensation authorized under subsection (a)(2) of this section; and

(2) the disproportionately more frequent assignment of overtime work to customs officers who are near to retirement.

**(e) Definitions**

As used in this section:

(1) The term "customs officer" means an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Such functions shall be consistent with such applicable standards as may be promulgated by the Office of Personnel Management.

(2) The term "holiday" means any day designated as a holiday under a Federal statute or Executive order.

(Feb. 13, 1911, ch. 46, § 5, 36 Stat. 901; Feb. 7, 1920, ch. 61, 41 Stat. 402; Pub. L. 91-271, title III, § 316, June 2, 1970, 84 Stat. 293; Pub. L. 103-66, title XIII, § 13811(a), Aug. 10, 1993, 107 Stat. 668.)

**CODIFICATION**

Section derived from R.S. § 2872, as amended by act June 26, 1884, ch. 121, § 25, 23 Stat. 59.

Prior to the general revision of section 5 of act Feb. 13, 1911, by section 13811(a) of Pub. L. 103-66, provisions of section 5 of act Feb. 13, 1911, relating to extra compensation for boarding officers performing services at night or on Sundays and holidays, were classified to section 261 of this title.

**AMENDMENTS**

1993—Pub. L. 103-66 amended section generally, substituting provisions relating to overtime and premium pay for customs officers for provisions relating to fixing of working hours and overtime compensation by Secretary of the Treasury.

1970—Pub. L. 91-271 substituted references to the appropriate customs officer for references to the collector of customs wherever appearing, and struck out reference to inspectors, storekeepers, weighers, and other customs officers and employees.

**EFFECTIVE DATE OF 1993 AMENDMENT**

Section 13811(c) of Pub. L. 103-66 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1450 of this title, repealing section 1451a of this title, and omitting provisions formerly set out as section 261 of this title] apply to customs inspectional services provided on or after January 1, 1994."

EXHIBIT M-M

# **EXHIBIT**

## **N-N**

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
 PF \_\_\_\_\_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:24

PORT: 45206 CY: 2008 PP: 06  
 I: ██████████ NAME: HUMPHREY KENNETH D S  

DAY	DATE	STRT	STOP	PF	TC	S	PC	LOC	A	M	APC	P	FT	P1	P2	RSV	PRJ	R1	R2	P
SU	031608	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
MO	031708	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TU	031808	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
WE	031908	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	032008	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	032008	2300	0700	20	21			XBKF	0		1	IC	NA	EW	000	000	A1			C
FR	032108																			
SA	032208																			
SU	032308	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
MO	032408	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TU	032508	1500	2300	15	66	8		XAEA	0	0435016	1	IC	NA	EW	000	000	A1			TA
WE	032608	1500	2300	15	61	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	032708	1500	2300	15	61	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
FR	032808																			

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
 PF3-RETURN 4-TBL LOOKUP 5-CLEAR 8-NEXT  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

00233

EXHIBIT N-N<sup>000233</sup>

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
 PF \_\_\_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:24

PORT: 45206 CY: 2008 PP: 07

V: ██████████ NAME: HUMPHREY KENNETH D S  
 DAY DATE STRT STOP PF TC S PC LOC A M APC P FT P1 P2 RSV PRJ R1 R2 P  
 SU 033008 1500 2300 50 04 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 MO 033108 1500 2300 15 11 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 TU 040108 1500 2300 15 11 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 WE 040208 1500 2300 15 11 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 TH 040308 1500 2300 15 11 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 FR 040408  
 SA 040508  
 SU 040608 1500 2300 50 04 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 MO 040708 1500 2300 15 11 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 MO 040708 0700 1500 20 21 XBKF 0 1 IC NA EW 000 000 A1 C  
 TU 040808 1500 2300 15 11 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 WE 040908 1500 2300 15 11 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 TH 041008 1500 2300 15 11 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 FR 041108

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
 PF3-RETURN 4-TBL LOOKUP 5-CLEAR 8-NEXT  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

: 00235

EXHIBIT N-N<sup>000235</sup>

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
 PF \_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:24

PORT: 45206 CY: 2008 PP: 08

DAY	DATE	STRT	STOP	PF	TC	S	PC	LOC	A	M	APC	P	FT	P1	P2	RSV	PRJ	R1	R2	P		
																					S	
SU	041308	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
SU	041308	0001	0700	20	21			XBKF	0			1	IC	NA	EW	000	000	A1				C
MO	041408	1500	2300	15	62	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
TU	041508	1500	2300	15	62	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
WE	041608	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
TH	041708	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
FR	041808																					
SA	041908																					
SU	042008	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
MO	042108	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
TU	042208	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
WE	042308	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
TH	042408	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
FR	042508																					

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN

PF3-RETURN 4-TBL LOOKUP 5-CLEAR 8-NEXT  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

00237

**EXHIBIT N-N** 000237

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
 PF \_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:24

PORT: 45206 CY: 2008 PP: 09  
 N: ██████████ NAME: HUMPHREY KENNETH D S  

DAY	DATE	STRT	STOP	PF	TC	S	PC	LOC	A	M	APC	P	FT	P1	P2	RSV	PRJ	R1	R2	P
SU	042708	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
MO	042808	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TU	042908	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
WE	043008	1500	2300	15	61	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	050108	1500	2300	15	61	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
FR	050208																			
SA	050308																			
SU	050408	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
MO	050508	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TU	050608	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TU	050608	2300	2400	20	21			XSSZR	0		1	IC	MA	RU	000	000	A1			C
WE	050708	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	050808	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	050808	2300	0400	20	21			XBKF	0		1	IC	NA	EW	000	000	A1			C

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
 PF3-RETURN 4-TBL LOOKUP 5-CLEAR 8-NEXT  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

: 00239

000239  
**EXHIBIT N-N**

SEL: CO C C 4 EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
 PF QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:24

PORT: 45206 CY: 2008 PP: 10

DAY	DATE	STRT	STOP	PF	TC	S	PC	LOC	A	M	APC	P	FT	P1	P2	RSV	PRJ	R1	R2	P	S	
SU	051108	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
MO	051208	0700	1500		01			XRNG	0	0435016	1	IC	MG	TF	000	000	A1					
TU	051308	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
WE	051408	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
TH	051508	1500	2300	15	61	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
FR	051608																					
SA	051708																					
SU	051808	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
MO	051908	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
TU	052008	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
WE	052108	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
TH	052208	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1					
TH	052208	2300	0700	20	21			XBKF	0		1	IC	NA	EW	000	000	A1					C
FR	052308																					

