1300 Pennsylvania Avenue NW
Washington, DC 20229

(b) (7)(E)

U.S. Customs and Border Protection

SEP 18 2009

MEMORANDUM FOR: All Chief Patrol Agents
All Division Chiefs

FROM: Jeffrey D. Self (b) (6), (b) (7)(C)
Acting Chief
U.S. Border Patrol

SUBJECT: CBP Directive 4510-25 "Emergency Driving and Vehicular Pursuits by Customs and Border Protection Personnel" and Related Training

I am pleased to announce that all collective bargaining requirements have been fulfilled regarding U.S. Customs and Border Protection (CBP) Directive 4510-25, entitled "Emergency Driving and Vehicular Pursuits by Customs and Border Protection Personnel." Attached with this memorandum is the final version of this directive that supersedes the interim version that was distributed on October 3, 2008.

The offensive driving techniques which are outlined in this policy under Section 6.6.5 may only be authorized by Supervisory Border Patrol Agents for agents who have successfully completed the driver training course for offensive driving techniques. The provisions of the new directive relating to pursuits with vehicles other than sedans will not apply until agents have been certified by completing the new course.

The CBP Office of Training and Development has completed the Emergency Driving Vehicular Pursuit Instructor Training Program and has certified (b) (7)(E) instructors in a train-the-trainer capacity. This training course will be available to agents as soon as contractual issues are resolved. Additional guidance will follow on the location, schedule, and duration of the driver training course once it is complete.

Staff may address any questions or concerns to Assistant Chief (b) (6), (b) (7)(C) of the Policy Branch at (b) (6), (b) (7)(C)

Attachment

CUSTOMS AND BORDER PROTECTION DIRECTIVE

ORIGINATING OFFICE: BP

DISTRIBUTION
CBP DIRECTIVE NO. 4510-25
DATE: March 26, 2008
SUPERSEDES: INS Vehicle Pursuit Policy, 4510-018A Emergency Driving
REVIEW DATE: July 25, 2011

SUBJECT: EMERGENCY DRIVING AND VEHICULAR PURSUITS BY CUSTOMS AND BORDER PROTECTION PERSONNEL

1. Purpose

1.1. Establish U.S. Customs and Border Protection (CBP) policy governing emergency driving to include vehicle pursuits.

2. POLICY

2.1. It is the policy of U.S. Customs and Border Protection that CBP Officers (CBPO) and Border Patrol Agents (BPA) may engage in and continue, emergency driving, including vehicle pursuits, only when they determine, and only for the duration of that ongoing determination. (b) (7)(E) (b) (7)(E) enforcement need for emergency driving (b) (7)(E) (b) (7)(E)

2.1.1. During emergency driving that does not involve a vehicle pursuit, when a CBPO or BPA or his/her supervisor reasonably determines that the immediate danger created by the emergency driving outweighs the law enforcement benefit of continued emergency driving, the emergency driving will be reduced to a safe level or terminated.

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2.1.3 Under the provisions of this policy supervisors will establish control over all authorized pursuits as soon as reasonably possible. Both supervisors and CBPOs or BPAs share a responsibility in assuring proper administration of the pursuit policy.

2.2. Factors to be considered in making pursuit determinations include but are not limited to:

2.2.1. Maintaining a probability of arrest.

2.2.2. Nature of the crime or suspected crime committed by suspect(s) being pursued.

2.2.3. Immediate danger to the public of continuing the emergency driving or vehicle pursuit (i.e. proximity of population centers, pedestrians, schools, traffic flow, etc.)

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2.3. CBPOs and BPAs (b) (7)(E) Any pursuit that is reasonably believed to be destined for a foreign country shall be coordinated with (b) (7)(E) so that notification can be made to the appropriate foreign agencies.

2.4 The following CBPOs and BPAs are authorized to perform emergency driving and pursuits as prescribed in this directive:

2.4.1. BPAs who have successfully completed the Border Patrol Academy Driver Training Program and have completed annual policy refresher training.

2.4.2. CBPOs who have successfully completed the CBP emergency driving and pursuit training program and have completed annual policy refresher training.

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(b) (7)(E) both the CBPO or BPA and his/her supervisor have determined that the law enforcement benefit of pursuit outweighs the risk to the public of pursuit, and supervisory approval is granted, on a continuing basis and subject to the evolving state of conditions, to continue the pursuit.

