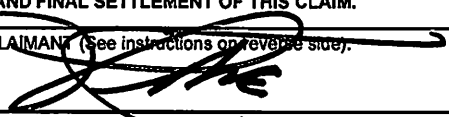


<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:  Department of Homeland Security Office of the General Counsel Mail Stop 3650 Washington, D.C., 20528			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.  Teresa Lopez and Red Ryder Ramos (See Attachments 1 and 2) c/o Cotchett, Pitre & McCarthy, LLP 840 Malcolm Road, Burlingame, CA 94010		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN		4. DATE OF BIRTH Attachment 2	5. MARITAL STATUS Attachment 2	6. DATE AND DAY OF ACCIDENT 09/29/2015	7. TIME (A.M. OR P.M.) Appx. 10:30 a.m.
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).  Please see Attachment 2.					
9. <b>PROPERTY DAMAGE</b>					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).  None.					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).  None.					
10. <b>PERSONAL INJURY/WRONGFUL DEATH</b>					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.  Please see Attachment 2.					
11. <b>WITNESSES</b>					
NAME			ADDRESS (Number, Street, City, State, and Zip Code)		
12. (See instructions on reverse). <b>AMOUNT OF CLAIM</b> (in dollars)					
12a. PROPERTY DAMAGE  0.00	12b. PERSONAL INJURY  Attachment 2	12c. WRONGFUL DEATH  Attachment 2	12d. TOTAL (Failure to specify may cause forfeiture of your rights).  Attachment 2		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM  (650) 697 - 6000	14. DATE OF SIGNATURE  6/1/16	
<b>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</b>			<b>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</b>		
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance?  Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number.  No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible?  Yes  No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).  
N/A

19. Do you carry public liability and property damage insurance?  Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code).  No  
N/A

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

- B. Principal Purpose: The information requested is to be used in evaluating claims.
C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

# **ATTACHMENT 1**

**ATTACHMENT 1**

**ATTORNEY AUTHORIZATION**

**TO: U.S. Department of Homeland Security  
C/O U.S. Immigration and Customs Enforcement  
500 12th St, SW  
Washington, D.C. 20536**

We, Teresa Lopez and Red Ramos, both individually and as parents of the decedent Antonio Ramos, hereby designate and authorize Frank M. Pitre of the law firm Cotchett, Pitre & McCarthy, LLP to represent our interests, and the interests of our deceased son Antonio Ramos, and continue any and all claims which have been filed or will be filed arising from the September 29, 2015 death of Antonio Ramos near 3500 West Street in Oakland, California.

Executed this 28 day of April, 2016, at

Burlingame CA

Teresa Lopez  
Signature of Teresa Lopez

Red R. Ramos  
Signature of Red Ryder Ramos

# **ATTACHMENT 2**

## ATTACHMENT 2

### INTRODUCTION

**CLAIMANTS** Teresa M. Lopez and Red R. Ramos, individually and as heirs to Antonio Ramos, deceased (collectively “**CLAIMANTS**”), bring this action under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2401(b), and 2671-2680 (“**FTCA**”), against the United States Immigration and Customs Enforcement (“**ICE**”) referred to hereinafter as (“**RESPONDENT**”) for the negligent acts of their officers, officials, agents and/or employees, and their failures to perform mandatory duties, the purpose of which are to promote, protect, and uphold the safety and welfare of the public.

As set forth below, **CLAIMANTS** assert that **ICE**, inclusive of its officers, officials, agents and/or employees, failed to train their employees and/or follow mandatory regulations, policies and/or procedures for securing and storing a firearm while it was left in a bag in an unattended vehicle in downtown San Francisco on September 13, 2015. As a direct and legal consequence of **ICE**’s wrongful acts and/or failure to exercise mandatory duties, Marquise Holloway (“**HOLLOWAY**”), a serial robber, was able to gain access to a government-issued Glock 26 9mm caliber pistol. Armed with the **ICE** agent’s weapon, **HOLLOWAY** then foreseeably used it to pursue a criminal course of conduct in the shooting and killing of Antonio Ramos (“**TONY**”) on September 29, 2015 in Oakland, California.

## PARTIES

### I. CLAIMANTS

**Antonio (“TONY”) Ramos**, now deceased, was at all times relevant to this claim a resident of the County of Alameda and City of Emeryville. **TONY** was born on September 9, 1988, and was the son of Teresa Lopez and Red Ramos.

**Teresa (“TERESA”) Lopez** is, and at all times relevant to this claim was, a resident of the County of Alameda and City of Emeryville. Teresa was the mother of **TONY**, and is a proper personal representative and heir pursuant to California law.

**Red (“RED”) Ramos** is, and at all times relevant to this claim was, a resident of the County of Alameda and City of Emeryville. Red was the father of **TONY**, and is a proper personal representative and heir pursuant to California law.

### II. RESPONDENTS

The **United States Immigration and Customs Enforcement (“ICE”)** is a federal law enforcement agency acting under the **United States Department of Homeland Security (“DHS”)**. **ICE**, through its officers, officials, agents and/or employees, is responsible for enforcing the nation’s laws governing border control, customs, trade and immigration to promote homeland security and public safety. Pursuant to that role, **ICE** trains officers, agents, and/or employees on gun safety, enforces gun safety laws and regulations, and establishes mandatory policies and procedures for safeguarding firearms issued to their officers, agents, and/or employees that are licensed to carry firearms, carry defensive equipment, make arrests, and/or execute search warrants.

## STATEMENT OF RELEVANT FACTS

### III. THE DEATH OF ANTONIO RAMOS

On the morning of September 29, 2015, **TONY**, a 27 year old Bay Area native was volunteering his artistic gifts to help paint a 4,000 square foot anti-violence mural for a non-profit based in Oakland. The mural, located at 3500 West Street, under the Interstate-580 overpass, was part of the Oakland Superheroes Mural Project: a community development project aimed at breaking the cycle of violence and engaging local youth through art and education.

At approximately 10:30 a.m., when **TONY** was taking a break from painting to photograph the mural, **MARQUIS HOLLOWAY** (“**HOLLOWAY**”), a serial robber, opened fire on **TONY** with a stolen, government-issued Glock 26 9mm caliber pistol. Police and medical teams responded to the gunfire in the area and, after finding **TONY** critically wounded, they transported him to a nearby hospital where he was pronounced dead soon after. A representative image of the location of the murder is provided below. At the time of **TONY**'s death, he was an altruistic and high-spirited young man with a passion for all forms of art, especially painting and music, a deep love for his family, and a longstanding commitment to helping others. *See Exhibit A.*





**IV. THE FIREARM USED TO KILL TONY WAS STOLEN FROM IMMIGRATION AND CUSTOMS ENFORCEMENT AGENTS AND/OR OFFICERS WHO FAILED TO PROPERLY SECURE THE WEAPON IN A HIGH-AUTO THEFT NEIGHBORHOOD OF SAN FRANCISCO**

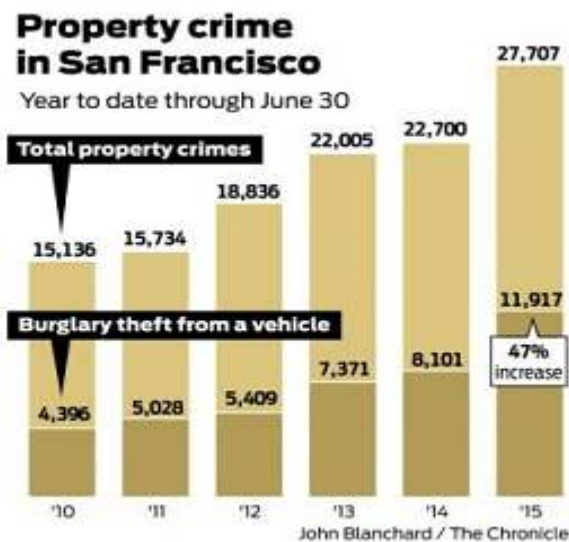
On or around September 13, 2015, between 7:30 p.m. and 9:15 p.m., a Glock 26 9mm caliber pistol issued to an **ICE** agent and/or officer was taken from an unattended vehicle parked in the vicinity of Second Street and South Park Street in San Francisco, California. A representative image of a Glock 26 9mm pistol is provided below.



According to reports, the firearm was left in a bag in an unattended vehicle along with the agent's badge, a pair of handcuffs, three fully loaded ammunition magazines, and a baton. The bag was left in the vehicle by one or more **ICE** agents and/or officers who were visiting the City and County of San Francisco. Later, a parking lot attendant in the 500 block of Howard Street discovered the other paraphernalia belonging to the **ICE** agent(s) and/or officer(s), but not the firearm or handcuffs.

After the shooting, San Francisco Police Chief Greg Suhr publicly confirmed that the duty weapon reported stolen on September 13, 2015, was indeed the same firearm used by **HOLLOWAY** to shoot and kill **TONY** on September 29, 2015. Further, the Oakland Police Department confirmed that the firearm **HOLLOWAY** used to murder **TONY** was the duty weapon stolen from the **ICE** agent in San Francisco.

**A. The Neighborhood Where The ICE Firearm Was Left Unattended Was Notorious For Its High Auto Break-In Rate**



According to the San Francisco Police Department (“SFPD”), the city has been experiencing an astonishing number of vehicle break-ins, a criminal activity that has been on a significant rise since 2010. From the beginning of January to June 30, 2015, there were 11, 917 reported vehicle burglaries in the city – a 47 percent increase from 2014 and a 62 percent increase from 2013. Since 2010 there has been a 171 percent

increase in vehicle break-ins in San Francisco. This is despite the property crime rate dropping statewide over the same period of time.<sup>1</sup>

During the six months preceding Mr. Ramos’s death, there were 5,508 auto break-ins in the Southern Police District of San Francisco, which encompasses the cross streets of South Park and Second, where the subject firearm was stolen. This amounts to approximately 25% of all

<sup>1</sup> Sernoffsky, Evan, *Jump in S.F. car break-ins prompts frustration, finger-pointing*, SFGate (“SFGate”), (August 17, 2015), <http://www.sfgate.com/news/article/Jump-in-S-F-car-break-ins-prompts-frustration-6446750.php> visited on February 2, 2016.

auto break-ins reported for the entire city.<sup>2</sup> In total, the Southern District had almost two and a half times as many vehicle burglaries as the average San Francisco Police District.<sup>3</sup>

**B. ICE Was On Notice Of The Foreseeable Dangerous Consequences of the Failure of Law Enforcement Officers to Properly Secure Their Weapons When Left Unattended**

Even more egregious was the fact that a *federal agent from the Bureau of Land Management had his gun stolen from an unattended vehicle in the same or similar neighborhood three months prior on June 27, 2015!<sup>4</sup> This gun was used to shoot and kill Kathryn Steinle on the San Francisco Embarcadero, by an undocumented immigrant four days later, on July 1, 2015. ICE was heavily involved in the ensuing public and political outcry due to the fact that they had requested custody of the illegal immigrant.<sup>5</sup> Thus, it is inconceivable that ICE was not aware of the foreseeable consequences of leaving unsecured firearms in unattended cars in downtown San Francisco.*

**V. ICE AGENTS AND/OR OFFICERS HAVE REPEATEDLY DEMONSTRATED A CONSCIOUS DISREGARD FOR MANDATORY DUTIES TO PROPERLY SECURE THEIR FIREARMS**

As a federal law enforcement agency, ICE provides for homeland security and public safety by and through the enforcement of federal laws governing border control, customs, trade

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<sup>2</sup> *SFOpenData*, <https://data.sfgov.org/Public-Safety/SFPD-Incidents-from-1-January-2003/tmnfyvry> (This San Francisco government website aggregates crime data from the **SFPD**) visited on April 5, 2016.

<sup>3</sup> There are ten San Francisco Police Districts and the average San Francisco Police District had 2,247 auto break-ins during the September 13, 2014 to September 13, 2016 time period.

<sup>4</sup> Vince Cestone, *Pier 14 Shooting: San Francisco Police Confirm weapon recovered in Bay near Pier 14 is same used in homicide*, KRON 4 News, (“KRON 4 News”) (July 10, 2015), <http://kron4.com/2015/07/10/san-francisco-police-confirm-weapon-recovered-from-pier-14-is-same-used-in-homicide/>.

<sup>5</sup> Mark Matthews & Lisa Fernandez, *Gun used in Pier 14 shooting belonged to federal agent: Sources*, MSNBC, (July 8, 2015), <http://www.msnbc.com/msnbc/gun-used-pier-14-shooting-belonged-federal-agent-sources>.

and immigration. ICE fields a force of more than 20,000 employees working in more than 400 offices in the United States and abroad. ICE is the largest investigative arm of the DHS and operates out of 26 main field offices in the U.S.

As reported by the Office of Inspector General in January 2010, **DHS reportedly lost 289 firearms over the course of just two years – this is more than one firearm every three days.** ICE, along with the Customs and Border Protection (“CBP”) accounted for 243 of the lost firearms—or close to eighty-five (85%) percent of the total DHS lost firearms. **The Office of the**



**Inspector General determined that 179 of the 243 firearms—or seventy-four (74%) percent—were lost due to failure of the agent to properly secure, and according to the Inspector General, “all 179 losses may have been prevented had the officers properly safeguarded their firearms.”** See Exhibit B at pages 5 - 7.

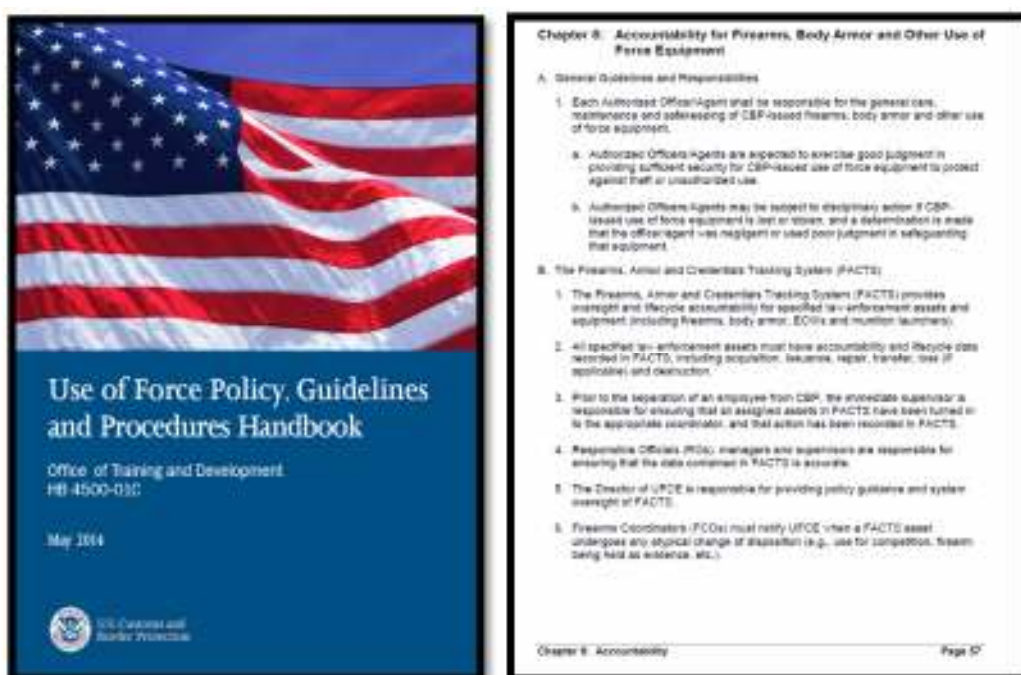
Notably, this led the Office of Inspector General in 2010 to conclude: **“The Department of Homeland Security, through its components, did not adequately safeguard and control its firearms.** Components reported 289 firearms as lost during FYs 2006 through 2008. Although some reported losses were beyond the officers’ control, **most losses occurred because officers did not properly secure firearms.**” See Exhibit B at page 1.