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN

PF3-RETURN 4-TBL LOOKUP 5-CLEAR 8-NEXT  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

:00241

EXHIBIT N-N <sup>000241</sup>

SEL: CO C C 4 EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
PF QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:24

PORT: 45206 CY: 2008 PP: 10  
 V: ██████████ NAME: HUMPHREY KENNETH D S  
 DAY DATE STRT STOP PF TC S PC LOC A M APC P FT P1 P2 RSV PRJ R1 R2 P  
 FR 052308 2300 2400 20 21 XBKF 0 1 IC NA EW 000 000 A1 C  
 SA 052408  
 SA 052408 0001 0700 20 21 XBKF 0 1 IC NA EW 000 000 A1 C

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
 PF3-RETURN 4-TBL LOOKUP 5-CLEAR 7-PREVIOUS  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

00242

EXHIBIT N-N<sup>000242</sup>

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
 PF \_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:25

PORT: 45206 CY: 2008 PF: 12  
 N: ██████████ NAME: HUMPHREY KENNETH D S  

DAY	DATE	STRT	STOP	PF	TC	S	PC	LOC	A	M	APC	P	FT	P1	P2	RSV	PRJ	R1	R2	P
SU	060808	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
MO	060908	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TU	061008	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
WE	061108	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	061208	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	061208	2300	0700	20	21			XBKF	0			1	IC	NA	EW	000	000	A1		C
FR	061308																			
SA	061408																			
SU	061508	1500	2300		67			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
MO	061608	1500	2300	15	67	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TU	061708	1500	2300	15	67	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
WE	061808	1500	2300	15	67	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	061908	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
FR	062008																			

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
 PF3-RETURN 4-TBL LOOKUP 5-CLEAR 8-NEXT  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

00245

EXHIBIT N-N <sup>000245</sup>

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
PF \_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:25

PORT: 45206 CY: 2008 PP: 13  
V: ██████████ NAME: HUMPHREY KENNETH D S  
DAY DATE STRT STOP PF TC S PC LOC A M APC P FT P1 P2 RSV PRJ R1 R2 P  
FR 070408 1500 2300 20 21 XBKF 0 1 IC NA EW 000 000 A1 C  
SA 070508

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
PF3-RETURN 4-TBL LOOKUP 5-CLEAR 7-PREVIOUS  
9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

: 00248

000248  
**EXHIBIT N-N**

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
PF \_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:25

PORT: 45205 CY: 2008 PP: 14  
 V: ██████████ NAME: HUMPHREY KENNETH D S  
 DAY DATE STRT STOP PF TC S PC LOC A M APC P FT P1 P2 RSV PRJ R1 R2 P  
 TH 071708 2300 2400 20 21 X190 0 1 IC AG AK 000 000 A1 C  
 FR 071808  
 FR 071808 0001 0700 20 21 X190 0 1 IC AG AK 000 000 A1 C  
 SA 071908

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
 PF3-RETURN 4-TBL LOOKUP 5-CLEAR 7-PREVIOUS  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

00250

EXHIBIT N-N <sup>000250</sup>

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
PF \_ \_ \_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:25

PORT: 45304 CY: 2008 PP: 17  
 I: ██████████ NAME: HUMPHREY KENNETH D S  
 DAY DATE STRT STOP PF TC S PC LOC A M APC P FT P1 P2 RSV PRJ R1 R2 P  
 FR 082908 2300 2400 20 21 XBKF 0 1 IC NA EW 000 000 A1 C  
 SA 083008  
 SA 083008 0001 0700 20 21 XBKF 0 1 IC NA EW 000 000 A1 C

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
 PF3-RETURN 4-TBL LOOKUP 5-CLEAR 7-PREVIOUS  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

: 00256

EXHIBIT N-N<sup>000256</sup>

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
PF \_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:25

PORT: 15205 CY: 2008 PP: 18  
 I: ██████████ NAME: HUMPHREY KENNETH D S  
 DAY DATE STRT STOP PF TC S PC LOC A M APC P FT P1 P2 RSV PRJ R1 R2 P  
 TH 091108 1500 2300 15 11 XAEA 0 0435016 1 IC NA EW 000 000 A1  
 FR 091208  
 SA 091308  
 SA 091308 0400 1200 20 21 XOPS 0 1 IC NA EW 000 000 A1 C

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
 PF3-RETURN 4-TBL LOOKUP 5-CLEAR 7-PREVIOUS  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

: 00258

EXHIBIT N-N<sup>000258</sup>

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
 PF \_\_\_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:25

PORT: 15206 CY: 2008 PP: 20  
 I: ██████████ NAME: HUMPHREY KENNETH D S  

DAY	DATE	STRT	STOP	PF	TC	S	PC	LOC	A	M	APC	P	FT	P1	P2	RSV	PRJ	R1	R2	P
SU	092808	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
MO	092908	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TU	093008	1500	2300	15	62	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
WE	100108	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	100208	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
FR	100308																			
FR	100308	2300	2400	20	21			XBKF	0			1	IC	NA	EW	000	000	A1		C
SA	100408																			
SA	100408	0001	0700	20	21			XBKF	0			1	IC	NA	EW	000	000	A1		C
SU	100508	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
MO	100608	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TU	100708	1500	2300	15	62	2		XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
WE	100808	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	100908	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
 PF3-RETURN 4-TBL LOOKUP 5-CLEAR 8-NEXT  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

00260

**EXHIBIT N-N** 000260

SEL: CO C C 4 \_ EMPLOYEE WORK SCHEDULE FUNCTIONS PRD CPS04910 CMS04902  
 PF \_ QUERY AN EMPLOYEE WORK SCHEDULE 051109 14:26