2.6. Marked sedans should be used by BPAs as the primary pursuit vehicle whenever reasonably possible. Other CBP emergency vehicles may be used when a marked sedan is not reasonably available and the pursuit meets all other policy criteria. Efforts should be made to establish a marked sedan as the primary pursuit unit as soon as practical. State or local law enforcement agencies may be contacted for assistance if practical.

2.6.1 Other CBP emergency vehicles may not have full pursuit features and capabilities that are inherent in a sedan. Therefore, when the use of other CBP emergency vehicles is necessary, it is the responsibility of the CBPO or BPA operating that vehicle, as with a sedan or any other vehicle, to operate the vehicle within its safe limitations. BPAs will not be authorized to perform vehicle pursuits in vehicles other than sedans until they complete CBP approved pursuit training in the type of vehicle they intend to operate during the pursuit.

2.7. CBP Officers will only pursue in marked emergency vehicles.

2.8. The use of roadblocks, deliberate vehicle contact, boxing in, or heading off a moving vehicle are only authorized in extremely exigent circumstances with supervisory approval, and must be performed in a manner consistent with CBP's Use of Force policy, taking due consideration for factors such as vehicle speed, proximity of population centers, traffic flow, and the availability of alternative measures. Consistent with subsection 6.6.6 herein, supervisory approval is not required for emergency maneuvers designed to stop the movement of a driverless vehicle (usually a vehicle that has been abandoned by its driver while in motion) when the CBPO or BPA can articulate the belief that the risk of the continued motion of the vehicle outweighs the risk of harm or injury, to the public, or to the remaining occupants of the vehicle.

2.9. Caravanning (b) (7)(E)

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2.12. The use of alternatives to pursuit, including the use of Controlled Tire Deflation Devices, consistent with CBP policy, are preferable to pursuit and are encouraged in order to terminate or avoid a vehicle pursuit.

2.13. Any additional programmatic restrictions imposed on emergency driving or vehicle pursuits at the field level must be approved by the Commissioner, U.S. Customs and Border Protection prior to implementation.

3. AUTHORITY/REFERENCES

Title 7 § 7731 (B), Plant Protection Act; Title 8 United States Code (U.S.C) § 1357 [Immigration and Nationality Act (INA), Section 287], Powers of Immigration Officers and Employees; Title 8 U.S.C. § 1225 (INA 235), Authority to Administer Oaths, Board and Search Conveyances, Take and Consider Evidence, Execute Warrants; Title 18 U.S.C. § 758, High Speed Flight from an Immigration Checkpoint; 19 U.S.C 1433, Report of Arrival; 19 U.S.C 1436, Penalties for Violations of Arrival; 19 U.S.C 1459, Reporting Requirements; 19 U.S.C 1461, Penalties for Failure to Declare; 19 U.S.C 1581 (d), Penalty for Failure to Stop at Command; CBP Directive No. 5290-007, Land Border Inspectional Safety Policy, dated June 21, 2001 as amended or superseded; DHS Policy on the Use of Deadly Force, June 2004, as amended or superseded; CBP Firearms and use of Force Handbook, CIS HB 4500-01A, March 2003, as amended or superseded.

4. DEFINITIONS

The following terms are herein defined for purposes of this Directive only:

4.1. Between the Ports: is defined as the area outside the external perimeters of a Port of Entry (POE).

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4.3 Controlled Tire Deflation Device (CTDD): A device designed and intended to produce a controlled deflation of one or more tires of a pursued vehicle, and capable of operation consistent with criteria established in CBP policy.

4.4. Customs and Border Protection Officer (CBPO): For the purpose of this policy, a CBPO includes Pursuit Authorized Customs and Border Protection Officers.

4.5. CBP Emergency Vehicle: Any CBP vehicle equipped with emergency warning equipment (including emergency lights and an audible siren) in accordance with CBP policy.

4.6. Caravanning: (b) (7)(E) law enforcement vehicles following in close proximity to the suspect vehicle during a pursuit.

4.7. Emergency Driving: (b) (7)(E)
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4.8. Failure to Yield: A situation that occurs during an active attempt by a CBPO or BPA in an authorized emergency vehicle, to stop a suspect vehicle by activating the emergency equipment (lights and siren) and the suspect fails to yield within a reasonable time and distance.