## **VI. ICE AGENTS AND/OR OFFICERS HAVE A MANDATORY DUTY TO SECURE THEIR FIREARMS**

The law enforcement agencies of the Department of Homeland Security publish “Use of Force Policy” handbooks that reflect the duties of their agents and/or officers in regard to weapons. While ICE does not make its “Use of Force Policy” available to the general public,

another law enforcement component of the Department of Homeland Security—Customs and Border Protection (“CBP”)—does make its “Use of Force Policy” public,<sup>6</sup> and there is no reasonable basis to suspect any difference in the requirements imposed on their officers and/or agents to properly store and secure weapons. If anything, ICE’s policy regarding storing firearms in vehicles is actually more stringent than CBP’s according to a report from the Office of the Inspector General.<sup>7</sup>

Pursuant to CBP’s *Use of Force Policy, Guidelines and Procedures Handbook* (“HANDBOOK”): **“Authorized Officers/Agents shall carry their CBP-issued handgun(s) fully loaded at all times.”** See Exhibit C at page 9.



<sup>6</sup> CBP has made its policy available under the New Commissioner R. Gil Kerlikowske. See <https://www.cbp.gov/newsroom/stats/cbp-use-force> (“At the Commissioner’s direction, CBP published its use of force policy in May 2014 and use of force statistics October 2015. Furthering the Commissioner’s intent regarding transparency, CBP will update the UOF data on a monthly basis, which includes a breakdown by Sector, Field Office and Air and Marine region.”).

<sup>7</sup> See Exhibit C at page 8 (“CBP policies and procedures for leaving a firearm in an unattended vehicle are inadequate and do not include requirements to secure the firearm to the vehicle. Although ICE policies and procedures for storing firearms in vehicles are more stringent, requiring officers to secure them to the vehicle with an ICE-approved safety-locking device, ICE does not require that its staff permanently secure the locking device to the vehicle.”).

With respect to general guidelines and responsibilities on the accountability of firearms, the HANDBOOK states: “Authorized Officers/Agents are expected to *exercise good judgment* in providing sufficient security for CBP-issued use of force equipment to protect against theft or unauthorized use.” *See* Exhibit C at page 57.

With respect to the proper storage of firearms, the HANDBOOK reads: “**A safety-locking device (e.g., a cable lock, trigger lock, lock box) shall be used** when storing a CBP-issued firearm in a residence, temporary residence or lodging unless the weapon is within the immediate reach of the employee. When stored, firearms *shall be placed out of plain view and in a location that affords reasonable protection against theft or unauthorized use.*” *See* Exhibit C at page 60.

Further, in response to its finding that ICE did not adequately safeguard and control its weapons in 2010, the Office of the Inspector General pointed out that **ICE policies and procedures require agents and/or officers to secure a firearm with an ICE-approved safety-locking device when left in a vehicle.** *See* Exhibit B page 8. Despite this measure, the Office of the Inspector General recommended that ICE take further measures to align itself with best practices: “**[w]hile using a safety-locking device is good practice, the best way to protect firearms from theft is to store them in lockboxes properly mounted as recommended in the manufacturers’ guidelines.**” *See* Exhibit B at page 8.

## **BASIS FOR FEDERAL TORT CLAIM LIABILITY**

### **VII. THE ICE AGENT FAILED TO PROPERLY SECURE HIS FIREARM**

**CLAIMANTS** hereby re-allege and incorporate by reference each and every allegation contained above as if fully set forth in detail herein.

**ICE** agents and/or officers are under a mandatory duty to secure government-issued firearms in a safety-locking device or lockbox. Further, **ICE** agents and/or officers have a mandatory duty to carry their government-issued firearms at all times, so as not to leave government firearms unattended, in plain view and/or in a location under circumstances that does not afford protection from theft. Lastly, **ICE** is required by federal regulations to train and instruct its agents and officers on how to properly safeguard government-issued weapons, and establish requirements for enforcement of those policies and procedures which are disobeyed.

**ICE** and/or an **ICE** agent, officer, and/or employee acted negligently, carelessly, recklessly, and/or unlawfully and breached their mandatory duties regarding training, instructing, and securing unattended weapons in the possession of their agents, officers, and/or employees, when a government-issued Glock 26 9mm caliber pistol with easily accessible ammunition was left unlocked and/or unsecured inside an unattended vehicle, thereby fueling yet another opportunity for smash and grab vandals—in a city plagued by auto break-ins.

As a direct and legal result of these wrongful acts and omissions of the **ICE** agent and/or officer, a serial robber was provided with the means to shoot and kill **TONY**.

Based on the premises, **CLAIMANTS** suffered the damages set forth below.

**DAMAGES**

**VIII. SUM CERTAIN REQUIREMENT IS NOT POSSIBLE AT THIS TIME**

As a direct and legal result of the combined wrongful acts of **ICE**, **CLAIMANTS** have suffered substantial economic and/or non-economic losses and damages, and they seek to recover all amounts permissible under state or federal law upon proof to the satisfaction of the trier of fact. Establishing a sum certain is not possible at this time, however, it is estimated that the amount sought will exceed the minimum jurisdictional amount required by federal and/or state courts.

**IX. CATEGORIES OF DAMAGE SOUGHT BY CLAIMANTS**

**CLAIMANTS** seek the following categories of damages:

As a direct and legal result of the wrongful acts of **ICE**, **CLAIMANTS** have incurred funeral expenses and burial expenses on behalf of **TONY** in an amount to be determined by the trier of fact. *See Exhibit D.*

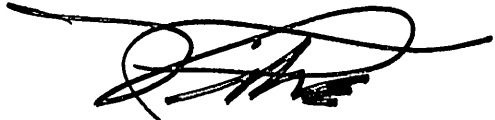
As a further direct and legal result of the wrongful acts of **ICE**, **CLAIMANTS TERESA** and **RED** have suffered, and will continue to suffer, the loss of love, society, solace, companionship, comfort, care, assistance, protection, affection, society, moral support of **TONY** in an amount to be determined by the trier of fact.

**CLAIMANTS** hereby submit their claim for damages.

Dated: June 1, 2016

**COTCHETT, PITRE & MCCARTHY, LLP**

By: \_\_\_\_\_

  
**FRANK M. PITRE**  
*Attorney for Plaintiffs*



# **EXHIBIT A**

## EXHIBIT A – BIOGRAPHY OF TONY

*Tony Painting  
for the  
Oakland  
Superheroes  
Mural Project*



*Tony with his  
camera and  
neighborhood  
children at the  
Oakland  
Superheroes Mural  
Project*



Simply put, Tony was a young man committed to healing his community through art. Sadly, he fell victim to the street violence he sought to end through his work. Born in California on September 9, 1988, Tony was a 2006 Berkeley High graduate who attended Berkeley City College. To Eric Norberg, a mentor to Tony and his former high school art teacher, Tony stood out amongst his peers as a promising and gifted artist. To others, he was a “good fellow” who

possessed the special quality of being able to connect with people from all different backgrounds and remain calm in the face of conflict.

Apart from his creative talents in painting and music and video production, Tony was also a skilled chess player and skateboarding enthusiast. As the aforementioned makes clear, Tony was committed to social justice and saw the world as a canvas for him to paint for peace.

# **EXHIBIT B**



# Department of Homeland Security Office of Inspector General

## DHS Controls Over Firearms



*Office of Inspector General*

**U.S. Department of Homeland Security**  
Washington, DC 20528



**Homeland  
Security**

January 25, 2010

Preface

The Department of Homeland Security Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses the efficacy of the Department of Homeland Security's management and oversight of its components to ensure that personnel are sufficiently safeguarding and controlling firearms. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner  
Inspector General

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## Acronyms and Abbreviations

CBP	Customs and Border Protection
DHS	Department of Homeland Security
FACTS	Firearms, Armor, and Credentials Tracking System
FMFIA	Federal Managers' Financial Integrity Act
GAO	Government Accountability Office
ICE	Immigration and Customs Enforcement
OCAO	Office of the Chief Administrative Officer
TSA	Transportation Security Administration
USCG	United States Coast Guard
USSS	United States Secret Service

# OIG

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*Department of Homeland Security  
Office of Inspector General*

## **Executive Summary**

The Department of Homeland Security's mission includes law enforcement elements, which require the department, through its components, to manage various types of firearms. Our audit objective was to determine the efficacy of the Department of Homeland Security's management and oversight of its components to ensure that personnel were sufficiently safeguarding and controlling firearms.

The Department of Homeland Security, through its components, did not adequately safeguard and control its firearms. Components reported 289 firearms as lost during FYs 2006 through 2008. Although some reported losses were beyond the officers' control, most losses occurred because officers did not properly secure firearms. The department did not have a specific firearm policy and instead relied on the components to establish specific policies and procedures for managing, safeguarding, and controlling firearms. While some component policies were sufficient, personnel did not always follow them and the department did not require that independent third parties perform firearm inventories. Field offices did not always promptly report lost firearms to component headquarters or keep inventory records updated. Lost firearms pose serious risks to the public and law enforcement officers.

Based on the results of our audit we are making two recommendations to the department to improve controls over firearms. The Department of Homeland Security's Management Directorate and Office of the Chief Administrative Officer concurred with the recommendations. The components we reviewed in detail are already taking actions to correct the issues we identified.



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## Background

Between 2003 and 2007, the Government Accountability Office (GAO) and the Department of Justice Office of Inspector General assessed controls over firearms at 18 federal law enforcement agencies. The reports showed that these agencies faced similar challenges in safeguarding and controlling firearms and suffered losses of firearms under similar circumstances as the Department of Homeland Security (DHS). In some cases, DHS losses were fewer than other agencies, indicating that DHS may have stronger controls over its firearms.

To support its law enforcement mission DHS had over 188,548 firearms in its inventory as of July 2009. The components with firearms include:

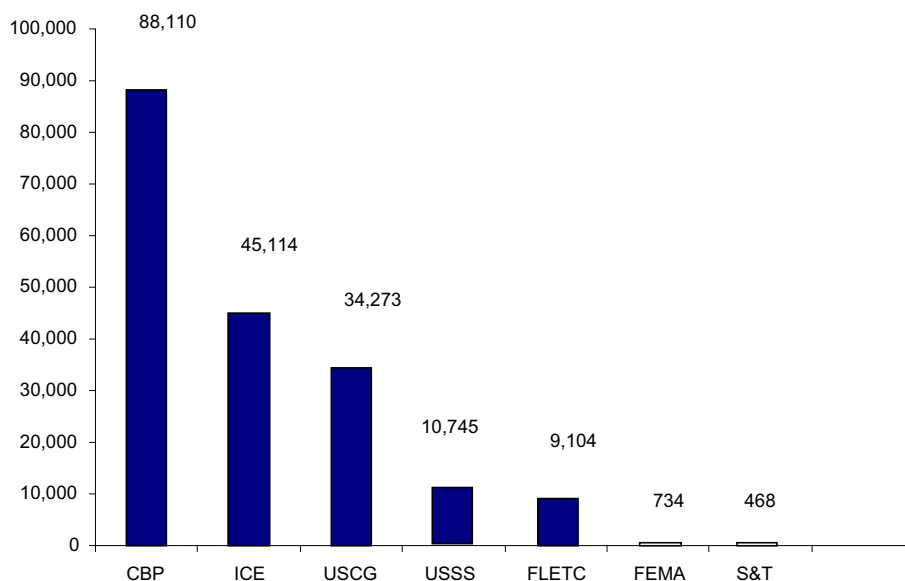
- Customs and Border Protection (CBP);
- Federal Emergency Management Administration (FEMA);
- Federal Law Enforcement Training Center (FLETC);
- Immigration and Customs Enforcement (ICE);
- Science and Technology Directorate<sup>1</sup> (S&T);
- Transportation Security Administration (TSA);
- United States Coast Guard (USCG); and
- United States Secret Service (USSS).

Table 1 illustrates component inventories and table 2 illustrates the types of firearms carried by DHS law enforcement officers.

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<sup>1</sup> The Science and Technology Directorate uses firearms solely in association with the testing mission of the Transportation Security Laboratory and does not issue side-arms to individuals.

**Table 1: DHS Component Inventories as of July 2009<sup>2</sup>**



**Table 2: Types of Weapons in Component Inventories**

<p>Handguns</p>  <p><i>Image courtesy of CBP</i></p>
<p>Semiautomatic / Automatic Weapons (M-4 Rifles)</p>  <p><i>Image courtesy of Colt Defense LLC</i></p>
<p>Shotguns</p>  <p><i>Image courtesy of Remington</i></p>

<sup>2</sup> We did not include the number of firearms in TSA's inventory because this information is protected as Sensitive Security Information under 49 CFR 1520.5(b)(8)(ii). We also did not list the total number of firearms in DHS' inventory to protect TSA's Sensitive Security Information.

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The Use of Force Policy Division at CBP and the National Firearms and Tactical Training Unit at ICE oversee their respective component firearms programs. CBP and ICE used the Firearms, Armor, and Credentials Tracking System (FACTS) to manage firearm inventories. CBP transferred its inventory data from the Firearms Inventory Tracking System to FACTS in April 2009. FACTS maintains information relating to individual firearms, such as the serial number, location, date of last inventory, assigned officer, and officer qualification scores.

In 1982, Congress established the *Federal Managers' Financial Integrity Act* (FMFIA) requiring executive agencies to establish and maintain controls that provide reasonable assurance that federal entities safeguard assets against waste, loss, unauthorized use, and misappropriation. The act also mandates that GAO's internal control standards serve as the framework for agencies to use in establishing and maintaining internal control systems. GAO internal control standards provide that in establishing internal controls, agencies should assess the risks associated with asset losses and establish control activities to help ensure those risks are addressed.

In addition to the FMFIA and GAO internal control standards, two other organizations issued advisory criteria addressing inventory controls. In June 1995, the Joint Financial Management Improvement Program addressed management's responsibility to provide guidelines for developing, documenting, and implementing physical controls to safeguard and provide accountability for inventory items. In August 1983, the Commission on Accreditation for Law Enforcement Agencies, Inc., an independent accrediting authority for law enforcement agencies, published accreditation standards that include procedures for inventory and property control. These inventory control requirements apply to sensitive property, such as firearms, to limit accessibility to authorized individuals and ensure accountability.

DHS Management Directive 0565, DHS Personal Property Management, provides a general description of controls for managing property and does not include controls over sensitive items, such as firearms.

We assessed the efficacy of DHS' management and oversight of its components to ensure that personnel were sufficiently safeguarding and controlling firearms. During our audit, we tested the accuracy of inventory records for 1,528 firearms, observed

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firearm storage procedures, and reviewed inventory policies and procedures at 6 CBP and 10 ICE field offices.