PORT: 45206 CY: 2008 FP: 22  
 I: ██████████ NAME: HUMPHREY KENNETH D S  

LAY	DATE	STRT	STOP	PF	TC	S	PC	LOC	A	M	APC	P	FT	P1	P2	RSV	PRJ	R1	R2	P
SU	102608	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
MO	102708	0700	1500		01			XRNG	0	0435016	1	IC	MG	TF	000	000	A1			
TU	102808	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
WE	102908	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	103008	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	103008	2300	0700	20	21			XOPS	0			1	IC	NA	EW	000	000	A1		C
FR	103108																			
FR	103108	1500	0700	20	21			XOPS	0			1	IC	NA	EW	000	000	A1		C
SA	110108																			
SU	110208	1500	2300	50	04			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
MO	110308	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TU	110408	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
WE	110508	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			
TH	110608	1500	2300	15	11			XAEA	0	0435016	1	IC	NA	EW	000	000	A1			

04036 PRESS PF3 TO RETURN TO THE SELECTION SCREEN  
 PF3-RETURN 4-TBL LOOKUP 5-CLEAR 8-NEXT  
 9-SUBMENU 10-MAIN MENU 11-ASDM 12-LOGOFF

: 00263

000263  
**EXHIBIT N-N**

# **EXHIBIT**

## **O-O**

EXHIBIT F18e

**National Treasury Employees Union**

Customs and Border Protection Chapter 137



February 18, 2009  
Grievance # 137-09-004

Ms. Maria Otero  
Station Chief, Passenger Processing  
Customs and Border Protection  
Miami International Airport  
Miami, Florida 33122

Dear Ms. Otero,

NTEU is requesting a meeting to discuss CBP violations of the bid rotation and placement procedures agreed in the MOU signed by CBP and NTEU. There are four major areas of concern that we would like to discuss, these are as follows:

1. Officers were not allowed bidding due to CBP'S interpretation of the definition of "covered employees", and/or medical reasons although they provided adequate and timely documentation stating their release to full duty status. NTEU contends that management should only exclude those employees that cannot perform the full range of required duties. So, if an employee has their firearm and access to all computer systems, they should not be excluded just because of an investigation or medical reasons. This is a violation of Section 1.B "Covered Employees". The following officers were affected by this violation: [REDACTED] and Kenneth Humphrey.
2. CBP'S failure to allow officers to rectify any data entry errors either electronically or via hard copy. It should be noted that some officers made attempts to rectify their mistakes before the due date and the share point system did not accept these changes. The following officers were considered at fault by CBP and were not allowed to receive work assignments or shift preference in accordance wit their bid submission: Herbert Kerkado, Jose Martinez and Fernald Brown.
3. CBP'S inability to identify those officers that submitted their bid under the "Group Log-On". Apparently these bids were never recorded in the system, placing these officers in passenger processing by default. There were several officers affected by this process.

P.O. Box 52-0807 - Miami, FL 33152  
Phone (305) 871-3861 - Fax (305) 871-3866  
NTEU137@aol.com

: 00319

EXHIBIT 000319 0-0

02-19-09, 11:11 AM

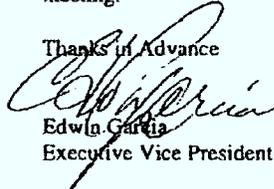
3

4. CBP'S failure to utilize seniority to assigned shift preferences.
5. CBP eliminated shifts that were part of the work units during and after the bid solicitation process.

In accordance with the MOU, this meeting should take place at a mutually agreeable time and place within seven calendar days of receipt of this letter. Further, if you are not the management official who was responsible for and/or do not have the authority to resolve this matter, please forward this request to the appropriate management official and provide me with the name and contact information for that official as soon as possible but no later than the above mentioned time limit.

Please contact me so that we may agree upon a mutually acceptable date and time for this meeting.

Thanks in Advance



Edwin Garcia  
Executive Vice President, NTEU Chapter 137

Cc: Steven Flig, NTEU Assistant Counsel

00320

EXHIBIT 000320  
O-O

# **EXHIBIT**

## **P-P**

**Subject:** RE: Humphrey - follow-up question  
**Date:** Wednesday, April 29, 2009 1:03 PM  
**From:** OTERO, MARIA C <maria.otero@dhs.gov>  
**To:** Ann-Dee Levine <alevine@dszonline.com>  
**Conversation:** Humphrey - follow-up question

Ms. Levine,

As requested, the BRP Policy states the following:

Section 1 – Definitions:

**A. "Covered employees"** include all CBP Officers and CBP Agriculture Specialists assigned to a port of entry who have successfully completed the formal academy and structured post-academy training programs, and are not the subject of any pending performance or disciplinary action, or the subject of an investigation of alleged misconduct that may prevent the performance of the full scope of required duties. Employees on a temporary light duty assignment may participate in the bid process, provided the Agency possesses evidence that the employee will no longer be on light duty at the time of placement.

Section 3 – Procedures:

A (10): "When processing a bid, the employee will be placed in his/her highest priority bid for which (s)he is qualified and more senior than an employee currently assigned to that work unit. To accommodate this placement, the employee with the least seniority assigned to the work unit will be displaced. Absent the placement of the displaced employee through the processing of his/her bid preference and qualifications form, (s)he will be assigned to the Port's core function(s)".

Core Function = Passenger Operations

**From:** Ann-Dee Levine [mailto:alevine@dszonline.com]  
**Sent:** Wednesday, April 29, 2009 3:31 PM  
**To:** OTERO, MARIA C  
**Subject:** Humphrey - follow-up question

Ms. Otero:

I have received your statement, and I thank you for getting it to me so quickly.

Following my review of the document, I have one question for clarification. In your response to Question # 12, you noted that the Bid Committee placed Mr. Humphrey in Passenger Control based on national policy. I have reviewed the Bargaining Council Memorandum of Understanding re: Bid, Rotation and Placement from November 2008, but I don't see anything in there which specifically addresses where employees will be placed when their bids are not accepted due to pending investigations.

Can you clarify specifically how national policy aids the Committee in making the decision as to where to place such employees? (For example, is it standard procedure for employees who are not approved for rotation onto special teams to be assigned to Passenger Control?)

If you would please reply to the above question in a response to this email ASAP, it would be much appreciated.

Thanks!

Ann-Dee Levine  
Contract EEO Investigator  
Delany Siegel Zorn & Associates  
206 760 3808

This e-mail message is intended for the exclusive use of the named addressee and may contain information that is legally privileged or confidential. If you have received this message in error, please notify me and delete the message.