4.9. Follow Out: When a CBPO follows a vehicle from a port of entry while observing all traffic laws. (b) (7)(E)
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4.11. Offensive Driving: Any driving technique, certified for use by the Office of Training and Development that is intended to end a pursuit through intentional vehicular contact. Offensive driving techniques and certification will be prescribed by the Office of Training and Development.

4.12. Port of Entry (POE): The CBP inspection area at all air, land and seaports. This includes the physical perimeter as defined by CBP and indicated in the General Services Administration property plans. For privately owned facilities "the CBP inspections area" is defined as the area up to and including the physical perimeter of the CBP inspection area as defined by OFO and indicated on the property plans. The POE includes inbound and outbound traffic and pedestrian inspection lanes.

4.13. Port Runner: Any vehicle that fails to stop at or flees from a port of entry. A port runner may be presumed armed and dangerous unless circumstances indicate otherwise.

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4.15. Pursuit Vehicle Positions:

A. Primary Unit: The CBPO or BPA that initiates a pursuit or any unit that assumes control of the pursuit as the lead vehicle – the first LEO immediately behind the fleeing suspect.

B. Secondary Unit: Any CBPO or BPA that becomes involved as a backup to the primary unit and follows the primary unit at a safe distance but close enough to provide support [redacted] (b) (7)(E)

4.16. Reasonable Distance: A space or distance between vehicles that will provide the maximum degree of safety practicable under the circumstances, particularly in the event that a fleeing vehicle suddenly stops, slows, or turns. This also applies to the space between the primary and secondary vehicles.

4.17. Reasonable Time: Based on the circumstances, the amount of time that would be considered reasonable for a person to yield to the activation of emergency warning lights by a law enforcement officer.

4.18. Roadblock: An obstruction used to prevent the free passage of moving motor vehicles. For the purpose of this policy, restricting or obstructing the immediate escape route of a stationary vehicle is not considered a roadblock and may be authorized to prevent a potential pursuit. Controlled tire deflation devices are not considered roadblocks.

4.19. Supervisor: a supervisor is defined as a permanent or acting Supervisory Border Patrol Agent, or Supervisory Customs and Border Protection Officer at any level of assignment within a Sector, Station, Field Office, Area Port, or Port of Entry, on duty and available to make field decisions.

4.20. Vehicle Contact Action: Any action undertaken by the pursuing CBPO or BPA intended to result in contact between the moving LEO vehicle and the pursued suspect vehicle.

4.21. Vehicle Incursion: The unauthorized crossing of a vehicle over the international boundary of the United States at a place other than through an open Port of Entry.

4.22. Vehicle Pursuit: An attempt by a CBPO or BPA in an authorized emergency vehicle, to stop a suspect vehicle by activating the emergency equipment (lights and siren), and the suspect fails to yield within a reasonable time and distance, and; the initiating CBPO or BPA, or any CBPO or BPA in an emergency vehicle, attempts to maintain contact with the suspect vehicle in an ongoing chase. A pursuit will not exist if the suspect yields within a reasonable

time and distance and/or; if the suspect fails to yield and the initiating CBPO or BPA does not attempt to maintain contact with the suspect vehicle in an ongoing chase.

5. RESPONSIBILITIES

5.1. The Commissioner shall have policy oversight regarding National level Policy and Procedures.

5.2. The Chief, Office of Border Patrol and Assistant Commissioner, Office of Field Operations will insure that this directive is provided and adhered to by all Sectors and Field Offices.

5.3. Sector Chief Patrol Agents and Directors of Field Operations are responsible for the implementation of this policy and annual recurring policy refresher training.

5.4. Within 30 days of the issuance of this Directive, the Office of Training and Development (OTD) will develop and implement and academic curriculum with a certification process for all CBPOs and BPAs that will address changes in pursuit initiation criteria specific to sedans as delineated in this policy.

5.4.1. The Office of Training and Development (OTD), in coordination with the Chief, Office of Border Patrol (OBP), and the Assistant Commissioner, Office of Field Operations (OFO), is responsible for developing and implementing, within one year of the issuance of this Directive, a training curriculum and certification process that will ensure a unified implementation of this policy.