## **Results of Audit**

The department's management and oversight of component safeguards and controls over firearms were not effective. A key reason that firearm controls were not sufficient was because DHS did not have specific firearms policies and procedures in place. Instead, DHS relied on its components to augment its general property management policies and procedures with specific guidance for safeguarding and controlling firearms. Although some component policies and procedures for safeguarding firearms were sufficient, personnel did not always follow them. Component personnel did not always sufficiently safeguard their firearms and, as a result, lost<sup>3</sup> a significant number of firearms between FY 2006 and FY 2008. Most of the losses occurred because law enforcement officers did not sufficiently secure firearms in their possession. The lost firearms created unnecessary risk to the public and law enforcement personnel; in some cases state and local law enforcement officials recovered lost DHS firearms from felons and gang members.

In addition, the department did not require independent third parties to perform annual firearm inventories, component field offices did not always promptly report lost and stolen firearms to component headquarters, and field offices did not keep inventory records updated. As a result, DHS could not ensure that components safeguarded and controlled firearms, or provided accountability over firearms.

During our audit, CBP and ICE initiated changes to their management and oversight of firearms to correct deficiencies we identified during this audit. Both components are reviewing or strengthening policy and procedures for safeguarding firearms and reporting lost firearms.

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<sup>3</sup> Lost firearms are those no longer in the possession of the components; they include firearms that were lost or stolen.

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## Safeguarding Firearms

The department, through its components, did not adequately safeguard and control firearms. During FYs 2006 through 2008, DHS components reported 289 handguns, M-4 rifles, and shotguns as lost. CBP and ICE reported 243 (84%) of the 289 lost firearms. The remaining 46 lost firearms (16%) were reported by USCG (9), TSA (22), and USSS (15)<sup>4</sup>.

When a law enforcement officer determines that a firearm is missing, CBP and ICE policies require that the officer send a memorandum reporting the loss, and a description of the situation surrounding that loss, to the supervisor. The supervisor forwards the notification of loss to the respective component headquarters personnel, who create a case file for the lost firearm. We reviewed 243 case files for firearms reported lost by CBP and ICE. For each case file, we determined the reason for the reported loss and evaluated those circumstances against the respective component's policies and procedures.

### **Lost Firearms**

CBP and ICE reported 243 lost firearms during FYs 2006 through 2008. According to our analysis:

- 36 firearms (15%) were lost due to circumstances beyond the control of the officers. For example, CBP lost firearms when Hurricane Katrina made landfall and ICE lost a firearm during an assault on an officer.
- 28 firearms (about 11%) were lost even though officers stored them in lockboxes or safes.
- 179 firearms (74%) were lost because officers did not properly secure them.

Of the 179 firearms, CBP and ICE reported 59 (33%) firearms as lost and 120 (67%) firearms as stolen. Since the components' guidance did not provide a standard methodology for classifying and reporting lost firearms, officers tended to report a firearm as stolen rather than lost. This was due to a common perception among officers that reporting a stolen firearm was more acceptable

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<sup>4</sup> According to Secret Service officials, 3 of the 15 firearms reported as lost or stolen between 2006 and 2008 were actually lost in the 2001 attack on the World Trade Center. The loss of these firearms was reported in 2008.

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than reporting a lost firearm. Although CBP and ICE reported 120 firearms as stolen, our analysis showed that these firearms were lost (stolen) because officers left the firearms unsecured. All 179 losses may have been prevented had the officers properly safeguarded their firearms. For example, an officer left his firearm in the restroom of a fast food restaurant, and when he returned to retrieve it, it was gone. The case file listed this firearm as stolen; however, we believe that the firearm would not have been stolen had the officer exercised due diligence in safeguarding the firearm.

The following examples further demonstrate the inappropriate practices some officers used to store firearms in vehicles and residences:

- A CBP officer left a firearm unsecured in an idling vehicle in the parking lot of a convenience store. The vehicle and firearm were stolen while the officer was inside the store. A local law enforcement officer later recovered the firearm from a suspected gang member and drug smuggler.
- A CBP officer left a firearm on a toolbox in the bed of a truck, and the firearm fell off when the officer drove home. Law enforcement officials later recovered the firearm from an individual who resisted arrest and assaulted the arresting officer.
- An ICE officer left an M-4 rifle and a shotgun unsecured in a closet in his home; subsequently, both firearms were stolen during a burglary. State and federal law enforcement officers later recovered these firearms from a felon.
- An ICE officer left a firearm on the bumper of a vehicle, which fell off as the officer left his place of employment. A civilian found the firearm and turned it over to the local police.

Other CBP and ICE officers left firearms in places such as a fast food restaurant parking lot, a bowling alley, and a clothing store. Although our review focused on CBP and ICE, other components described similar incidents. For example, a TSA officer left a firearm in a lunch box on the front seat of an unlocked vehicle; the officer realized the firearm was stolen when he returned to the vehicle 2 days later. Officers may have prevented many of these losses had they exercised reasonable care when storing their firearms.

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CBP and ICE officers lost 28 firearms even though they secured the firearms in lockboxes or safes. The components may have prevented these losses through more stringent policies and procedures. CBP policies and procedures for leaving a firearm in an unattended vehicle are inadequate and do not include requirements to secure the firearm to the vehicle. Although ICE policies and procedures for storing firearms in vehicles are more stringent, requiring officers to secure them to the vehicle with an ICE-approved safety-locking device, ICE does not require that its staff permanently secure the locking device to the vehicle. While using a safety-locking device is a good practice, the best way to protect firearms from theft is to store them in lockboxes properly mounted as recommended in the manufacturers' guidelines.

### **Storing Firearms at Field Offices**

Law enforcement officers at field offices did not always use the locking devices provided by CBP and ICE to store their firearms in vehicles. We observed firearm storage procedures and verified 1,528 firearm serial numbers at 6 CBP and 10 ICE field offices. Officers stored 152 of the 1,528 firearms we examined in vehicles. Of the 152 firearms stored in vehicles, 58 (38%), were unsecured. CBP and ICE provided most officers with lockboxes and a locking cable to secure their firearms. However, in these 58 cases, the officers did not use the locking devices. In addition to the locking devices, some ICE facilities provided officers access to lockers to secure their firearms during working hours, as shown below:



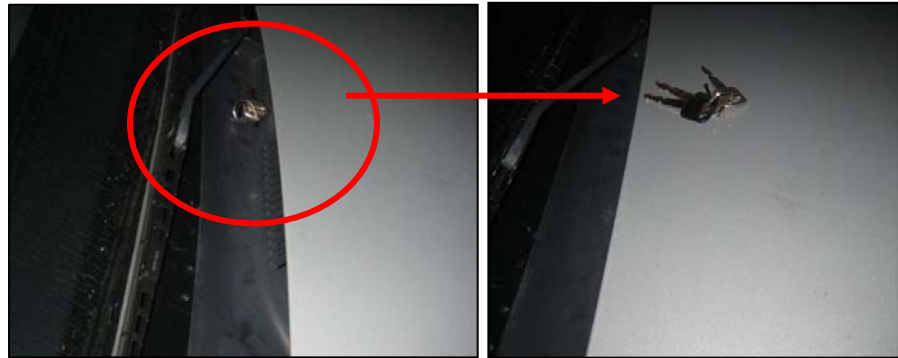
*Lockers provided for ICE officers to secure firearms – DHS-OIG Photo*

Even though the officers had securing devices and access to these lockers, some officers chose to leave their firearms unsecured in their vehicles. The following examples and photos illustrate how

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some officers stored firearms in vehicles<sup>5</sup>:

- An ICE officer stored the keys for his assigned government-owned vehicle next to a windshield wiper blade. We observed the officer retrieve the keys, unlock the trunk, and reveal an unsecured firearm, body armor, and radio equipment. After our verification of the firearm serial number, the officer returned the keys to the windshield wiper blade.



*Keys to government- issued vehicle stored next to windshield wiper – DHS-OIG Photo*

- CBP and ICE firearms instructors left firearms unsecured in vehicles. The firearms were stored in bags that were visible from the windows of the vehicles and not secured to the vehicles.
- Other CBP and ICE officers stored firearms in glove compartments and center consoles, under seats, and in various types of bags.



*Firearm unsecured in duty belt in an officer's vehicle – DHS-OIG Photo*

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<sup>5</sup> We notified local supervisors of these issues as we identified them.



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## **Recovered Firearms**

According to CBP and ICE case files, 65 (27%) of the 243 lost firearms were recovered; of the 65 recovered firearms, 50 (77%) were recovered by the components or civilian organizations, and 15 (23%) were recovered by other law enforcement organizations. Although lost firearms account for a minor percentage of DHS' total firearms inventory, they pose serious risks to civilians and non-civilians alike. Local law enforcement organizations recovered 15 DHS firearms from felons, gang members, criminals, drug users, and teenagers. For example, law enforcement officers:

- Recovered a firearm from a suspected gang member. The suspect was driving a recreational vehicle with modified hidden compartments that had trace evidence of illegal drugs.



*Firearm recovered with gang symbol etched on the barrel.*

*— Photo courtesy of the Lake City Police Department*

- Recovered a lost firearm from an individual who was in possession of cocaine.
- Recovered a firearm from a drug dealer while executing a narcotics search warrant.

## **Reporting Lost Firearms**

Although officers immediately reported the lost firearms to their supervisors and the National Crime Information Center<sup>6</sup> as required, officers did not always report lost firearms to the component headquarters in a timely manner. In some cases, it took nearly 3 years to report the loss to the component headquarters. According to the case files, CBP and ICE staff took an average of

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<sup>6</sup> The National Crime Information Center is a computerized database for ready access by law enforcement agencies to assist in apprehending fugitives, locating missing persons, locating and returning stolen property, and protecting the law enforcement officers encountering the individuals described in the system.

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about 2 months and 4 months, respectively, to report lost firearms to component headquarters, ranging from the day of loss to nearly 3 years after the loss. The reporting delays were due to incomplete reporting policies and procedures.

CBP and ICE have incomplete requirements for reporting lost and stolen firearms. Both of their policies and procedures state that when a firearm is lost or stolen the officer must report the loss or theft immediately or as soon as practicable to a supervisor. However, beyond the initial reporting, some critical reporting requirements are not stated. For example, CBP and ICE policies and procedures do not state the timeframes for reporting lost firearms to the National Crime Information Center. (See Appendix C for the table illustrating the incomplete reporting requirements.)

In addition, CBP operates under three inconsistent policies: the former Customs policy, the former Immigration and Naturalization Service policy, and the current ICE policy (only one CBP division follows the current ICE policy). Although ICE has only one policy, it does not address all the critical reporting requirements. Without consistent reporting requirements, the components and department cannot maintain visibility over firearms inventories.

## **Accounting Inventory Control**

Independent third parties do not conduct annual firearms inventories at CBP and ICE. In addition, component personnel did not always enter some acceptances and transfers into the inventory system promptly. CBP and ICE rely on law enforcement personnel and their supervisors to conduct inventories. The delays in acceptances and transfers occurred because CBP and ICE do not have policies and procedures addressing the timelines for these actions. As a result, the inventories were not always accurate or updated.

### **Annual Inventory**

Independent third parties do not conduct annual inventories of firearms at CBP and ICE. CBP and ICE guidance does require that field office personnel conduct annual inventories to ensure the completeness and accuracy of the firearms inventory information within the inventory system. The policy requires personnel to complete an annual inventory over a 30-day period. The officer assigned the firearm is responsible for verifying the serial number

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and other pertinent information, and entering the data into FACTS. Subsequently, the officer's supervisor is responsible for ensuring that the officer appropriately inventoried the correct firearm through visual inspection of the officer's firearm and verification of the information entered into FACTS. We identified six cases of lost firearms where supervisors did not perform a visual inspection; however, they still verified the firearm within the inventory system over several years.<sup>7</sup> The following history of one of these six lost CBP firearms illustrates this annual inventory control weakness:

- September 2004 – An officer's firearm was stolen from his vehicle but the loss was not recorded in the FACTS inventory system.
- August 2005 – Another officer recorded in FACTS that the stolen firearm was in his possession.
- September 2005 – This officer's supervisor affirmed information about this firearm in FACTS.
- December 2006 – A third officer entered the firearm information into FACTS (as if it were not lost).
- December 2006 – This officer's supervisor affirmed the firearm information in FACTS.
- August 2007 – The third officer again entered firearm information into FACTS (as if it were not lost) as part of the annual inventory process.
- September 2007 – Supervisor verified this firearm information in FACTS.

As of 2009, CBP and ICE require supervisors to affirm, within the inventory system, that they visually verified the serial numbers of officers' firearms during the annual inventory. Although this is a reasonable control, affirmations do not replace inventories performed by independent third parties.

### **Acceptances and Transfers**

Component personnel did not always promptly update acceptances of firearms and transfers of officers' firearms in the inventory system. Component policies and procedures do not address the

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<sup>7</sup> We referred these six cases to the CBP Office of Internal Affairs for further review.

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timely inputting of acceptances and transfers. Acceptances occur to document the receipt of new firearms. Transfers occur to document a change in an officer's duty station or a change in status of an issued firearm. As a result, the components did not always maintain up-to-date inventory records, which reduced accountability in the management of firearms.

Our review of CBP and ICE resulted in 29 inventory control inaccuracies (22 at CBP and 7 at ICE). For example:

- A CBP facility did not include three firearms issued to the facility in their inventory system. CBP updated the inventory when we pointed out the discrepancy.
- An ICE officer transferred from one office to another but the officer's information, including inventory data for his firearm, did not transfer to the new inventory records for several weeks. ICE updated the inventory records when we pointed out the discrepancy.

## **Actions Taken by CBP and ICE**

CBP is developing and implementing changes in its management and oversight of firearms to improve firearms accountability and to correct deficiencies identified during our audit. To correct the deficiencies, CBP initiated the following actions:

- Transitioned to a web-based firearms accountability system in April 2009.
- Created a monthly review process of lost firearms to improve its oversight and accountability.
- Developed a unified Use of Force Policy, which is currently in the staffing and approval process.
- Reviewed policies and procedures regarding the safeguarding and controlling of firearms in vehicles to determine if they are sufficient.
- Utilized the *CBPnet* to remind law enforcement personnel of the reporting requirements for lost, stolen, or missing firearms.
- Developed a presentation that addresses the proper methods for safeguarding and controlling firearms, which CBP plans to use annually.

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ICE initiated changes in its management and oversight of firearms to correct deficiencies identified during our audit. To correct the deficiencies, ICE initiated the following actions:

- Developed methods to promote firearms security awareness through policy and procedure clarifications, and posters to reinforce firearms storage requirements.
- Drafted a memorandum to remind all ICE program office directors of their responsibility to ensure that armed personnel safeguard all issued or approved personally owned firearms in accordance with ICE policies and procedures.
- Drafted a second memorandum to provide supplementary guidance regarding the processes officers should use to report lost and stolen firearms and the required documentation for transfer and receipt of firearms.
- Recommended that its Office of Professional Responsibility Management Inspection Unit expand the scope of their firearms field audits to include a review of the individual officers' storage practices.

## Conclusion

The prescribed guidance for DHS and the augmented guidance developed by the components are incomplete and inconsistent to ensure that firearms are protected against loss and unauthorized use. By developing standard policies and procedures, DHS could reduce the number of lost firearms and improve its accountability over its firearm inventory.

## Recommendations

We recommend that the Undersecretary for Management:

**Recommendation #1:** Develop department-wide policies and procedures for safeguarding and controlling firearms. At a minimum, these policies and procedures should include:

- a. Requirements for properly securing firearms, including a requirement to use properly mounted lockboxes.
- b. Timelines for recording acceptances and transfers in the inventory system.
- c. Requirements for reporting lost firearms, including classification of lost versus stolen, and timelines for

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reporting lost firearms to supervisors, local law enforcement, the National Crime Information Center, and component headquarters.