: 00168

EXHIBIT P-P

# **EXHIBIT**

## **Q-Q**

SEL: SF A 4 \_ \_ SF-52 PERSONNEL ACTION REQUESTS PRD CPD01102 CMD00105  
PF \_ \_ QUERY A 52 RECORD 110411 12:01

Request Number: CU 13520000 09 0568 Status: INA Screen: 01  
Contact Person: GELBER, SUZANNE G Phone: 305-810-5106  
Actns: Pers: RA REASSIGNMENT Proposed Date: 030109  
Ceiling: S SAME SLOT Procurmnt Integrty: \_  
Spec Use: \_\_\_\_\_

Employee SSN: \_\_\_\_\_ DOB: 042645 Comments: N  
Last Name: HUMPHREY First: KENNETH Middle: D

Fr: PDN: S1043A Org: CU 13 52 0009 01 01 20 00 NARCOTICS DIVISION  
Pos: GS 1895 11 Title: CBP OFFCR

APC: 435016 AUO: \_ Pay Basis: PA

To: PDN: S1043A Org: CU 13 52 0009 01 01 40 00 PASSENGER PROCESSING DIVISION  
Pos: GS 1895 11 Title: CBP OFFICER

FTE: IC APC: 433052 AUO: \_ Pay Basis: PA Target Grade: 11  
City: MIAMI St: FL FLSA: \_ BUS: 0081 Pos Stat Budg: Y  
Clearance: \_ Relocation: N Wk Sched: F P-Time Hrs/P-Period: .00

REQUESTED RECORD HAS BEEN DISPLAYED

PF8-NEXT

9-SUBMENU

10-MAIN MENU

11-ASDM

12-LOGOFF

19-COMMENTS

ENTER-PROCESS

EXHIBIT Q-Q 1

CBP-000843

SEL: SF A 4 SF-52 PERSONNEL ACTION REQUESTS PRD CPD01502 CMD00508  
PF QUERY A 52 RECORD 051109 14:41

Request Nbr: CU 13520000 09 0568 Eff Date: 030109 Status: IN Screen: 05  
Pl Name: HUMPHREY KENNETH D SSN: ██████████  
DOB: 042645

Status: SQ ACTION COMPLETED IN USDA Status date: 032309

Action: RA REASSIGNMENT

NOA1: 721 REASSIGNMENT

Auth1: N2M REG 335.102 Auth2:

NOA2:

Auth1: Auth2:

Fr Pos: GS 1895 11 CBP OFFCR  
Org: CU 13 52 0009 01 01 20 00 NARCOTICS DIVISION  
To Pos: GS 1895 11 CBP OFFICER  
Org: CU 13 52 0009 01 01 40 00 PASSENGER PROCESSING DIVISION

OHR Org: CU 27 04 0007 02 00 00 00 MHC PROCESSING SERVICES Comment: N  
PMS: OWENS, JOHN In: 022409 Target: 031009

REQUESTED RECORD HAS BEEN DISPLAYED

PF5-CLEAR 7-PREVIOUS 8-NEXT 9-SUBMENU  
10-MAIN MENU 11-ASDM 12-LOGOFF 19-COMMENTS ENTER-PROCESS

00326

EXHIBIT <sup>000326</sup> Q-Q 2

# **EXHIBIT**

## **R-R**

Revised June 1988  
U.S. Office of Personnel Management  
FPM Chapter 298  
61-108

# APPOINTMENT AFFIDAVITS

Customs Inspector (Position to which appointed) 1-3-00 (Date of appointment)

U.S. Customs Service (Department or agency) Inspection & Control (Bureau or Division) Miami (Place of employment)

I, KENNETH DELANO HUMPHREY, do solemnly swear (or affirm) that—

### A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

### B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

### C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

X [Handwritten Signature]  
(Signature of appointee)

Subscribed and sworn (or affirmed) before me this 3 day of January, 2000

at Miami (City) Florida (State)

[SEAL]

[Handwritten Signature] 1-3-2000  
(Signature of officer)

Commission expires \_\_\_\_\_ (If by a Notary Public, the date of expiration of his/her Commission should be shown) Port Director, Miami Service Port (Title)

NOTE.—The oath of office must be administered by a person specified in 5 U.S.C. 2302. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavit; only these words may be stricken and only when the appointee elects to affirm the affidavit.

NSN 7540-00-804-4015

★U.S.GPO:1987-0-198-009/79118

Prior Edition Usable

# EXHIBIT S-S1

This is an 'official' document generated from the EHRI eOPF system.

CBP-000565

GS=S1043a  
GG=S1047a

**Customs and Border Protection Officer  
GS/GG-1895-11**

**INTRODUCTION:**

The primary mission of U.S. Customs and Border Protection (CBP) is to detect and prevent terrorists and instruments of terror from entering the United States, enforce applicable laws, and facilitate the orderly and efficient flow of legitimate trade and lawful travelers.

The CBP Officer performs the full range of inspection, intelligence analysis, examination, and law enforcement activities relating to arrival and departure of persons, conveyances, and merchandise at Ports of Entry (POE). The Officer's primary responsibility is to identify potential terrorists and instruments of terror and to perform layered enforcement activities relative to counter-terrorism. These enforcement activities are to prevent the entry of terrorists and instruments of terror, harmful pests and diseases, illegal drugs and contraband, and illegal aliens and importations/exportations contrary to law and trade agreements, etc., from entering/exiting the United States. The Officer interprets the laws and regulations of a broad range of Federal, state, and local agencies, relating to the admissibility of people, cargo and conveyances.

This position is located in various POEs, to include land border, airport, seaport, and pre-clearance stations, and mission needs may require rotation of assignments and duty locations.

**MAJOR DUTIES:**

The enforcement and facilitation examination continuum is a process that typically includes preprimary/risk assessment, primary examination, secondary examination (including disposition for enforcement and compliance), outbound, registration, exit controls, and post disposition. Significant judgments are made at every step on the continuum.

The work requires broad knowledge of laws and procedures, as well as changing initiatives and threats. The Officer applies behavioral and cultural analysis, and decision-making skills in order to perform the risk assessment required to release travelers and shipments and to identify those requiring further scrutiny, especially those involving terrorist individuals and instruments of terror. The Officer applies this broad range of knowledge in completing the initial interactions and a more specific application in increasingly complex determinations as examinations progress.