5.4.2 OTD, OBP, and OFO will coordinate the training of all current CBPOs and BPAs in emergency driving, offensive driving techniques, vehicle stops, and vehicle pursuit procedures, along with any required re-certifications. New CBPOs and BPAs will be instructed on the requirements of this directive and participate in practical emergency driving during basic training. Practical driver's training will include emergency driving, offensive driving techniques, vehicle stops and vehicle pursuits in the authorized types of vehicles CBPOs and BPAs will most likely utilize in the field.

5.5. CBPOs or BPAs who have previously attended the Border Patrol academy must complete the CBP pursuit training and certification course prior to engaging in a pursuit.

5.6. CBPO and BPA supervisors are responsible for continually monitoring and authorizing the continuation of, or directing the termination of, any vehicle pursuit consistent with the guidelines set forth in this directive.

5.7. CBP and BPAs are responsible for knowing and complying with all provisions of this directive including the termination of any pursuit not consistent with the guidelines set forth in this directive.

6. PROCEDURES

6.1. Emergency Driving:

6.1.1. During the course of routine duties it may be necessary for CBPOs and BPAs to engage in emergency driving for a variety of reasons that include, but are not limited to, catching up with suspect vehicles, performing vehicle stops, responding to certain emergency calls or reports and/or, when providing emergency assistance.

6.1.2. As each incident may vary greatly; CBPOs and BPAs shall be responsible for determining appropriate vehicle speed, operating the vehicle within its capabilities, and use of emergency equipment, consistent with Federal, state, and local laws governing the operation of emergency vehicles. (b) (7)(E)

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6.1.3. The use of emergency lights and siren is mandatory when in pursuit or taking exemptions to traffic signals, stop signs or prescribed direction of travel.

6.1.4. When initiating a vehicle stop, CBPOs or BPAs will notify Border Patrol Dispatch of the intended vehicle stop prior to initiation, if practical. If Border Patrol dispatch is not available, the CBPO or BPA will attempt to notify another CBP communications center. If no other communications center is available, e.g., due to poor communications) CBPOs or BPAs will attempt to notify a supervisor, or other Agents/Officers who can relay the information. Notification will be provided to a supervisor as soon as practical, or when communications become available.

6.1.5. CBPOs or BPAs initiating the vehicle stop should provide or broadcast a minimum of the following information if available:

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6.2. Vehicle Pursuit Driving.

6.2.1. Primary Unit Responsibilities: Upon deciding to initiate a vehicle pursuit of a vehicle that has failed to stop, the initiating CBPOs or BPAs will immediately notify the appropriate communications operator that s/he has initiated a vehicle pursuit, and provide the following details as soon as practical:

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6.2.2. Other Requirements:

(a) CBPOs or BPAs shall constantly evaluate pursuit conditions.

(b) CBPOs and BPAs will immediately notify a supervisor upon witnessing a suspect vehicle committing any dangerous traffic violations during a pursuit and, supervisory approval shall be required to continue the vehicle pursuit after such actions have been witnessed.

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(e) Pursuits that involve multiple CBP components or other agencies require precise coordination. The decision to assume or relinquish primary role in a pursuit shall be made with the overall tactics and probability of arrest in mind. CBPOs or BPAs must consider the following circumstances when deciding to maintain or relinquish the primary pursuit position:

- Vehicle Capabilities.
- Driving ability and experience of the CBPO or BPA involved.
- Knowledge of the area.
- The ability of the primary unit to communicate with secondary units, dispatch, and/or supervisory personnel.

In the event that a state or local peace and/or law enforcement officer joins the pursuit and requests to assume the primary pursuit position, it is the responsibility of the supervisor, in consultation with the primary pursuing CBP LEO to determine if, or when to relinquish the primary position in the pursuit, to the state or local officer.

6.3. Secondary Unit Responsibilities:

6.3.1. The secondary unit will normally be the closest available CBPO and BPA, and shall be directed to assist the primary unit by a supervisor, an acting supervisor, a lead agent, or by self initiative in the absence of other instructions. Any unit not specifically directed to assist by a supervisor or lead agent will ensure that the supervisor or lead Agent is aware of that unit's involvement.

6.3.2. Once in position behind the primary pursuit vehicle, the secondary unit will notify the appropriate communications operator and (b) (7)(E) (b) (7)(E)

6.4. Notification and Communications:

6.4.1. In areas with Border Patrol radio coverage, Border Patrol Dispatch will be notified immediately (b) (7)(E) (b) (7)(E)

6.4.2. In areas without Border Patrol radio coverage, Border Patrol Dispatch and CBPOs and BPAs will follow local Standard Operating Procedures (SOP) for notifying (b) (7)(E) emergency personnel, and other law enforcement agencies of the pursuit.