- d. Inventory procedures that include having an independent third party observe annual inventories.

**Recommendation #2:** Assess firearm security equipment needs for each officer assigned a firearm, issue security equipment as needed, and reaffirm to each officer the requirement to always properly secure firearms.

## Management Comments and OIG Analysis

DHS provided comments to our draft report, concurring with both recommendations. Below is a summary of the written response from DHS and our analysis of the response. A copy of the Undersecretary of Management's response, in its entirety, appears in Appendix B.

**DHS Response to Recommendation #1:** The Undersecretary of Management concurred with our recommendation and said that the Office of the Chief Administrative Officer (OCAO) has begun a complete revision of the DHS Property Management policy directive. Key controls addressed within the DHS Property Management policy directive will include the proper storage of weapons; recording and updating firearms inventory; classification of lost and stolen, and timeliness for reporting lost or stolen firearms; and proper inventory procedures.

**OIG Evaluation:** This recommendation is resolved, but remains open pending confirmation that the DHS implemented these key controls and that the key controls address the recommendation. Developing effective policies and procedures will assist in mitigating the risk of lost firearms.

**DHS Response to Recommendation #2:** DHS concurred with our recommendation. The OCAO will review the component's requirements for firearm security equipment and collaborate with them to determine the effectiveness of their current equipment. In addition, the OCAO will require that all components conduct annual firearm security requirements awareness training.

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**OIG Evaluation:** This recommendation is resolved, but remains open pending confirmation that DHS implemented these policies and procedures and that the policies and procedures appropriately address the recommendation. Developing effective policies and procedures will assist in mitigating risks associated with maintaining security over firearms.

## Appendix A

### Purpose, Scope, and Methodology

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This report provides the results of our work to determine the efficacy of DHS management and oversight of component safeguards and controls over firearms. To achieve our objectives we:

- Interviewed DHS officials regarding management of personal property, specifically firearms, and the related policies and procedures for DHS and the components;
- Reviewed DHS organizational charts, and manuals for tracking systems and firearms inventories;
- Reviewed case files and data for the components' lost firearms from FYs 2006 through 2008;
- Contacted law enforcement agencies and the Federal Bureau of Investigation to obtain information regarding the circumstances surrounding the recovery of lost firearms;
- Interviewed officers, observed the storage of firearms, and physically verified that serial numbers and the make and model of the officers' firearms matched the inventory listing provided to us by CBP and ICE;
- Conducted fieldwork at 16 CBP and ICE locations, verified the serial numbers for 1,528 issued firearms, and observed storage practices for 152 firearms;
- Reviewed prior audit reports regarding DHS, the components, and other federal agencies that have armed law enforcement officers; and
- Assessed the reliability and validity of data provided by the components by performing a physical verification of inventory data and comparing relevant data from multiple sources.

We conducted our audit between February and July 2009 under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



**Appendix B**  
**Management Comments to Draft Report**


U.S. Department of Homeland Security  
Washington, DC 20528

DEC 11 2009



**Homeland  
Security**

MEMORANDUM FOR: Anne L. Richards  
Assistant Inspector General for Audits

FROM:  Elaine C. Duke  
Under Secretary for Management

SUBJECT: Draft Report: DHS Controls Over Firearms

Thank you for the opportunity to respond to the findings and recommendations in the Office of Inspector General (OIG) draft report titled, "DHS Controls Over Firearms" which was transmitted via your memorandum dated October 23, 2009. The report addresses the efficacy of the Department of Homeland Security's management and oversight of its Components to ensure that personnel are sufficiently safeguarding and controlling firearms.

The Management Directorate and the Office of the Chief Administrative Officer (OCAO) acknowledge the importance of effective controls over firearms and other sensitive assets and we are committed to improving current Department-wide policies and procedures, as well as strengthening OCAO oversight of the property management program throughout the Department. OCAO worked with each of the Components that was audited (Customs and Border Protection [CBP], Immigration and Customs Enforcement [ICE], and Transportation Security Administration [TSA]) in order to identify corrective actions and any concerns relative to the draft report. We believe this demonstrates our commitment to the Secretary's One DHS initiative and that it will help improve management oversight of a DHS-wide program.

The draft audit report recommendations and our responses and comments follow:

**Recommendation #1:** Develop department-wide policies and procedures for safeguarding and controlling firearms. At a minimum, these policies and procedures should include:

**a. Requirements for properly securing firearms, including a requirement to use properly mounted lockboxes.**

**We concur with this recommendation.** OCAO has begun a complete revision of the DHS Property Management policy directive. In addition, OCAO will initiate a comprehensive review of current component requirements for securing firearms and other sensitive assets with the goal of identifying best practices to secure, safeguard and control these assets. Several key controls will be addressed in the department-wide policies and procedures including:

- Proper storage of weapons;
- Ensuring accountability for safeguarding and controlling firearms;

## Appendix B Management Comments to Draft Report

- Standard training for Component level personnel who have responsibility for firearms to raise awareness of the accountability aspects of DHS firearms controls;
- Requirements for investigation when determinations are made that individuals do not follow accountability procedures.

### **b. Timelines for recording acceptances and transfers in the inventory system.**

**We concur with this recommendation.** It should be noted that of all the Components that use and store weapons, only two (CBP and ICE) use the same inventory system to manage their weapons. However, OCAO will initiate DHS-wide inventory controls to ensure written policies and procedures are implemented to require accurate and timely firearms property records and systems are maintained. The policies and procedures will include specific requirements to:

- Record firearms upon receipt;
- Update firearms inventory data upon removal of firearms from agency for losses and disposals;
- Update firearms inventory data to reflect discrepancies after on-hand inventory counts.

### **c. Requirements for reporting lost firearms, including classification of lost versus stolen, and timelines for reporting lost firearms to supervisors, local law enforcement, the National Crime Information Center, and component headquarters.**

**We concur with this recommendation.** OCAO has initiated a review of the current definitions and use of these terms. A consistent DHS-wide policy regarding the classification of lost and stolen, and the timelines for reporting lost or stolen firearms, will be included in the revised Property Management policy directive and distributed throughout the Department.

### **d. Inventory procedures that include having an independent third party observe annual inventories.**

**We concur with this recommendation.** Due to the diverse nature of the DHS Component operations, third party participation in the annual inventories may be achieved in a variety of different ways. OCAO will review current component inventory policies and procedures and issue instructions regarding proper inventory procedures.

**Recommendation #2:** Assess firearm security equipment needs for each officer assigned a firearm, issue security equipment as needed, and reaffirm to each officer the requirement to always properly secure firearms.

**We concur with this recommendation.** OCAO will review Components' requirements for firearm security equipment and collaborate with them to determine the effectiveness of their current equipment. OCAO will require that all components conduct annual firearm security requirements awareness training for all personnel issued firearms. The training will emphasize the importance of properly securing firearms and the risks associated with failing to maintain effective custody of DHS issued firearms.

**Appendix B**  
**Management Comments to Draft Report**

As noted in the draft report, the Components that were audited took immediate and substantive actions to correct noted deficiencies and to improve the overall management of their firearms. OCAO has initiated action to revise its policies and procedures, with the expectation that a new policy directive will be issued by the spring of 2010. Concurrent with that effort, OCAO will develop a Management Action plan by December 30, 2009, to identify remaining actions, milestones and resource requirements.

**Appendix C**  
**Reporting Lost Firearms Policies and Procedures**

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<b>Critical Reporting Steps</b>	<b>CBP Policies</b>		<b>ICE Policy</b>
	<b>Customs Policy</b>	<b>Immigration and Naturalization Service Policy</b>	<b>ICE Interim Policy</b>
Report lost firearm to supervisor	Immediately	As soon as practical	Immediately
Report lost firearm to local law enforcement	Not stated	As soon as possible from supervisor	Not required
Report lost firearm to component headquarters	No timeframe	Within 24 hours	Immediately from supervisor
Report lost firearm to National Crime Information Center	No timeframe	Not stated	No timeframe
Memo prepared by employee	Not stated	Within 48 hours	Within 48 hours
Report to Joint Intake Center (JIC)	Not stated	Not stated	Not stated
Significant Incident Report	Not stated	Within 24 hours	Not stated
Report of survey	No timeframe	No timeframe	Not stated
CBP - Internal Affairs	No timeframe	Within 24 hours by HQs	Not applicable
ICE - Office of Professional Responsibility	Not applicable	Not applicable	As soon as practicable from supervisor

**Appendix D**  
**Major Contributors to this Report**

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**Appendix E**  
**Report Distribution**

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ICE Audit Liaison  
Acting Administrator, TSA  
TSA Audit Liaison  
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- Write to us at:  
DHS Office of Inspector General/MAIL STOP 2600,  
Attention: Office of Investigations - Hotline,  
245 Murray Drive, SW, Building 410,  
Washington, DC 20528.

The OIG seeks to protect the identity of each writer and caller.

# **EXHIBIT C**





# Use of Force Policy, Guidelines and Procedures Handbook

Office of Training and Development  
HB 4500-01C

May 2014



U.S. Customs and  
Border Protection

## FOREWORD FROM THE COMMISSIONER

U.S. Customs and Border Protection is entrusted with the critical responsibility of protecting our nation's borders. This mandate carries with it the authority to use force up to and including the use of deadly force. The following policy provides guidance and parameters under which force may be used. It also provides the levels of oversight when force is used and the ongoing training and demonstration of decision making and skill surrounding the use of force.

A respect for human life and the communities we serve shall guide all employees in the performance of their duties. Authorized Officers and Agents should employ enforcement tactics and techniques that effectively bring an incident under control, while minimizing the risk for injury or property damage. The use of excessive force by CBP law enforcement personnel is strictly prohibited.

As CBP employees, this *Handbook* serves as your authoritative reference for firearms procedures and use of force related issues. By conforming to standard use of force policies, procedures, training, and equipment, Authorized Officers and Agents can more effectively protect themselves and the public they serve.

Authorized Officers and Agents who encounter use of force issues in the field that are not addressed in this *Handbook* are expected to exercise reasonable judgment.

CBP adheres to the *Department of Homeland Security Policy on the Use of Deadly Force* and the *Department of Homeland Security Commitment to Nondiscriminatory Law Enforcement and Screening Activities* policy statement, both of which are attached as appendices and referenced throughout the body of this *Handbook*.

Violation of the *CBP Use of Force Policy, Guidelines and Procedures Handbook* may constitute grounds for disciplinary action.

This *Handbook* sets forth guidance for CBP employees, and does not create or confer any right, privilege, or benefit for any person, party or entity. United States v. Caceres, 440 U.S. 741 (1979).



R. Gil Kerlikowske  
Commissioner  
U.S. Customs and Border Protection

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This *Handbook* supersedes the U.S. Customs and Border Protection Use of Force Policy Handbook (HB 4500-01B) dated October 2010, the U.S. Customs Firearms and Use of Force Handbook (CIS HB 4500-01A) dated March 2003; the U.S. Customs and Border Protection Interim Use of Force and Firearms Guidelines dated October 11, 2004; the INS Firearms Policy dated 19 February 2003; the U.S. Customs Firearms and Use of Force Training Policy (4510-017A ) dated December 17, 2001; the 24 Hour Carry of Firearms by Office of Field Operations Personnel (ENF-3-FO RDJ) dated March 3, 2000; the U.S. Immigration and Customs Enforcement Interim Firearms and Use of Force Policies dated July 7, 2004 (as they applied to CBP components transferred from U.S. Immigration and Customs Enforcement); the U.S. Customs and Border Protection Body Armor Policy (4510-020C), the Policy on the Use of Electronic Control Devices (4510-029A); the Less Lethal Specialty Impact - Chemical Munitions Policy (4510-032); the Controlled Tire Deflation Device Directive (4510-0262B); and the PLS/FN303 Compressed Air Launcher Policy (4510-030A), and any prior CBP policy or directive to the extent that it is inconsistent with the content of this *Handbook*.

## I. Policy on the Use of Force By CBP Officers and Agents

### A. General Guidelines

1. CBP policy on the use of force by Authorized Officers/Agents is derived from constitutional law, as interpreted by federal courts in cases such as Graham v. Connor, 490 U.S. 386 (1989) and Tennessee v. Garner, 471 U.S. 1 (1985), federal statutes and applicable DHS and CBP policies.
2. Authorized Officers/Agents may use "objectively reasonable" force only when it is necessary to carry out their law enforcement duties.
3. The "reasonableness" of a particular use of force is based on the totality of circumstances known by the officer/agent at the time of the use of force and weighs the actions of the officer/agent against the rights of the subject, in light of the circumstances surrounding the event. Reasonableness will be judged from the perspective of a reasonable officer/agent on the scene, rather than with the 20/20 vision of hindsight.
4. The calculus of reasonableness embodies an allowance for the fact that law enforcement officers/agents are often forced to make split-second decisions - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.
5. A use of force is "necessary" when it is reasonably required to carry out the Authorized Officer's/Agent's law enforcement duties in a given situation, considering the totality of facts and circumstances of such particular situation. A use of deadly force is "necessary" when the officer/agent has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer/agent or to another person.
6. An Authorized Officer/Agent may have to rapidly escalate or de-escalate through use of force options, depending on the totality of facts and circumstances of the particular situation.
7. Based on the totality of circumstances, different officers/agents may have different responses to the same situation, any of which may be both reasonable and necessary. The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to the officer/agent or others.
8. If feasible, and if to do so would not increase the danger to the officer/agent or others, a verbal warning to submit to the authority of the officer/agent shall be given prior to the use of force. If a particular situation allows for the issuance of a verbal warning, the officer/agent:

- a. Should have a reasonable basis to believe that the subject can comprehend and comply with the warning; and
  - b. Allow sufficient time between the warning and the use of force to give the subject a reasonable opportunity to voluntarily comply with the warning.
9. Following any incident involving the use of force, Authorized Officers/Agents shall seek medical assistance for any person who appears, or claims to be, injured.

#### B. Objectively Reasonable and the Totality of Circumstances

1. The reasonableness inquiry for an application of force is an objective one: the question is whether the officer's/agent's actions are objectively reasonable in light of the totality of facts and circumstances confronting him or her, without regard to underlying intent or motivation.
2. In determining whether a use of force is "objectively reasonable" an Authorized Officer/Agent must give careful attention to the totality of facts and circumstances of each particular case, including:
  - a. Whether the subject poses an imminent threat to the safety of the officer/agent or others;
  - b. The severity of the crime at issue;
  - c. Whether the subject is actively resisting seizure or attempting to evade arrest by flight;
  - d. Whether the circumstances are tense, uncertain and rapidly evolving; and
  - e. The foreseeable risk of injury to involved subjects and others.
3. Totality of circumstances refers to all factors existing in each individual case. In addition to those listed in subsection B.2, these factors may include (but are not limited to):
  - a. The training, mental attitude, age, size and strength of the officer/agent;
  - b. The training, mental attitude, age, size and strength of the subject;
  - c. The weapon(s) involved;
  - d. The presence of other officers/agents, subjects or bystanders; and
  - e. Environmental conditions.