**Preprimary/Risk Assessment:**

Preprimary/risk assessment occurs prior to the arrival of persons, conveyances, or merchandise, as information about impending arrivals is received via automated

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**EXHIBIT** <sup>000171</sup>  
**S-S 2**

GS=S1043a  
GG=S1047a

Employs a wide range of non-intrusive technology devices such as radiation monitors, portable and stationary X-ray machines, body scanners, density meters and fiberscopes when conducting examinations. Troubleshoots technical problems with non-intrusive technology; determines the accuracy of readings and signals which result from the equipment and conducts required safety checks as mandated by established protocols.

**Secondary Examination:**

Secondary examination is the further intensified inspection of people, cargo, or conveyances not released or admitted upon primary examination. Through interviews, document reviews, additional database queries, communication with other law enforcement agencies, observational techniques, heightened physical inspections, and the use of technology, the inspecting Officer performing the secondary examination continues to collect information, facts, and evidence necessary to properly assess risk. The purpose of the secondary examination is to determine eligibility and admissibility relative to applicable regulations and statutes and to determine the appropriateness, extent, and focus of further intensified examination.

Conducts visual and physical inspection of cargo, baggage, conveyances, packing materials and people using a wide array of non-intrusive technology such as density meters, laser range finders, stationary and portable X-ray machines, body scanners, radiation detection devices, vapor tracers, isotope identification devices, and biometrics collection units. Based on assessed risks, further and progressively more complex and extensive physical examinations, interrogations and database queries may be required to identify and interdict highly sophisticated smuggling schemes and activities and instruments of terror.

Conducts re-boarding inspections on conveyances as necessary for the purpose of ensuring compliance with prescribed laws or regulations.

Compiles data, maintains logs, and prepares monthly/daily work accomplishment reports on inspection operations. Accurately documents incident reports, prepares investigative reports and provides testimony in support of third party proceedings. Processes required documentation for other federal agencies.

**Outbound, Registration, and Exit Control Functions:**

The purpose of the outbound, registration, and exit control functions is to selectively identify, target, control and examine passengers, conveyances, and cargo leaving the United States or within the United States but under the jurisdictional oversight of CBP. This function is designed to detect terrorists and instruments of terror, to prevent departure of those aliens ordered to remain within the United States, to collect departure data on aliens leaving the United States, and to ensure compliance with agricultural and export requirements.

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**EXHIBIT S-S 2**

# **EXHIBIT**

## **T-T**



**U.S. CUSTOMS AND BORDER PROTECTION  
FIELD OPERATIONS**

**BID & ROTATION ANNOUNCEMENT FY09**

**ANTI-TERRORISM CONTRABAND ENFORCEMENT TEAM (A-TCET)**

This is the work unit charged with the inbound and/or outbound interdiction of narcotics and other contraband, including currency, arms and ammunition, as well as terrorist related materials in the cargo and/or passenger environments.

**Qualifications**

- Knowledge of laws, rules, regulations, programs, and procedures concerning import/export of merchandise
- Skill in physical detection of anomalies in conveyances, vehicles, luggage, merchandise, etc. (e.g. false compartments)
- Ability to detect inconsistencies in information gathered from interviewing individuals through observational techniques and automated systems to identify high risk travelers
- Ability to conduct effective secondary inspections/examinations and to document the findings in a timely and accurate manner in the appropriate automated systems
- Ability to perform duties, which are technical in nature, such as utilizing specialized equipment to aid in the unloading or examination of cargo and surveillance (i.e. Reference CBP 3290-013C, Consolidated National Inspectional Anti-Terrorism Contraband Enforcement Team Policy) in multiple environments (i.e. Sea/Air)

**Assignment Duration**

- AT-CET members who have attended specialized training (i.e. NIJ to include VACIS, HCV, RPM, ATS-AT, ATS-N, AES, etc.) will remain in their position for a minimum of two bid cycles after the completion of the training. Officers will be aware of this commitment prior to the training.

**Available Work Schedules**

- Shifts are normally permanent and days off are Friday-Saturday or Sunday-Monday consecutive.

2300 - 0700 ; 0700 - 1500 ; 1500 - 2300

A-TCET assignments are unpredictable, around the clock, and require shift changes on short notice.

00298

**EXHIBIT**

000298

**T-T 1**

A-TCET operations to ensure compliance. The A-TCET branch chief/team supervisor will maintain oversight of all operational aspects of the NII to include utilization of equipment.

**5 PROCEDURES.**

5.1 The A-TCET program is national in scope. The Headquarters program is managed by the Assistant Commissioner, OFO, and is further managed by the Executive Director, Border Security and Facilitation. The Field Operations Office program is managed by the Director, Field Operations, and the port area program is managed by the Port Director. The A-TCET unit is to be supervised by an inspectional branch chief/team supervisor who reports directly to the Port Director.

5.2 The A-TCET's primary focus is anti-terrorism. Its secondary focus is the interdiction of narcotics, other contraband, alien smugglers/traffickers and fraudulent documents, and the detection of agricultural products related to bio-terrorism. The A-TCET will be assigned to the operational or geographical areas within the port, which pose the greatest threat.

5.3 Designation: To promote uniformity and reduce confusion, each team throughout the country will be known as the A-TCET, with the port name following, for example, A-TCET Miami.

5.4 Team's Composition: Canine Enforcement Officers (CEOs) should always be an integral part of A-TCET operations. The organizational alignment of CEOs is identified in the Customs Directive 3290-015A, dated August 23, 2000, on the Canine Enforcement Program. Each A-TCET unit will consist of inspectors/officers and CEOs specifically assigned to priority interdiction efforts within each port. The CEO assignments to A-TCET will not preclude their use in port coverage (e.g., vehicle secondary and cargo), and it must be remembered that canines should be viewed as a resource available to all of Field Operations.

5.5 Staffing:

5.5.1 It is recognized that the A-TCET assignments are often unpredictable and entail work beyond normal assignments in shifts and unusual routines. Although a close-knit volunteer workforce is most effective in this environment, management is not required to limit assignments to volunteers. Management will identify and post a listing of the number of positions for which volunteers are solicited. Interested applicants may submit electronically a brief narrative, not to exceed one page, outlining their skills and abilities. Applications must be routed through their respective chain of command. Normally solicitations will be made annually; however, management may solicit volunteers to participate on A-TCET as it deems appropriate to satisfy workload or staffing needs. All appropriate methods will be used to notify employees in the effected area of opportunity to apply to A-TCET.