6.5. Dispatch Responsibilities:

6.5.1. Upon notification/recognition that a vehicle pursuit is in progress, the Border Patrol Sector Enforcement Specialist (SES) (or in the absence of specialized communications personnel, any CBPO and BPA that can relay the information) shall immediately:

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(b) Ensure that a supervisor or acting supervisor is notified of the pursuit and advised of essential information regarding the pursuit. If a supervisor or an acting supervisor is not immediately available, attempts should be made to contact a supervisor from an adjoining Station, Sector, Port, or Field Office staff officer.

(c) Notify state or local law enforcement agencies that a pursuit has been initiated.

(d) Notify CBP Air and Marine Operations or other available federal air assets to request support where appropriate.

(e) Monitor and record all incoming information on the pursuit.

(f) Execute relevant record checks on fleeing vehicle and advise the pursuit units of these record check results, as appropriate.

(g) Prompt the pursuing CBPO and BPA (s) for missing information required.

(h) Periodically broadcast an update during the course of the pursuit.

(i) Broadcast as to the termination of the pursuit along with the locations.

(j) Advise all previously notified agencies when the pursuit has been terminated.

6.6. Vehicle Pursuit Tactics and Alternative Actions:

6.6.1. In order to diminish the likelihood of a pursuit, CBPOs and BPAs intending to stop a vehicle should, when reasonably possible, close the distance between the vehicles before activating the forward facing emergency lights and/or siren.

6.6.2. All units in the pursuit shall space themselves at a distance that will provide the maximum degree of safety practicable under the circumstances, particularly in the event that the lead vehicle stops, slows or turns. This applies

whether the lead vehicle is the suspect vehicle or another law enforcement vehicle.

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6.6.5. Offensive Driving Techniques (see definitions) may be authorized by a Supervisory CBPO or BPA for use by a CBPO or BPA who has successfully completed the required driver-training course for Offensive Driving Techniques. These techniques may only be authorized when the actions of the driver operating the vehicle being pursued present an imminent threat of death or serious bodily harm, and an offensive driving technique is determined to be necessary in an attempt to prevent that threat of death or serious bodily harm.

Offensive driving techniques are considered a use of force and depending upon the circumstances of use, may be considered a use of deadly force, and accordingly, all uses of offensive driving techniques must meet applicable criteria of the CBP and DHS use of force policies.

6.6.6. Offensive driving techniques are authorized without a supervisor's approval and without specific offensive driver training, to stop the movement of a driverless vehicle (usually a vehicle that has been abandoned by its driver while in motion) when the CBPO or BPA can articulate the belief that the risk of the continued motion of the vehicle outweighs the risk of harm or injury, to the public, or to the remaining occupants of the vehicle.

6.6.7. As noted above, the use of alternatives to pursuit, including the use of Controlled Tire Deflation Devices, consistent with CBP policy, are preferable to pursuit and are encouraged in order to terminate or avoid a vehicle pursuit. All provisions of the collective bargaining agreement must be observed with respect to all reporting requirements pertaining to the use of CTDDs.

7. **Pursuits Originating from Ports of Entry (Port Runners)**

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(a) Except as provided for in subsection 7.2, when a CBP Officer initiates a vehicle pursuit of a Port Runner, that CBP Officer will assume the primary position for the duration of the pursuit (b) (7)(E) (b) (7)(E) at which time the Border Patrol will assume the primary pursuit position.

7.2. The primary pursuit position can be relinquished to another law enforcement Officer, at the discretion of the CBP Officer in the primary pursuit position or the pursuit supervisor according to the following precedence:

(a) To a Border Patrol Agent, or

(b) To a Federal, state or local, or tribal Officer, if no BPA is available.

8. **Reporting Requirements**

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8.3. Review Procedures:

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9. **Disposition.**

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10. **Measurements.**

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11. **NO PRIVATE RIGHT CREATED**

11.1 This document is an internal policy statement of U.S. Customs and Border Protection and does not create or confer any right, privilege, or benefit on any person or party.

APPENDIX "A"

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