### C. Use of Less-Lethal Force<sup>1</sup>

1. Less-lethal force is force that is not likely to cause serious physical injury or death.
2. Any use of less-lethal force must be both objectively reasonable and necessary in order to carry out the Authorized Officer's/Agent's law enforcement duties.
3. Less-lethal devices/weapons may be used in situations where empty-hand techniques are not sufficient to control disorderly or violent subjects.

### D. Use of Deadly Force

1. Deadly force is force that is likely to cause serious physical injury or death.
2. The *Department of Homeland Security Policy on the Use of Deadly Force* governs the use of deadly force by all DHS employees.
3. Authorized Officers/Agents may use deadly force only when necessary, that is, when the officer/agent has a reasonable belief that the subject of such force poses an imminent danger of serious physical injury or death to the officer/agent or to another person.
  - a. Serious Physical Injury - Injury which creates a substantial risk of death or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ or structure or involves serious concussive impact to the head.
4. Except in limited circumstances during air or marine enforcement operations, discharging a firearm as a warning or signal is prohibited. Discharging a firearm at a person shall be done only with the intent of stopping that person from continuing the threatening behavior that justifies the use of deadly force.
5. Deadly force is not authorized solely to prevent the escape of a fleeing subject. Deadly force against a fleeing subject is only authorized if there is probable cause to believe that:
  - a. The subject has inflicted or threatens to inflict serious physical injury or death to the officer/agent or to another person; **and**
  - b. The escape of the subject poses an imminent threat of serious physical injury or death to the officer/agent or to another person.

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<sup>1</sup> Referenced in prior versions of CBP policy or applicable regulations as "intermediate force" or "non-deadly force" and used herein with the same purpose and effect.

6. Authorized Officers/Agents shall not discharge their firearms at the operator of a moving vehicle, vessel or aircraft unless deadly force is necessary – that is, when the officer/agent has a reasonable belief that the operator poses an imminent danger of serious physical injury or death to the officer/agent or to another person.
  - a. Such deadly force may include a moving vehicle aimed at officers/agents or others present, but would not include a moving vehicle merely fleeing from officers/agents unless the vehicle or the escape of the subject poses an imminent threat of serious physical injury or death to the officer/agent or to another person.
  - b. The hazard of an uncontrolled conveyance shall be taken into consideration prior to the use of deadly force.
7. Firearms shall not be fired solely to disable motor vehicles, vessels, aircraft or other conveyances. The only exception is that Authorized Officers/Agents, when conducting maritime law enforcement operations, may use specifically authorized firearms and ammunition to disable moving vessels or other maritime conveyances.
8. Deadly force may be directed against dangerous or vicious animals in self-defense or in defense of another person.
9. Deadly force may also be used to euthanize an animal that appears to be seriously injured or diseased. In doing so, the Authorized Officer/Agent must be able to justify the use of deadly force to prevent the animal from additional suffering, eliminate a public health risk or to ensure public safety.
10. The act of establishing a grip, drawing a weapon or pointing a weapon does not constitute the use of deadly force.

#### E. The CBP Use of Force Continuum

1. The CBP Use of Force Continuum is an instructional model used to describe the levels of force an Authorized Officer/Agent may need to utilize to gain control over a resistant subject.
2. While it describes each of the different levels of force that may be used in response to subject behavior, it is not necessary to mechanically apply every step of the CBP Use of Force Continuum.
3. An Authorized Officer/Agent may have to rapidly escalate or de-escalate through the Continuum, depending on the totality of facts and circumstances of the particular situation.

#### 4. Levels of Subject Behavior/Resistance:

- a. Compliant - A subject who is compliant/cooperative with an Authorized Officer's/Agent's control efforts.
- b. Passive Resistance - A subject who is not believed to represent an immediate threat or flight risk, and who is not offering physical resistance to an Authorized Officer's/Agent's control efforts, but is not cooperative.
- c. Active Resistance - A subject who offers physical or mechanical resistance to an Authorized Officer's/Agent's control efforts.
  - (1) Mechanical Resistance - A type of active resistance, where a subject uses a mechanical or other object to resist an officer/agent's control efforts. The subject's efforts are not directed toward the officer/agent but rather appear intended to thwart an officer's/agent's control efforts by physically securing or holding to another object.
- d. Assaultive Resistance (Physical Injury) - A subject whose resistance causes, or has the potential to cause, physical injury to the officer/agent, others, or self. This includes a subject's attempts (or apparent intent) to make physical contact in an attempt to control or assault the officer/agent.
- e. Assaultive Resistance (Serious Physical Injury/Death) - A subject whose resistance causes, or has the potential to cause, serious physical injury or death to the officer/agent, others, or self.

#### 5. Levels of Officer/Agent Response:

- a. Cooperative Controls - Measures (including verbal commands) used to maintain control over a compliant subject.
- b. Contact Controls - Physical measures taken when verbal commands and officer presence are not effective in gaining compliance. Contact controls may include measures such as strategic positioning, escort holds, joint manipulation or immobilization or touch pressure point stimulation.
- c. Compliance Techniques - Actions taken when the subject is actively resisting the efforts of the officer/agent to establish and maintain control. Examples of compliance techniques include the use of Oleoresin Capsicum (OC) spray, strike pressure points, stunning techniques, takedowns, joint manipulations and use of an Electronic Control Weapon (ECW).

- d. Defensive Tactics - Actions taken when a subject has either assaulted the officer/agent or is displaying a willingness and intent to do so. Examples of defensive tactics are concentrated strikes involving the use of empty-hand techniques (e.g., the use of body parts as weapons), the Collapsible Straight Baton (CSB) and the ECW.
- e. Deadly Force - Actions taken when an Authorized Officer/Agent has a reasonable belief that the subject of such force poses an imminent danger of serious physical injury or death to the officer/agent or to another person.

#### F. Use of Safe Tactics

1. Authorized Officers/Agents should seek to employ enforcement tactics and techniques that effectively bring an incident under control, while promoting the safety of the officer/agent and the public, and minimizing the risk for unintended injury and/or property damage.
2. Except where otherwise required by inspections or other operations, Authorized Officers/Agents should avoid standing directly in front of or behind a subject vehicle. Officers/agents should not place themselves in the path of a moving vehicle or use their body to block a vehicle's path.
3. Authorized Officers/Agents should, whenever reasonable, avoid placing themselves in positions where they have no alternative to using deadly force.
4. Authorized Officers/Agents shall not discharge their firearms in response to thrown or launched projectiles unless the officer/agent has a reasonable belief, based on the totality of circumstances (to include the size and nature of the projectiles), that the subject of such force poses an imminent danger of serious physical injury or death to the officer/agent or to another person.

Officers/agents may be able to obtain a tactical advantage in these situations, through measures such as seeking cover or distancing themselves from the immediate area of danger.

#### G. DHS Commitment to Nondiscriminatory Law Enforcement and Screening Activities

1. The DHS *Commitment to Nondiscriminatory Law Enforcement and Screening Activities* policy statement is applicable to all situations where officers/agents exercise their use of force authority.

## II. Operational Guidelines and Administrative Procedures

### Chapter 1: Authorized Officers/Agents and the Authority to Carry Firearms

#### A. Authorized Officers/Agents

1. For the purposes of this *Handbook*, the term “Authorized Officers/Agents” includes:
  - a. CBP Officers;
  - b. Border Patrol Agents;
  - c. Air and Marine Officers and Agents;
  - d. Internal Affairs Special Agents and Investigators; and
  - e. Other qualified CBP personnel as designated by the Assistant Commissioners of the operational components, or the Chief, Office of Border Patrol (hereinafter referred to as “Assistant Commissioners” or “ACs”), the Commissioner and the Director of UFCE.

A component Assistant Commissioner (AC) may request an individual designation by submitting a written justification requesting this designation to the Commissioner, through the AC of the Office of Training and Development (OTD). This justification shall be forwarded to the Director of UFCE for comment prior to submission to the Commissioner.

2. Additional qualified CBP personnel may be designated as armed personnel by the ACs of the operational components, the Commissioner and the Director of UFCE, but are not considered to be Authorized Officers/Agents.

A component Assistant Commissioner (AC) may request an individual designation by submitting a written justification requesting this designation to the Commissioner, through the AC of the Office of Training and Development (OTD). This justification shall be forwarded to the Director of UFCE for comment prior to submission to the Commissioner.

- a. All such personnel are required, in accordance with the requirements of Chapter 6, to demonstrate their proficiency in the use of each of the CBP firearms that they are issued.

## B. Authority to Carry CBP-Issued Firearms

1. The authority to carry a CBP-issued firearm is provided by federal law, including 8 U.S.C. § 1357, 8 C.F.R. § 287.8 and § 287.9, and 19 U.S.C. § 1589(a). Such carriage, whether on or off duty, is governed by this *Handbook* and applicable CBP policy.
2. To carry CBP-issued firearms, Authorized Officers/Agents must:
  - a. Be designated to carry a firearm, individually or as a class, by the Commissioner of CBP;
  - b. Be issued a badge, and CBP credentials that authorize the carrier to bear firearms;
  - c. Have successfully completed the basic law enforcement training required as a condition of employment with CBP, including basic firearms training, or have successfully completed a substantially equivalent training program approved by the AC of OTD and the Director of UFCE;
  - d. Maintain proficiency, as set forth in Chapter 6 of this *Handbook*, in the use of firearms they are permitted to carry and adhere to the provisions of the policy governing the use of force; and
  - e. Meet all other requirements and standards set forth in this *Handbook*.

## C. Carriage of CBP-Issued Firearms

1. Authorized Officers/Agents are required to carry a CBP-issued handgun during duty hours while performing uniformed law enforcement duties, except when operational circumstances preclude the carriage of a firearm (e.g., when operating in restricted areas).
2. Only those firearms listed on the UFCE Authorized Equipment List (and specifically approved by the AC of each operational component) may be carried while on duty.
  - a. Authorized Officers/Agents are not authorized to carry any personally-owned firearms while on duty.
  - b. In threatening, emergent situations, Authorized Officers/Agents are authorized to use any available weapon in a manner that is reasonable and necessary for self-defense or the defense of another person. However, this statement does not authorize the carrying of any weapon for duty use that is not authorized and listed on the UFCE Authorized Equipment List (or specifically approved by the Director of UFCE).

3. Authorized Officers/Agents may carry their CBP-issued firearms twenty-four hours a day (including off-duty) in accordance with the provisions of this *Handbook*.
4. Authorized Officers/Agents, when carrying a CBP-issued firearm(s), are required to carry their CBP badge and credentials authorizing them to bear firearms. This requirement does not apply to officers/agents involved in an authorized undercover operation or when approved in writing by the officer's/agent's immediate supervisor.
5. Authorized Officers/Agents shall carry their CBP-issued handgun(s) fully loaded at all times. Semiautomatic pistols shall be carried with a round in the chamber and the magazine loaded to capacity. When authorized, revolvers shall be carried with all chambers loaded.
6. Only CBP-issued/approved ammunition may be used in CBP firearms.
7. Authorized Officers/Agents, when in uniform and on-duty, shall carry a minimum of two, fully loaded, spare magazines for their primary handgun.
8. An Authorized Officer/Agent shall be issued only one primary handgun. Based upon availability, and with the concurrence of the AC of that operational component, an officer/agent may be issued a subcompact handgun as a secondary handgun.
  - a. An Authorized Officer/Agent shall not be issued more than two handguns without the concurrence of AC of the operational component and the Director of UFCE.
9. Except as provided herein, Authorized Officers/Agents shall carry only one handgun on their person at a time. Written authorization to carry two handguns at the same time must be obtained from the Responsible Official (RO) with the concurrence of the respective operational component AC.
10. Based on the duty assignment, Authorized Officers/Agents may be issued shoulder-fired weapons (SFWs) as determined necessary by the operational component ACs (or their designees).
11. Based on operational needs and requirements, a RO may require that Authorized Officers/Agents carry shoulder-fired weapons (SFWs) while performing specified uniformed law enforcement duties.
12. In special circumstances, when unarmed CBP personnel are required to provide service in areas of substantial risk, armed Authorized Officer/Agents shall provide an appropriate level of security, up to and including the formation of a security detail.

13. Only Authorized Officers/Agents may discharge a CBP-issued firearm, except during CBP-authorized training, events or activities and military or law enforcement joint operations.

#### D. Flying Armed on a Commercial Aircraft

1. Authorized Officers/Agents may carry their CBP-issued firearms in the cabin of commercial aircraft in accordance with applicable regulations, policies and procedures.<sup>2</sup>
2. Each officer/agent who carries a CBP-issued firearm while traveling on board a commercial aircraft must complete the CBP-approved Law Enforcement Officers Flying Armed training course. This course will be readily available to all officers/agents.
3. Any Authorized Officer/Agent traveling aboard an aircraft while armed must at all times keep their CBP-issued firearm:
  - a. Concealed and out of view, either on their person or in immediate reach, if the officer/agent is not in uniform; or
  - b. On their person, if the officer/agent is in uniform.
4. No officer/agent may place a weapon in an overhead storage bin.
5. Under no circumstances shall an Authorized Officer/Agent relinquish their CBP-issued handgun to the pilot or any member of the flight crew, or allow the weapon to be stored in the crew compartment of the aircraft.
  - a. If an officer/agent is directed by anyone to check their handgun, the officer/agent should request assistance from the appropriate security officials in order to resolve the issue: first, the airport's Ground Security Coordinator (GSC) and then the TSA Federal Security Director (FSD).
  - b. Any officer/agent who has been denied boarding shall notify their immediate supervisor at the earliest practicable time. A written report of this denial shall be forwarded to the Director of UFCE, through the RO, outlining the details of the occurrence.

#### E. Alcohol and Medication

1. Authorized Officers/Agents are prohibited from consuming alcoholic beverages while carrying CBP-issued weapons, except when engaged in authorized undercover activities necessitating the consumption of alcoholic beverages.

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<sup>2</sup> Carriage of firearms aboard aircraft is governed by 49 C.F.R. § 1544.219: Carriage of accessible weapons.



In these cases, the consumption of alcoholic beverages shall be limited to an amount that does not impair the officer's/agent's judgment.

2. Authorized Officers/Agents shall not carry a firearm while taking medication that impairs their judgment and/or ability to safely carry, control or use a firearm.