: 00352

EXHIBIT T-T 2  
000352

5.5.2 The Port Director or his or her designee will retain sole authority to determine the number and composition of work units, the qualifications and length of specific assignments, and the necessity of rescheduling individual assignments to adjust the workforce in order to meet operational or training needs. This includes the right to retain employees in their current assignments when circumstances indicate that it is operationally prudent to do so.

5.5.3 At any time, management reserves the right to reassign an employee from A-TCET. Management will also make reasonable efforts to honor an employee's request to have their A-TCET assignment terminated. Employees removed from A-TCET will be reassigned to other duties in accordance with current practices.

5.5.4 New inspectors, while participating in the on-the-job training program, will be given some experience with A-TCET activities. While it is desirable that all inspectors become familiar with A-TCET functions, this objective should not interfere with the primary responsibilities of A-TCET.

5.5.5 Supervisory inspectors, team leaders, and branch chiefs managing A-TCET units will be assigned as to ensure continuity of the A-TCET program priorities. If reassignment of these personnel becomes necessary, it should be accomplished in a staggered rotation so that continuity is not disrupted.

5.6 Budgetary Planning: The A-TCET efforts should be properly funded. Managers at all levels should consider, request, and provide adequate budgetary resources and planning.

5.7 Training:

5.7.1 All A-TCET inspectors and CEOs will continue to be rotated in enforcement training programs administered by Headquarters, Field Operations. Management will provide appropriate training to newly assigned employees prior to the performance of A-TCET functions when operationally feasible.

5.7.2 The A-TCET inspectors will be called upon to perform duties, which are technical in nature, such as utilizing specialized equipment to aid in the unloading or examination of the cargo and surveillance. Management will provide appropriate training in the safe operation of any such equipment or surveillance when operationally feasible.

5.8 Surveillance and Controlled Deliveries: As A-TCET's mission is anti-terrorism, interdiction of narcotics, other contraband, alien smugglers/traffickers and fraudulent documents, and the detection of agricultural products related to bio-terrorism, it follows that A-TCET may be involved in surveillance and controlled delivery operations at the request of the Bureau of Immigration and Customs Enforcement (BICE), Federal Bureau of Investigation and other agencies.

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EXHIBIT

000353 T-T 2

**EXHIBIT**  
**U-U**

was imported into the United States or is sought to be imported into the United States in violation of, or without meeting the requirements of, section 1681a of this title shall be forfeited to the United States, or to any State in which such tobacco product, cigarette papers, or tube is found. Notwithstanding any other provision of law, any product forfeited to the United States, or to any State, pursuant to this subtitle shall be destroyed.

(June 17, 1930, ch. 497, title VIII, § 803, as added Pub. L. 106-476, title IV, § 4004(a), Nov. 9, 2000, 114 Stat. 2180; amended Pub. L. 109-432, div. C, title IV, § 401(d), (e)(1), (3), Dec. 20, 2006, 120 Stat. 3048, 3049.)

## REFERENCES IN TEXT

Chapter 52 of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 5701 et seq. of Title 26, Internal Revenue Code.

## AMENDMENTS

2006—Subsec. (a). Pub. L. 109-432, § 401(e)(1), inserted “or smokeless tobacco products” after “cigarettes”.

Subsec. (b). Pub. L. 109-432, § 401(d), (e)(3), in first sentence, inserted “, or any smokeless tobacco product,” before “that was imported” and “, or to any State in which such tobacco product, cigarette papers, or tube is found” before period at end and, in second sentence, inserted “, or to any State,” after “United States”.

## EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 20, 2006, see section 401(g) of Pub. L. 109-432, set out as a note under section 1681 of this title.

## CHAPTER 5—SMUGGLING

Sec.	
1701.	Customs-enforcement area.
1702.	Repealed.
1703.	Seizure and forfeiture of vessels.
1704.	Refusal or revocation of registry, enrollment, license or number on evidence that vessel engaging in smuggling; appeal; immunity from liability.
1705.	Destruction of forfeited vessel or vehicle.
1706.	Importation in vessels under thirty tons and aircraft; licenses; labels as prima facie evidence of foreign origin of merchandise.
1706a.	Civil penalties for trading without required certificate of documentation.
1707, 1708.	Repealed.
1709.	Definitions.
1710.	Separability.
1711.	Citation of chapter.

## § 1701. Customs-enforcement area

**(a) Establishment; extent and duration; enforcement of laws applicable to waters adjacent to customs waters**

Whenever the President finds and declares that at any place or within any area on the high seas adjacent to but outside customs waters any vessel or vessels hover or are being kept off the coast of the United States and that, by virtue of the presence of any such vessel or vessels at such place or within such area, the unlawful introduction or removal into or from the United States of any merchandise or person is being or may be occasioned, promoted, or threatened, the place or area so found and declared shall con-

stitute a customs-enforcement area for the purposes of this Act. Only such waters on the high seas shall be within a customs-enforcement area as the President finds and declares are in such proximity to such vessel or vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessel or vessels. No customs-enforcement area shall include any waters more than one hundred nautical miles from the place or immediate area where the President declares such vessel or vessels are hovering or are being kept and, notwithstanding the foregoing provision, shall not include any waters more than fifty nautical miles outwards from the outer limit of customs waters. Whenever the President finds that, within any customs-enforcement area, the circumstances no longer exist which gave rise to the declaration of such area as a customs-enforcement area, he shall so declare, and thereafter, and until a further finding and declaration is made under this subsection with respect to waters within such area, no waters within such area shall constitute a part of such customs-enforcement area. The provisions of law applying to the high seas adjacent to customs waters of the United States shall be enforced in a customs-enforcement area upon any vessel, merchandise, or person found therein.