#### F. Revocation of Authorization to Carry CBP-Issued Firearms

1. The authority to carry a CBP-issued firearm may be temporarily or permanently revoked by the CBP Commissioner, an AC of an operational component or by the appropriate Responsible Official (RO). The authority to carry may also be temporarily revoked by a CBP supervisor.
2. Temporary revocations will be based on reliable evidence. Permanent revocations will be based on substantiated evidence.
3. Credentials may be temporarily or permanently revoked by the CBP Commissioner, AC of an operational component or the appropriate RO.
  - a. The revocation of credentials results in the automatic revocation of the authorization to carry a CBP-issued firearm.
  - b. The revocation of the authorization to carry a firearm does not automatically result in the revocation of credentials.
4. Situations that warrant the temporary or permanent revocation of the authority to carry firearms and/or credentials include (but are not limited to):
  - a. The failure to demonstrate proficiency with firearm(s) or other mandatory training requirements without an authorized exemption;
  - b. Medical conditions that impede the safe and effective use of a firearm. In such circumstances the Authorized Officers/Agents may have the authorization to carry a firearm temporarily revoked. A medical evaluation in accordance with regulations shall take place before a permanent revocation occurs;
  - c. Evidence of substance abuse;
  - d. Evidence of the commission of a felony;
  - e. Evidence of (including an arrest or conviction for) the commission of an act of domestic violence (see [Chapter 1.G](#)) or the existence of a protective order related to acts of domestic violence (see [Chapter 1.G.3](#));
  - f. Evidence of unlawful violent behavior, or behavior that indicates that the individual may be a danger to themselves or others;



### G. Domestic Violence and the Authority to Carry Firearms

1. It is the responsibility of any armed CBP employee who is arrested for, or charged with, a crime of domestic violence to promptly report their arrest or charge to their immediate supervisor.
2. During the period pending disposition of the domestic violence case (following an arrest or charge for, and until the case has been resolved by the appropriate legal authority) CBP employees shall not be permitted to possess or carry any CBP-issued firearms or ammunition.
  - a. The armed employee's supervisor shall ensure that all CBP-issued firearms and ammunition are immediately turned in for storage.
3. Protective Orders – For purposes of this *Handbook*, a protective order related to domestic violence shall be considered to be a pending domestic violence case (and therefore subject to the restrictions of subsection G.2 above) if the order:
  - a. Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
  - b. Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
  - c. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.
4. Pursuant to 18 U.S.C. § 922(g)(9), it is illegal for anyone, including a federal law enforcement officer, who has been convicted of a misdemeanor crime of domestic violence to possess any firearm or ammunition.

### H. Carriage of Personally-Owned Firearms Off-Duty

1. Nothing in this *Handbook* shall be construed as interfering with the rights that Authorized Officers/Agents may have as private citizens to carry a personally-owned firearm off-duty for personal use. Authorized Officers/Agents must comply with all applicable federal, state and local laws when exercising any such rights.
2. Guidance on CBP policy regarding the off-duty carriage of personally-owned firearms may be found in the Commissioner's Memorandum, *The Law Enforcement Officers Safety Act (LEOSA)*, dated August 13, 2013, attached as Appendix V.

## Chapter 2: Authorizing and Approving Officials

### A. Responsible Officials (ROs)

1. A RO is responsible for the implementation of the CBP use of force program and for ensuring compliance with the *CBP Use of Force Policy, Guidelines and Procedures Handbook* by all Authorized Officers/Agents within his or her area of responsibility.
2. Each RO has primary responsibility for inventory control, maintenance, and security of all CBP use of force equipment within his or her area of responsibility.
3. Each RO shall designate a Firearms Coordinator (FCO) to manage the firearms and ammunition program within his or her area of responsibility (see [Chapter 11](#)). These designees are responsible for overseeing the shipment, receipt, issuance and the periodic inventory of use of force equipment.
4. The ROs are:
  - a. Assistant Commissioners of CBP Operational Components (ACs), and the Chief, Office of Border Patrol (OBP);
  - b. Chief Patrol Agents (CPA);
  - c. Directors, Field Operations (DFO);
  - d. Directors, Air Operations and Marine Operations (DAO, DMO);
  - e. Division Directors, Internal Affairs (IA);
  - f. Division Directors, Office of Training and Development (OTD); and
  - g. Other officials designated in writing by the Commissioner.

### B. The Director of the Use of Force Center of Excellence (UFCE)

1. The Director of UFCE has primary responsibility to:
  - a. Direct all aspects of the CBP use of force and firearms program, including less-lethal equipment;
  - b. Direct the development and implementation of CBP use of force and firearms policies and procedures;

- c. Direct the technical and evaluation aspects of the CBP use of force and firearms programs;
  - d. Direct the development of the training curriculum and the training of CBP firearms instructors, armorers, less-lethal instructors and other related training;
  - e. Direct the review of field use of force training and training programs;
  - f. Direct the review of use of force incidents, in order to review and/or improve CBP training, tactics, policy and equipment;
  - g. Direct the collection and storage of qualification and instructor certification records;
  - h. Establish the procedures for the selection, training, and certification of armorers, firearms instructors, less-lethal instructors, and other advanced instructors;
  - i. Oversee all CBP armories and direct the maintenance, repair, and alteration of all CBP-issued and authorized firearms;
  - j. Oversee the control and accountability of all firearms, ammunition, ordnance, less-lethal devices and body armor; and
  - k. Maintain a list of authorized weapons, holsters, ammunition, equipment and accessories.
2. The Director of UFCE is responsible for overseeing the acquisition of all CBP-issued firearms, ammunition, ordnance, less-lethal equipment and body armor.
  3. No CBP component or individual officer/agent or employee is authorized to solicit, accept or otherwise acquire or dispose of CBP-issued firearms, or other use of force equipment that is accountable in the Firearms, Armor and Credentials Tracking System (FACTS), outside of authorized CBP equipment procurement and distribution procedures for any CBP purpose or operation without the written consent of the Director of UFCE.

#### C. The UFCE Incident Review Committee

1. The UFCE Incident Review Committee is authorized to review any incident in which use of force is employed, whether by a CBP employee or directed at an employee.
  - a. Any use of deadly force by a CBP employee against a person shall be reviewed by the Committee.

2. The primary role of this Committee is to allow qualified experts an opportunity to perform an internal analysis of these incidents from a perspective of training, tactics, policy and equipment. Accordingly, this Committee will not make any recommendations concerning disciplinary or adverse actions.
3. Through a deliberative process, the Committee will identify trends that may impact the use of force procedures and policies employed by CBP to protect its personnel, property and operations.
4. The UFCE Incident Review Committee members are:
  - a. The Director of UFCE, who serves as committee chair; and
  - b. Designated representative(s) from each CBP operational component.
5. The UFCE Incident Review Committee shall meet on a quarterly basis, and additionally at the discretion of the Director of UFCE when sufficient use of force incident data is assembled to warrant the convening of the Committee.
6. Quarterly, the Committee shall submit a report outlining findings and recommendations, as appropriate, to the CBP Commissioner.

## Chapter 3: Guidelines and Procedures Following the Use of Deadly Force

### A. Responsibilities Following a Use of Deadly Force

1. Any use of deadly force shall be orally reported to a CBP supervisor:
  - a. Unless the employee is physically incapacitated or otherwise unable, the report shall be made within one hour of the time the incident occurs.

The report shall be made either in person, or via radio or telephone, and shall be comprised of the following information (if known):

- (1) The date, time, and location of the incident;
  - (2) The identity and current location of any injured or deceased person(s), an assessment of the extent of their injuries and whether medical assistance has been requested;
  - (3) The identity, physical description, and current location of any individual(s) known to be involved in, or to have witnessed the incident, including subjects who are at large;
  - (4) The description and location of conveyances involved in the incident, including any subject conveyance(s);
  - (5) A brief description of the incident, including any unusual circumstance(s) which might cause additional conflicts or confrontations;
  - (6) The operational activity in which the Authorized Officer/Agent or employee(s) involved in the incident was engaged;
  - (7) When firearms are used: the type of firearm(s), the number of shots fired, and the current location of all firearms used in the incident;
  - (8) Any other information that is needed to assure that the operational responsibilities of CBP related to the security of human life and CBP equipment are properly carried out.
2. Any Authorized Officer/Agent who observes or becomes aware of a use of deadly force, and has a reasonable belief that the incident has not yet been reported, shall orally report the incident to a supervisor as soon as practicable.
  3. Following the initial reporting of the incident, an employee who learns of additional information concerning the items listed in Chapter 3.A.1.a shall, as soon as practicable, make an oral report of such information to a supervisor.

4. CBP Supervisor - Upon notification of a use of deadly force, a supervisor shall:
  - a. Secure the incident scene, and seek medical assistance for any person who appears, or claims to be, injured.
  - b. Ensure that all CBP employees who were involved in the incident have been identified and advised that they will be interviewed by investigative personnel and that they are to remain on-duty until released;
  - c. Make an initial report via established chain of command;
    - (1) The initial supervisory report shall contain a summary of the incident and shall be made within one hour of receipt of the first employee report.
    - (2) The report shall be made through official channels, but the report shall not be delayed when observance of the chain-of-command is impractical.
  - d. Report the incident to CBP HQ via the Commissioner's Situation Room in accordance with CBP Directive 3340-025D (or any successor policy);
  - e. Notify the Office of Internal Affairs via the Joint Intake Center (JIC), and via notification to the duty agent of the specific IA regional office with responsibility for that area of operations;
  - f. Notify the Office of Human Resources Drug Program Coordinator;
  - g. Assume on-scene responsibility for media contacts. Supervisors should, as soon as practicable, seek assistance from their public affairs officer. Media should be provided reasonable access to the scene, with preservation of evidence and efficient operations determining the limits of reasonable access;
  - h. Provide to the RO, within one hour of the arrival of CBP management or the investigative team at the scene of the incident, a preliminary report of the status of the situation, including updated information regarding the condition of injured persons and the employee(s) involved in the incident.
  - i. Report the use of force in the CBP Use of Force Reporting System (UFRS) on CBPnet. Initial reports should be submitted/completed in the system within 72 hours.
5. Prior to any investigative interview of involved personnel, on-scene responsible supervisory personnel shall:
  - a. Ensure that supervisors and/or investigators are aware that if an employee uses deadly force, he or she is prohibited from making a written statement regarding the incident. Other CBP personnel on scene may be required to provide a written statement regarding the incident;



- b. Ensure that when any bargaining unit employee is compelled by or through CBP and/or DHS to provide any information that could reasonably lead to disciplinary action against that employee (other than the initial verbal notification outlined herein), he or she is advised in writing of his or her right to Union representation in accordance with the applicable provisions of the law and governing Collective Bargaining Agreement;
  - c. Ensure that supervisory or investigative officers involved in the investigation of a use of force incident are aware that any information provided by any employee under threat of disciplinary action by CBP, or compelled by any other means, may be subject to exclusion from criminal proceedings consistent with the standards outlined in Garrity v. New Jersey, 385 U.S. 493 (1966);
  - d. In appropriate circumstances, and upon proper authorization, employees will be provided “Kalkines” warnings consistent with Kalkines v. U.S., 473 F.2d 1391 (Ct. Cl 1973) informing them of the requirement to cooperate in management’s examination when the employee has been assured that he or she will not be subject to criminal action;
    - (1) After receiving such assurances, an employee’s failure to cooperate in an administrative investigation may result in disciplinary action up to and including removal.
  - e. If an employee requests to consult with an attorney, normally no questioning to the employee will occur until his/her attorney is present. Questioning of an employee without an attorney being present after the employee has requested an attorney be present may result in not being able to take criminal action against the employee; and
  - f. If involved employee interviews cannot be conducted within a reasonable period of time, or the employee is physically or mentally unable to participate in the interview, the investigative team supervisor, or designee, shall direct the necessary rescheduling for this requirement.
6. Responsible Officials (ROs) - Upon notification of a use of deadly force, the RO (or his or her designee) shall:
- a. Ensure that the incident scene (and all relevant evidence) are secured, and that medical attention is provided for any individual injured;
  - b. Ensure that information regarding the deadly force incident is collected and reported in accordance with Chapter 3.A.1;
  - c. Ensure that the incident has been reported to the law enforcement authorities having jurisdiction over the investigation, and that they have been advised of CBP’s desire to maintain liaison during the investigation;

- d. For incidents involving detailed/TDY CBP personnel, the RO shall also notify the detailed personnel's permanent command element of a use of deadly force incident involving one or more of their personnel. The RO assumes responsibility for the employee(s) involved as if the personnel were permanently assigned within the RO's jurisdiction;
  - e. Until the incident is resolved, the RO shall be responsible for responding to requests for information about the incident from the public, the media, and other agencies with a "need to know," after coordinating such information releases with the Office of Public Affairs; and
  - f. Following the initial report of the incident and during the ensuing investigation, the RO shall ensure that copies of all investigative reports, any other pertinent documents and copies of all printed and televised media reports are provided through chain of command;
7. All use of force incidents involving CBP personnel shall be reported via the established chain of command in the geographic jurisdiction where the incident occurred.
  8. Following the submission of the initial supervisory report, any supervisor or other CBP management official who receives additional information regarding the incident shall, as soon as practicable, report such information to the RO and to the Commissioner's Situation Room in accordance with CBP Directive 3340-025D (or any successor policy).
  9. If any CBP employee becomes aware of apparent misconduct or violation of CBP policy regarding the use of force, that employee shall notify the Office of Internal Affairs via the Joint Intake Center (JIC).

#### B. Reporting the Discharge of a Firearm

1. Authorized Officers/Agents (and other armed CBP employees) must report the following firearms discharges:
  - a. Any discharge of a CBP-issued firearm (including unintentional discharges) except for intentional discharges which occur during firearms training, practice, or qualification, and do not cause any injury to a person or animal, or unintentional damage to private, public, or government property; or
  - b. A discharge of any firearm that:
    - (1) Is in violation of any law or ordinance, or causes an investigation by any law enforcement agency;
    - (2) Is, or reasonably appears to be, discharged in an unsafe or reckless manner due to impairment caused by the consumption of alcohol or drugs;

- (3) Is an act of assault against any Authorized Officer/Agent, or employee, and the assault is, or reasonably appears to be, related to his or her CBP employment; or
    - (4) Is a discharge of a firearm by a law enforcement officer other than an Authorized Officer/Agent, when the discharge occurs during multi-agency operations involving CBP personnel.
2. Any reportable discharge not involving the use of deadly force shall be reported through the chain of command and through the CBP Use of Force Reporting System (UFRS) on CBPnet. Initial reports should be submitted/completed in the system within 72 hours.
  - a. At the discretion of the RO, a local investigation/review (consistent with the requirements of Chapter 5) may be initiated.
3. After any discharge (either intentional or unintentional) of a CBP-issued firearm where a firearm malfunction is suspected, the RO must immediately send the firearm and ammunition to the appropriate UFCE facility for examination (unless the firearm is required for an ongoing federal, state or local law enforcement investigation or legal action).
  - a. To send a firearm to the UFCE facility, ensure that the firearm and magazine are unloaded and that they have NOT been cleaned or disassembled prior to shipping.
4. When an employee is required to relinquish his or her CBP-issued firearm, but the authority to carry a firearm has not been revoked, he or she shall promptly be provided with:
  - a. A replacement CBP-issued firearm; and
  - b. The opportunity to familiarize himself or herself with the replacement firearm under the supervision of a Firearms Instructor (FI).

The employee shall qualify with the replacement firearm as soon as practicable.
5. A shooter-induced unintentional discharge, for which the employee acknowledges responsibility, does not require the firearm be sent to the UFCE facility.
  - a. Post-incident safety and function remedial training shall be provided and documented by the local FI. The documentation shall be included in the incident investigation file.

C. Employee Assistance Program (EAP)

1. **EAP is available to assist all CBP Officers, Agents and employees, and the use of EAP is strongly encouraged.**
2. When an Authorized Officer/Agent uses deadly force against a person, either on or off-duty, the officer/agent shall (after providing incident information in accordance with the requirements of Chapter 3.A.1) be placed on Administrative Leave with pay and/or regularly scheduled days off for three consecutive calendar days immediately following the incident.

During this period, the officer/agent shall, at a minimum, participate in a confidential initial consultation conducted by an EAP (or other CBP-provided) counselor.

3. A supervisor shall advise all officers/agents involved in a deadly force incident that EAP is available for consultation. This service is confidential and is not part of the investigative process; its sole purpose is to assist the employee in dealing with the traumatic incident.
4. If an employee avails himself/herself of EAP services under subsection 3, the employee shall be granted duty time consistent with operational requirements.
5. The RO shall ensure that an EAP counselor is available for consultation as needed.

## Chapter 4: Guidelines and Procedures on the Use of Less-Lethal Force

### A. General Guidelines and Responsibilities

1. The *Policy on the Use of Force By CBP Officers and Agents* governs the use of force by all Authorized Officers/Agents. The policy is contained in Part I of this *Handbook*.
2. In accordance with the requirements of the *Policy*, any use of less-lethal force must be both objectively reasonable and necessary in order to carry out the officer's/agent's law enforcement duties.
3. Authorized Officers/Agents<sup>3</sup> who are trained and UFCE-certified in their use may use the following less-lethal devices/techniques:
  - a. Empty-Hand Strikes;
  - b. Oleoresin Capsicum (OC) Spray;
  - c. Collapsible Straight Batons (CSB);
  - d. Electronic Control Weapons (ECW);
  - e. Compressed Air Launchers (e.g., PLS, FN303);
  - f. Munition Launchers (e.g., 40mm);
  - g. Less-Lethal Specialty Impact - Chemical Munitions (LLSI-CM);
  - h. Controlled Tire Deflation Devices (CTDD); or
  - i. Other less-lethal devices approved by the AC of their operational component, with the concurrence of the Director of UFCE.
4. While performing uniformed law enforcement duties, Authorized Officers/Agents who carry firearms are required to carry either OC Spray or a CSB.
  - a. An officer/agent who is certified in both less-lethal devices may choose to carry either or both.

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<sup>3</sup> Additional qualified CBP personnel may be authorized (either individually, or as a class, by the Commissioner of CBP) to carry and use less-lethal devices/techniques. All such personnel are required, in accordance with the requirements of [Chapter 6](#), to demonstrate their proficiency in the use of each of the devices that they are issued.

- b. An officer/agent who is only certified in one less-lethal device shall carry only that device.
5. Based on operational needs and requirements, a RO may require that Authorized Officers/Agents carry additional less-lethal devices (that they are certified to carry) while performing specified uniformed law enforcement duties.

## B. Reporting the Use of Less-Lethal Force

1. Authorized Officers/Agents - Authorized Officers/Agents shall report all incidents involving the use of less-lethal force (not resulting in serious physical injury or death) by:
  - a. Verbal Report - Officers/agents shall orally report any use of less-lethal force to a CBP supervisor. Unless the employee is physically incapacitated or otherwise unable, the report shall be made within one (1) hour of the time the incident occurs or within one (1) hour of the time the employee becomes aware of the incident.

The report shall be made either in person, or via radio or telephone, and shall be comprised of the following information (if known):

- (1) The date, the time and the location of the incident;
  - (2) The less-lethal device(s) used by the officer/agent and subject;
  - (3) The nature and the extent of any injuries claimed or observed and whether medical assistance has been requested; and
  - (4) The name, date of birth, and physical location of the subject(s).
- b. Written Report/Memorandum - Officers/agents shall submit a written memorandum regarding the use of force incident through the chain of command.<sup>4</sup> Unless the employee is physically incapacitated or otherwise unable, the memorandum shall be made by the end of the work shift.
    - (1) The memorandum shall describe in detail the circumstances of the incident, including the actions of the subject necessitating the use of force and the specific force used in response to the subject's actions. Any injuries or complaint of injuries, and any medical treatment or refusal of medical treatment, shall be documented.

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<sup>4</sup> When any bargaining unit employee is compelled by or through CBP and/or DHS to provide any information that could reasonably lead to disciplinary action against that employee, he or she has a right to Union representation in accordance with the applicable provisions of the law and governing Collective Bargaining Agreement.

- c. UFRS Report - Involved Officers/Agents shall also report uses of less-lethal force through the CBP Use of Force Reporting System (UFRS) on CBPnet. Initial reports should be entered into the system within 24 hours.
2. CBP Supervisor - Upon notification of a use of less-lethal force, the supervisor shall:
    - a. Verbal Report - Make an initial report via established chain of command;
      - (1) The initial supervisory report shall contain a summary of the incident and shall be made within one (1) hour of receipt of the first employee report.
      - (2) The report shall be made through official channels, but the report shall not be delayed when observance of the chain-of-command is impractical.
    - b. Written Report - CBP supervisors shall submit a preliminary written report through the chain of command by the end of the work shift.
    - c. Involved Officer/Agent Memorandum - CBP supervisors shall review the involved officer's/agent's memorandum to ensure that it is consistent with the requirements outlined in Chapter 4.B.1.b.1.
    - d. UFRS Report - CBP supervisors shall review the involved officer's/agent's report in the CBP Use of Force Reporting System (UFRS) on CBPnet, and submit/approve the report in the system (or forward for approval based on local procedure). Reports should be submitted/approved within 72 hours.
    - e. Supervisors should ensure that when any bargaining unit employee is compelled by or through CBP and/or DHS to provide any information that could reasonably lead to disciplinary action against that employee (other than the initial verbal notification outlined herein), he or she is advised in writing of his or her right to Union representation in accordance with the applicable provisions of the law and governing Collective Bargaining Agreement.
      - (1) Any information provided by any employee under threat of disciplinary action by CBP or compelled by any other means, may be subject to exclusion from criminal proceedings consistent with the standards outlined in Garrity v. New Jersey, 385 U.S. 493 (1966).
      - (2) In appropriate circumstances, and upon proper authorization, employees will be provided "Kalkines" warnings consistent with Kalkines v. U.S., 473 F.2d 1391 (Ct. Cl 1973) informing them of the requirement to cooperate in management's examination when the employee has been assured that he or she will not be subject to criminal action.

After receiving such assurances, an employee's failure to cooperate in an administrative investigation may result in disciplinary action up to and including removal.

3. If any CBP employee becomes aware of apparent misconduct or violation of CBP policy regarding the use of force, that employee shall notify the Office of Internal Affairs via the Joint Intake Center (JIC).

4. Use of Less-Lethal Force Resulting in Serious Physical Injury or Death

Any use of less-lethal force that results in serious physical injury or death shall follow the procedures for reporting the use of deadly force.

5. Use of a Less-Lethal Device as Deadly Force

Any use of a less-lethal device as deadly force (used in a manner likely to cause serious physical injury or death) shall follow the procedures for reporting the use of deadly force.

### C. Use of Less-Lethal Devices/Techniques

1. Guidelines and Responsibilities

The following guidelines and responsibilities apply to all CBP less-lethal devices, systems and associated equipment. Additional device-specific guidelines are contained in the following subsections.

- a. Less-lethal devices may be deployed only by trained and certified CBP law enforcement personnel, and only in accordance with manufacturer's specifications and applicable DHS and CBP policy.
- b. A less-lethal device is not a substitute for the use of deadly force. This, however, does not preclude the use of a less-lethal device (or any other weapon) for this purpose if the use of deadly force would otherwise be objectively reasonable.
- c. Only less-lethal devices, systems and associated equipment authorized by UFCE shall be carried and deployed by Authorized Officers/Agents.
- d. If practical, CBP supervisory personnel shall photograph or videotape any marks or injuries resulting from the use of less-lethal devices.

- (1) If the marks or alleged injuries to be documented are on a private portion of the subject's body, CBP personnel shall make reasonable efforts to ensure privacy before the documentation is recorded. In that instance (to the extent possible) the recording must be made by an officer/agent of the same gender as the subject.



- e. Less-lethal devices, systems and associated equipment shall not be altered in any way without the written authorization of the Director of UFCE.
  - f. UFCE shall be responsible for development and approval of less-lethal device training materials and certification standards.
  - g. Authorized Officers/Agents are responsible for the general care and safeguarding of the less-lethal devices and equipment issued to them, and may be subject to disciplinary action for any loss or damage resulting from negligence by the officer/agent.
  - h. Less-lethal devices, systems and/or associated equipment shall be inventoried, transferred, and excessed shall be inventoried/accounted for in accordance with the requirements of Chapter 8.
  - i. Less-lethal devices, systems and/or associated equipment shall only be purchased through contracts and procedures established by UFCE. Purchase Card purchases of less-lethal equipment is prohibited without written approval from the Director of UFCE.
  - j. UFCE shall be responsible for the periodic review of the usage of less-lethal devices, systems and associated equipment, in order to evaluate compliance with policy, as well as to assess their overall safety and effectiveness.
2. Empty-Hand Strikes
- a. Strikes targeting strike pressure points may be utilized as a compliance tool on a subject offering, at a minimum, active resistance.
  - b. Other strikes (e.g., punches, kicks, etc.) may be utilized as a defensive tactic on a subject offering, at a minimum, assaultive resistance.
3. Oleoresin Capsicum (OC) Spray
- a. OC Spray may be utilized as a compliance tool on a subject offering, at a minimum, active resistance.
  - b. Authorized Officers/Agents may only use chemical agents authorized by the Director of UFCE. Officers/agents may not carry personally-owned OC devices for duty use.
  - c. Authorized Officers/Agents shall decontaminate exposed subject(s) as soon as practicable.

- d. Authorized Officers/Agents are responsible for advising their supervisors when the devices issued to them are approaching the end of their useable life so that they can be replaced prior to their expiration date.
  - e. Authorized Officers/Agents are required to turn in expired, damaged, or empty OC spray canisters to local training staff for proper disposal in accordance with local Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) requirements.
  - f. The TSA and FAA do not permit any chemical agents in the cabin of a commercial aircraft. As provided by 49 C.F.R. § 175.10, self-defense spray (mace or pepper spray) may be carried in checked baggage, provided the container does not exceed four fluid ounces and has a positive means to prevent accidental discharge. Chemical agents shall be carried aboard CBP aircraft only in accordance with *CBP Air Operations Handbook* (AOH) guidelines.
4. Collapsible Straight Batons (CSB)
- a. A CSB may be utilized as a defensive tool on a subject offering, at a minimum, assaultive resistance.
  - b. Authorized Officers/Agents may only use CSBs authorized by the Director of UFCE. Officers/agents may not carry personally-owned batons for duty use.
  - c. The following acts and techniques with the CSB are prohibited when using less-lethal force:
    - (1) Choke holds, carotid control holds, and other neck restraints;
    - (2) Use of a baton to apply “come-along” holds to the neck area; and
    - (3) Intentional strikes with the baton to the head, the neck, the face, the groin, the solar plexus, the kidneys or the spinal column.
5. Electronic Control Weapons (ECWs)
- An ECW is a less-lethal weapon which is designed to use short-duration electronic pulses to cause Neuro-Muscular Incapacitation (NMI) and/or pain, with minimal risk of serious physical injury or death.
- a. An ECW may be utilized as a compliance tool on a subject offering, at a minimum, active resistance in a manner that the Authorized Officer/Agent reasonably believes may result in injury to themselves or to another person.

- b. An ECW should be deployed for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are reasonable and necessary. Each ECW cycle must be both reasonable and necessary to overcome non-compliance by an actively resistant subject and to accomplish the officer/agent's law enforcement duties.
- c. A subject should not receive more than three ECW cycles. If the use of the ECW is unsuccessful, the Authorized Officer/Agent should transition to another reasonable force option.
- d. CBP personnel should not use an ECW, and should consider other force options, with respect to subjects who are: small children; elderly; pregnant; low body mass index (BMI) persons; near known flammable materials; on elevated surfaces; operating conveyances; adjacent to traffic; in water sufficient to drown; running; or handcuffed.
  - (1) Authorized Officers/Agents should use an ECW on a subject who is running only when the officer/agent has reasonable belief that the subject presents an imminent threat of injury to an officer/agent or another person. The threat presented by the subject must outweigh the risk of injury to the subject that might occur as a result of an uncontrolled fall while the subject is running.
- e. Authorized Officers/Agents should not intentionally expose a subject to more than one ECW at a time.
- f. Authorized Officers/Agents shall not intentionally target the head, neck, groin or female breast.
- g. When practicable and when other Authorized Officers/Agents are present, officers/agents should verbalize "TASER, TASER, TASER" prior to deployment to warn fellow officers/agents of the imminent use of an ECW. This will alert fellow officers/agents to prepare to control a subject under the power of an ECW.
- h. ECWs shall be carried on the non-gun side in a UFCE-authorized holster issued by CBP or purchased through an official uniform purchase program.
- i. Any subject in CBP custody who has been exposed to an ECW shall, as soon as practicable, be seen by an Emergency Medical Technician or other trained medical professional.
- j. CBP personnel trained and certified in the use of an ECW may remove probes embedded in a person's skin, provided the probes are not embedded in a sensitive area like the head, neck, genitals, or female breast tissue.

Probe removals in those instances shall be performed by a trained medical professional.

- k. ECW probes are considered a biohazard and shall be disposed of according to established biohazard disposal protocol.
  - l. Each ECW shall have all stored deployment and utilization data downloaded quarterly. ROs shall ensure that all downloaded ECW data is securely stored and maintained for a minimum of three years.
  - m. After each ECW deployment, data related to that deployment shall be downloaded and saved. A copy of the data report shall be attached to the use of force report in the CBP Use of Force Reporting System (UFRS).
6. Compressed Air Launchers (e.g., PLS and FN303)

Compressed air launchers are less-lethal impact/chemical irritant delivery systems that are powered by compressed air. The launchers can deliver a variety of less-lethal projectiles including kinetic impact, PAVA pepper powder and non-toxic marking rounds.

- a. A compressed air launcher may be used for area saturation against subject(s) who, at a minimum, demonstrate active resistance.
- b. A compressed air launcher may be used as a kinetic impact delivery system on subject(s) who, at a minimum, demonstrate assaultive resistance.
- c. Authorized Officers/Agents may also use a PLS to remove subjects who are intentionally covering the engine of a vessel in order to deploy marine disabling fire. Such deployment must target the strike pressure points of the outer extremities (i.e., arms and legs).
- d. Authorized Officers/Agents may use a compressed air launcher to mark a conveyance for identification purposes in situations where a conveyance has failed to comply with another officer's/agent's lawful attempt to stop it, in situations where the use of a controlled tire deflation device would not be reasonable, or if an involved vehicle is leaving the scene of an enforcement action without authorization. When deploying a compressed air launcher for marking and identification purposes, officers/agents may not target the conveyance's windows.
- e. Authorized Officers/Agents should not use a compressed air launcher, and should consider other force options, on subjects who are: small children; elderly; pregnant; or operating a conveyance.

- f. Authorized Officers/Agents may use the PLS on subjects between 3 and 60 feet away as a kinetic impact device. Officers/agents may use the PLS on subjects up to 150 feet away as an area saturation device.
  - g. Authorized Officers/Agents may use the FN303 on subjects between 10 to 225 feet away as a kinetic impact device. Officers/agents engaging subjects with the FN303 from 10 to 20 feet should target the subject's lower extremities. Officers/agents engaging subjects greater than 20 feet may target the lower torso, or upper and lower extremities (i.e., arms and legs).
  - h. The FN303 shall not be deployed if the officer/agent is less than 10 feet from the subject unless the use of deadly force is reasonable and necessary.
  - i. The intentional targeting of areas where there is a substantial risk of serious physical injury or death is considered a use of deadly force. Authorized Officers/Agents shall not intentionally target the head, neck, spine, or groin of the intended subject, unless the use of deadly force is reasonable.
7. Munition Launchers (e.g., 40mm) and Less-Lethal Specialty Impact and Chemical Munitions (LLSI-CM)

Munition Launchers are a less-lethal specialty impact/chemical munition (LLSI-CM) delivery system that are designed to deliver an impact projectile, a chemical irritant projectile or a combination projectile with more accuracy, higher velocity, and longer range than a projectile deployed by hand.