**(b) Boarding vessels; arrest and seizure; compliance with treaty provisions; authority of Secretary of Commerce unaffected**

At any place within a customs-enforcement area the several officers of the customs may go on board of any vessel and examine the vessel and any merchandise or person on board, and bring the same into port, and, subject to regulations of the Secretary of the Treasury, it shall be their duty to pursue and seize or arrest and otherwise enforce upon such vessel, merchandise, or person, the provisions of law which are made effective thereto in pursuance of subsection (a) of this section in the same manner as such officers are or may be authorized or required to do in like case at any place in the United States by virtue of any law respecting the revenue: *Provided*, That nothing contained in this section or in any other provision of law respecting the revenue shall be construed to authorize or to require any officer of the United States to enforce any law thereof upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government: *Provided further*, That none of the provisions of this Act shall be construed to relieve the Secretary of Commerce of any authority, responsibility, or jurisdiction now vested in or imposed on that officer.

(Aug. 5, 1935, ch. 438, title I, § 1, 49 Stat. 517.)

## REFERENCES IN TEXT

This Act, referred to in text, means act Aug. 5, 1935, which enacted this chapter and sections 1432a and 1601a of this title and amended sections 70, 483, 1401, 1434,

EXHIBIT U-U 1

**§ 1588. Transportation between American ports via foreign ports**

If any merchandise is laden at any port or place in the United States upon any vessel belonging wholly or in part to a subject of a foreign country, and is taken thence to a foreign port or place to be reladen and reshipped to any other port in the United States, either by the same or by another vessel, foreign or American, with intent to evade the provisions relating to the transportation of merchandise from one port or place of the United States to another port or place of the United States in a vessel belonging wholly or in part to a subject of any foreign power, the merchandise shall, on its arrival at such last-named port or place, be seized and forfeited to the United States, and the vessel shall pay a tonnage duty of 50 cents per net ton.

(June 17, 1930, ch. 497, title IV, § 588, 46 Stat. 749.)

**§ 1589. Repealed. Pub. L. 100-690, title VII, § 7367(c)(5), Nov. 18, 1988, 102 Stat. 4480**

Section, act June 17, 1930, ch. 497, title IV, § 589, as added Oct. 12, 1984, Pub. L. 98-473, title II, § 320, 98 Stat. 2056, set forth arrest authority of customs officers.

## CODIFICATION

Another section 589 of act June 17, 1930, was added by Pub. L. 98-573, title II, § 213(a)(17), Oct. 30, 1984, 98 Stat. 2988, and is classified to section 1589a of this title.

A prior section 589 of act June 17, 1930, ch. 497, title IV, 46 Stat. 750, related to unlawful relanding and was classified to this section, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 544 of Title 18, Crimes and Criminal Procedure.

**§ 1589a. Enforcement authority of customs officers**

Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

- (1) carry a firearm;
- (2) execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States;
- (3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and
- (4) perform any other law enforcement duty that the Secretary of the Treasury may designate.

(June 17, 1930, ch. 497, title IV, § 589, as added Pub. L. 98-573, title II, § 213(a)(17), Oct. 30, 1984, 98 Stat. 2988.)

## CODIFICATION

Another section 589 of act June 17, 1930, as added by Pub. L. 98-473, title II, § 320, Oct. 12, 1984, 98 Stat. 2056, was classified to section 1589 of this title, prior to repeal by Pub. L. 100-690.

## PRIOR PROVISIONS

A prior section 589 of act June 17, 1930, ch. 497, title IV, 46 Stat. 750, related to unlawful relanding and was classified to this section, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 544 of Title 18, Crimes and Criminal Procedure.

## EFFECTIVE DATE

Section effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

**§ 1590. Aviation smuggling****(a) In general**

It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.

**(b) Sea transfers**

It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

(1) either—

(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

(B) the vessel is a vessel of the United States (within the meaning of section 1703(b) of this title), or

(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

**(c) Civil penalties**

Any person who violates any provision of this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than \$10,000. The value of any controlled substance included in the merchandise shall be determined in accordance with section 1497(b) of this title.

**(d) Criminal penalties**

In addition to being liable for a civil penalty under subsection (c) of this section, any person who intentionally commits a violation of any provision of this section is, upon conviction—

- (1) liable for a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved was a controlled substance; or
- (2) liable for a fine of not more than \$250,000 or imprisonment for not more than 20 years, or both, if any of the merchandise involved was a controlled substance.

**(e) Seizure and forfeiture**

(1) Except as provided in paragraph (2), a vessel or aircraft used in connection with, or in aiding or facilitating, any violation of this section, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with the customs laws.

(2) Paragraph (1) does not apply to a vessel or aircraft operated as a common carrier.

**(f) "Merchandise" defined**

As used in this section, the term "merchandise" means only merchandise the importation of which into the United States is prohibited or restricted.

**(g) Intent of transfer of merchandise**

For purposes of imposing civil penalties under this section, any of the following acts, when per-

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text read as follows: "A vessel carrier shall notify the Customs Service of any cargo tendered to such carrier that is not properly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal, and the location of the cargo in the marine terminal. For vessel carriers that are members of vessel sharing agreements (or any other arrangement whereby a carrier moves cargo on another carrier's vessel), the vessel carrier accepting the booking shall be responsible for reporting undocumented cargo, without regard to whether it operates the vessel on which the transportation is to be made."

#### EFFECTIVE DATE

Section applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107-210, set out as an Effective Date of 2002 Amendment note preceding section 2271 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### §§ 1432, 1432a. Repealed. Pub. L. 103-182, title VI, § 690(b)(1), (c)(5), Dec. 8, 1993, 107 Stat. 2223

Section 1432, acts June 17, 1930, ch. 497, title IV, § 432, 46 Stat. 710; June 2, 1970, Pub. L. 91-271, title III, § 301(b), 84 Stat. 287, required that the manifest of any vessel arriving from foreign port or place separately specify articles to be retained on board as sea stores, ship's stores, bunker coal, or bunker oil and provided for forfeiture and penalties for omitted articles.

Section 1432a, act June 17, 1930, ch. 497, title IV, § 401 (part), as added Aug. 5, 1935, ch. 438, title II, § 201, 49 Stat. 521, provided that any vessel which had visited any hovering vessel would be deemed to have arrived from a foreign port or place, for purposes of certain provisions of law. Section 690(c)(5) of Pub. L. 103-182 which directed the repeal of the "last undesignated paragraph of section 201 of the Act of August 5, 1935 (19 U.S.C. 1432a)", was executed by repealing this section, which was based on the last undesignated paragraph of section 401 of act June 17, 1930, as added by section 201 of act Aug. 5, 1935, to reflect the probable intent of Congress.

#### § 1433. Report of arrival of vessels, vehicles, and aircraft

##### (a) Vessel arrival

(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

- (A) any vessel from a foreign port or place;
- (B) any foreign vessel from a domestic port;
- (C) any vessel of the United States carrying foreign merchandise for which entry has not been made; or
- (D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

(2) The Secretary may by regulation—

- (A) prescribe the manner in which arrivals are to be reported under paragraph (1); and
- (B) extend the time in which reports of arrival must be made, but not later than 24 hours after arrival.

##### (b) Vehicle arrival

(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

- (A) report the arrival; and
- (B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

##### (c) Aircraft arrival

The pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

##### (d) Presentation of documentation

The master, person in charge of a vehicle, or aircraft pilot shall present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data, documents, papers, or manifests as the Secretary may by regulation prescribe.

##### (e) Prohibition on departures and discharge

Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary—

- (1) depart from the port, place, or airport of arrival; or
- (2) discharge any passenger or merchandise (including baggage).

(June 17, 1930, ch. 497, title IV, § 433, 46 Stat. 711; Pub. L. 99-570, title III, § 3112, Oct. 27, 1986, 100 Stat. 3207-80; Pub. L. 103-182, title VI, § 652, Dec. 8, 1993, 107 Stat. 2209; Pub. L. 106-476, title I, § 1452(a)(1), Nov. 9, 2000, 114 Stat. 2167.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 433, 42 Stat. 951. That section was superseded by section 433 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 2774, requiring a report of arrival, and a further report in the form of a manifest, and imposing a penalty for violations was superseded by act Sept. 21, 1922, ch. 356, title IV, § 433, 42 Stat. 951, and repealed by section 642 of that act.

R.S. § 2772, relative to report and entry by the master of every vessel, bound to a port of delivery; section 2775, requiring a special report by the master of any vessel having on board distilled spirits or wines; and section 2832, relative to report of arrival of vessels proceeding to the ports of Natchez or Vicksburg, were also repealed by section 642 of the act of Sept. 21, 1922, ch. 356.

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## AMENDMENTS

2000—Subsec. (a)(1)(C). Pub. L. 106-476 struck out “bonded merchandise, or” before “foreign merchandise”.

1993—Subsec. (a)(1)(D). Pub. L. 103-182, §652(1), added subpar. (D).

Subsec. (d). Pub. L. 103-182, §652(2), substituted “present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data,” for “present to customs officers such”.

Subsec. (e). Pub. L. 103-182, §652(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

“(1) depart from the port, place, or airport of arrival; or

“(2) discharge any passenger or merchandise (including baggage); only in accordance with regulations prescribed by the Secretary.”

1986—Pub. L. 99-570 amended section generally. Prior to amendment, section read as follows: “Within twenty-four hours after the arrival of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, at any port or place within the United States at which such vessel shall come to, the master shall, unless otherwise provided by law, report the arrival of the vessel at the nearest customhouse, under such regulations as the Commissioner of Customs may prescribe.”

## EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106-476, set out as a note under section 58c of this title.

## TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## § 1434. Entry; vessels

## (a) Formal entry

Within 24 hours (or such other period of time as may be provided under subsection (c)(2) of this section) after the arrival at any port or place in the United States of—

- (1) any vessel from a foreign port or place;
- (2) any foreign vessel from a domestic port;
- (3) any vessel of the United States having on board foreign merchandise for which entry has not been made; or
- (4) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea;

the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

## (b) Preliminary entry

The Secretary may by regulation permit the master to make preliminary entry of the vessel

with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.

## (c) Regulations

The Secretary may by regulation—

(1) prescribe the manner and format in which entry under subsection (a) of this section or subsection (b) of this section, or both, must be made, and such regulations may provide that any such entry may be made electronically pursuant to an electronic data interchange system;

(2) provide that—

(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and

(B) formal entry may be made before arrival; and

(3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.

(June 17, 1930, ch. 497, title IV, §434, 46 Stat. 711; Aug. 5, 1935, ch. 438, title III, §301, 49 Stat. 527; Pub. L. 91-271, title III, §301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103-182, title VI, §653, Dec. 8, 1993, 107 Stat. 2210; Pub. L. 106-476, title I, §1452(a)(2), Nov. 9, 2000, 114 Stat. 2167.)

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §434, 42 Stat. 951. That section was superseded by section 434 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for deposit of the register and other papers previous to entry, and for their return to the master or owner of the vessel on clearance of the vessel, were contained in R.S. §2790, which was superseded by act Sept. 21, 1922, ch. 356, title IV, §434, 42 Stat. 951, and repealed by section 642 of that act.

R.S. §2836, relative to the entry of vessels arriving within the districts of Petersburg or Richmond (abolished by the Plan of Reorganization of the Customs Service set forth in a note to section 1 of this title) was also repealed by section 642 of act Sept. 21, 1922, ch. 356.

Special provisions for Astoria and Portland were contained in R.S. §§2588-2590, which were also repealed by section 642 of the act of Sept. 21, 1922, ch. 356.

R.S. §2835, prescribing the duties of masters of vessels bound up James River, Virginia, in regard to deposit of manifests, etc., was repealed by act Mar. 3, 1897, ch. 389, §16, 29 Stat. 691.

Special provisions to facilitate the entry of steamships running in an established line in foreign trade, made by act June 5, 1894, ch. 92, §1, 28 Stat. 85, and extended to steamships trading between Porto Rico and Hawaii and the United States by act May 31, 1900, ch. 600, 31 Stat. 249, were repealed by section 6 of act Feb. 13, 1911, ch. 46, the preceding sections of which act made more comprehensive provisions for preliminary entry of any vessel from a foreign port, and for the lading or unlading of such vessels at night. Sections 1 to 4 of said act of 1911, were repealed by section 643 of the act of Sept. 21, 1922, ch. 356.

## AMENDMENTS

2000—Subsec. (a)(3). Pub. L. 106-476 struck out “bonded merchandise or” before “foreign merchandise”.

1993—Pub. L. 103-182 amended section generally. Prior to amendment, section read as follows: “Except as

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