LLSI-CM can also be delivered by means of a device that is designed to be hand thrown by an Authorized Officer/Agent.

- a. Subject to the exceptions described in subsection c below, a Less-Lethal Chemical Munition (LLCM) may be utilized as a compliance tool on a subject offering, at a minimum, active resistance.
- b. Subject to the exceptions described in subsection c below, a Less-Lethal Specialty Impact (LLSI) munition may be utilized as a compliance tool on a subject offering, at a minimum, assaultive resistance.
- c. Authorized Officers/Agents should not use a LLSI-CM and should consider other force options with respect to subjects who are: small children; elderly; pregnant; near known flammable materials (when using a pyrotechnic device); or operating conveyances.
- d. When practicable and when other officers are present, Authorized Officers/Agents should verbalize "Less-Lethal, Less-Lethal, Less-Lethal" prior to deployment to warn fellow officers/agents of the imminent use of a LLSI-CM. This will alert fellow officers/agents to prepare for the deployment of a LLSI-CM.

- e. Authorized Officers/Agents shall not intentionally target the head, neck, groin or female breast.
  - f. Any subject in CBP custody who has been exposed to a LLSI-CM shall, as soon as practicable, be seen by an Emergency Medical Technician or other trained medical professional.
  - g. The Federal Aviation Administration (FAA) prohibits the transportation of LLCM's and LLSI-CM combinations (e.g., CS (O-Chlorobenzylidene-malononitrile) Stingball) onboard commercial aircraft. All CBP employees will comply with this regulation. Transportation of LLSI-CM munitions will be accomplished by the use of a CBP vehicle/vessel and/or an authorized commercial ground carrier.
  - h. The transportation of LLSI-CM onboard CBP vessels must conform with the appropriate safety standards such as storage and transportation of the devices in insulated, water proof containers to prevent damage or unintended discharge.
  - i. Once the safety pin has been pulled on a hand-held LLSI-CM the deployment of the hand-held LLSI-CM should be immediate. The safety pin should never be reinserted in the hand-held LLSI-CM once it has been pulled.
  - j. Approval from the Director of UFCE is required prior to each individual purchase of LLSI-CM.
8. Controlled Tire Deflation Devices (CTDDs)

CTDDs are specialized devices whose deployment results in the controlled deflation of a vehicle tire.

- a. A CTDD may only be deployed with supervisory authorization and when the immediate or potential danger to the public created by the deployment of the CTDD is less than the immediate or potential danger to the public should the suspect vehicle be allowed to proceed without deployment of the CTDD.
  - (1) The CTDD shall be deployed in a manner that minimizes risk of injury to persons or damage to property.
- b. A CTDD may be deployed:
  - (1) When an Authorized Officer/Agent directs a motor vehicle to stop and the vehicle fails to comply with the officer's/agent's order;
  - (2) When a vehicle flees from the primary or secondary inspection area of a checkpoint or port of entry (POE);

- (3) When a vehicle unlawfully crosses the border between POEs;
  - (4) When an Authorized Officer/Agent, acting within the guidelines set forth in this *Handbook*, is trying to prevent a suspect vehicle from leaving the area where a warrant is being served or where officers/agents have determined, or developed at least reasonable suspicion, that a crime is being or may have been committed;
  - (5) When the configuration at permanent checkpoints allows for the safe deployment of the CTDD to prevent vehicles from avoiding inspection; or
  - (6) When another law enforcement agency requests deployment of the CTDD in an emergency. Supervisory approval is required unless exigent circumstances can be articulated. At checkpoints, supervisory authorization may be granted in advance for specific situations involving other law enforcement agencies.
- c. The road where an Authorized Officer/Agent is considering the deployment of a CTDD should provide an unimpeded view of vehicular traffic from all directions. The CTDD may be used only in areas where topography, roadway surfaces, and vehicular conditions indicate that deployment can be accomplished with reasonable safety.
- d. The Authorized Officer/Agent who deploys the CTDD should:
- (1) During deployment of a CTDD, remain in visual contact and control of the CTDD unless the deploying officer/agent can articulate why visual contact and control are not safe and/or practical;
  - (2) Prior to deploying the CTDD, ensure that all CBP and other agency personnel involved are notified of the pending deployment of the CTDD via available communication methods. Communication shall be maintained between officers/agents in the deployment area unless exigent circumstances preclude such communication;
  - (3) Remove or deactivate the CTDD before becoming involved in the apprehension of the subject(s) unless exigent circumstances preclude such removal or deactivation; and
  - (4) Remember that safety is paramount. The officer/agent retains the discretion not to deploy the CTDD and should not do so if safety concerns are an issue.
- e. Authorized Officers/Agents shall not deploy a CTDD in school zones when children are present or traveling to or from the school, or in cases when the danger to the public outweighs the enforcement benefit.

- f. With the exception of Authorized Officers/Agents conducting enforcement operations on CBP aircraft, an officer/agent shall not overtake a pursued vehicle in order to deploy a CTDD.
  - g. Authorized Officers/Agents shall not deploy a CTDD to stop the following types of vehicles, except where an immediate danger to life makes it reasonable to deploy the CTDD: two or three-wheeled vehicles; vehicles known or reasonably believed to be transporting hazardous materials; or vehicles that there is a reason to believe would pose an unusual hazard to officers/agents or the public.
  - h. When a CTDD causes unintentional damage to a vehicle:
    - (1) The involved officer/agent will immediately report the incident to the duty supervisor;
    - (2) The duty supervisor shall provide a tort claim form (SF-95) to the driver of the vehicle for the damages to the vehicle that may have been caused by the CTDD along with instructions on how to complete the form and where to send the claim;
    - (3) In cases when the vehicle is rendered immobile, procedures must be in place to assist the driver in making the vehicle mobile; and
    - (4) The officer/agent involved in the incident shall document the incident in accordance with operational protocols. The incident report shall describe exactly what transpired and provide details of any assistance rendered to the driver.
9. Controlled Noise and Light Distraction Devices (CNLDDs)

A CNLDD is a pyrotechnic device that, once activated, emits a bright light and loud noise to momentarily disorient and confuse subjects; giving officers/agents a brief tactical advantage so they can bring the situation to a successful law enforcement resolution.

- a. The pre-planned use of a CNLDD during law enforcement operations requires the approval of a Supervisor or Team Leader. In exigent circumstances, a CNLDD may be deployed without prior supervisory approval.
- b. When practicable and when other Authorized Officers/Agents are present, officers/agents should verbalize "BANG OUT" prior to deployment to warn fellow officers/agents of the imminent use of a CNLDD.
- c. The Supervisor or Team Leader shall ensure that all officers/agents wear appropriate personal protective equipment during any operation utilizing CNLDDs (see specific Operational Order for required equipment).



- d. The Supervisor or Team Leader shall (when it is reasonably anticipated that CNLDDs will be employed and where practical) have a standard vehicle fire extinguisher (or larger) and appropriate medical equipment available at the scene or at a location nearby.
- e. Once the safety pin has been pulled on a CNLDD the deployment of the hand held CNLDD should be immediate. The safety pin should never be reinserted into the hand held CNLDD once it has been pulled.
- f. CNLDDs that have malfunctioned should be disposed of according to manufacturer's recommendations.
- g. Authorized Officers/Agents should not use a CNLDD, and should consider other force options, with respect to subjects who are: small children; elderly; pregnant; or near known flammable materials.
- h. Environmental considerations should be evaluated prior to deployment of a CNLDD.
- i. Responsible supervisory personnel must ensure that ATF regulations and guidelines are known and followed by all subordinate personnel involved in the handling, storage, or use of these items.
- j. The RO (or his or her designee) shall ensure that CNLDDs are only issued to trained and certified officers/agents with an articulated need for a CNLDD.
- k. The issuance of CNLDDs shall be recorded on a CBP Form 259 signed by appropriate supervisory or authorized issuing personnel indicating the amount and type of CNLDD issued, record serial numbers, and to whom received them and for what reason. The receiving party will countersign the CBP Form 259.
- l. The RO (or designee) shall maintain the CBP Form 259s in a folder (electronic or paper) for a period of not less than two years.
- m. Responsible supervisory personnel shall maintain a written log regarding the operational and training use of CNLDDs. This log shall include the following information: how many CNLDDs were utilized; to whom they were issued; the serial number(s) of the CNLDDs; and how they were utilized (training or operations). This log will be periodically reviewed by the RO (or designee) to ensure compliance.
- n. Approval from the Director of UFCE is required prior to each individual purchase of CNLDDs.

#### D. Warning Shots and Disabling Fire

1. Warning Shots - Warning shots are not permitted except as follows:
  - a. Warning shots may be used by Authorized Officers/Agents when conducting maritime law enforcement operations only as a signal to stop a vessel.
  - b. Warning shots may be used by Authorized Officers/Agents when conducting aviation law enforcement operations only as a signal to an aircraft to change course and follow direction to leave airspace.

Warning shots are to be used as a signal only. They are used to attract attention after all other available means of signaling have failed. This conforms to United States and international law, which recognize warning shots across the bow of vessels, or across the nose of an aircraft, as legitimate signals.

2. Disabling Fire - Firearms may not be used solely to disable moving vehicles, vessels, aircraft or other conveyances, except when Authorized Officers/Agents are conducting maritime law enforcement activities against maritime conveyances.
  - a. When a pursued vessel fails to comply with an order to stop, and warning shots have been deployed, the CBP Vessel or Aircraft Commander may elect to authorize disabling fire.
  - b. The authority to commence disabling fire rests with the Vessel or Aircraft Commander. The decision to fire, however, ultimately rests with the shooter. It is the shooter's responsibility to ensure the safe deployment of the disabling rounds.
3. Warning shots and disabling fire shall be deployed with strict adherence to UFCE-approved programs, policies, procedures and directives.
4. Only ordnance approved by the Director of UFCE, shall be authorized for use in conducting warning and/or disabling fire.
5. Only those Authorized Officers/Agents who have successfully completed UFCE-approved training are authorized to utilize warning shots and/or disabling fire.
6. Warning shots and/or disabling fire poses a potential hazard; therefore, good judgment must be exercised at all times. They cannot be fired where there is a reasonable belief that personal injury, death, or unintended property damage will occur. Safety shall always be the first consideration when utilizing warning shots and/or disabling fire.
7. The use of warning shots and/or disabling fire is considered less-lethal force, and shall be reported in accordance with the requirements of this chapter.

**E. Emergency Situations**

In threatening, emergent situations, Authorized Officers/Agents are authorized to use any available weapon in a manner that is reasonable and necessary for self-defense or the defense of another person.

However, this statement does not authorize the carrying of any weapon for duty use that is not authorized and listed on the UFCE Authorized Equipment List (or specifically approved by the Director of UFCE).

## Chapter 5: Investigation of Incidents Involving the Use of Force

### A. Investigation of Incidents Involving the Use of Force

1. Any use of force incident involving CBP employees may be reviewed and/or investigated both criminally, in order to ensure compliance with applicable law, as well as administratively, in order to ensure compliance with DHS and/or CBP policy.
2. Criminal Review/Investigation - Any use of force incident involving CBP employees may be reviewed and/or investigated by the appropriate federal, state or local law enforcement agencies.
  - a. Local law enforcement agencies may investigate use of force incidents, including those resulting in serious physical injury or death, occurring within their territorial jurisdictions.
  - b. A CBP employee involved in a use of force incident should anticipate a review and/or investigation by the appropriate federal, state or local authorities.
3. Administrative Review - Any use of force incident involving CBP employees may be subject to an administrative review by the Office of Internal Affairs (IA) and/or local CBP management.
4. When an injured or diseased animal is euthanized by an Authorized Officer/Agent, the investigation/review may be limited. This decision should be based on reasonable facts and belief that the action taken was prudent, appropriate and justified. If any doubt exists as to the need to have euthanized the animal, a full investigation should be completed.

### B. Internal Affairs Investigation of Incidents Involving the Use of Deadly Force

1. Upon receipt of declination from DHS investigative entities (or as appropriate for a parallel secondary investigation) IA shall direct designated investigative personnel to initiate an investigation.
  - a. If the incident is also being investigated by DHS or other investigative entities, the investigation must be coordinated with the entity with primary investigative jurisdiction to ensure procedural continuity.
2. An IA investigation is intended to determine the following:
  - a. Is there any indication of criminal misconduct by any CBP employee?

- b. Were the actions of each CBP employee involved in the incident appropriate and in accordance with CBP policies? (e.g., was each application of force both reasonable and necessary, as articulated in the *Policy on the Use of Force By CBP Officers and Agents*?)
    - c. Are there any factors that should be referred by IA to the CBP Office of Chief Counsel concerning potential litigation?
  3. IA shall assign investigative personnel to conduct an investigation of the incident.
    - a. No investigating agent who has a conflicting relationship with the involved employee(s) shall be assigned to the investigation.
    - b. The assigned IA investigations manager shall determine if a conflict of interest exists between the investigating agent and the involved employee.
  4. The designated investigative personnel shall:
    - a. Obtain a report from the Joint Intake Center;
    - b. Follow standard investigative procedures;
    - c. Ensure that when any bargaining unit employee is compelled by or through CBP and/or DHS to provide any information that could reasonably lead to disciplinary action against that employee (other than the initial verbal notification outlined herein), he or she is advised in writing of his or her right to Union representation in accordance with the applicable provisions of the law and governing Collective Bargaining Agreement;
    - d. Ensure that supervisory or investigative officers/agents involved in the investigation of a use of force incident are aware that any information provided by any employee under threat of disciplinary action by CBP, or compelled by any other means, may be subject to exclusion from criminal proceedings consistent with the standards outlined in Garrity v. New Jersey, 385 U.S. 493 (1966);
    - e. In appropriate circumstances, and upon proper authorization, employees will be provided “Kalkines” warnings consistent with Kalkines v. U.S., 473 F.2d 1391 (Ct. Cl 1973) informing them of the requirement to cooperate in management’s examination when the employee has been assured that he or she will not be subject to criminal action; and
      - (1) After receiving such assurances, an employee’s failure to cooperate in an administrative investigation may result in disciplinary action up to and including removal.

- f. Ensure that upon completion of the investigation of the incident that a single, consolidated report of the incident is prepared by the investigative team. Reports shall conform to the substance of agency policy regarding reports of investigation. A copy of the report shall be sent to the respective component ACs and the Director of UFCE.

### C. Local CBP Management Review of Use of Deadly Force Incidents

1. Upon receipt of a referral from the Office of Internal Affairs (IA) the RO shall initiate a local CBP management review.
  - a. If the incident is also being investigated by DHS or other investigative entities, the local review must be coordinated with the entity with primary investigative jurisdiction to ensure procedural continuity.
2. The RO (or his or her designee) shall assign a manager and a Use of Force Instructor (or other subject-matter expert) to conduct the review.
  - a. No employee who has a conflicting relationship with the involved employee(s) shall be assigned to the review.
  - b. The RO shall determine if a conflict of interest exists between the reviewing officer/agent and the involved employee.
3. The local CBP management review will determine:
  - a. Is there any indication of criminal misconduct by any CBP employee?
  - b. Were the actions of each CBP employee involved in the incident appropriate and in accordance with CBP policies? (e.g., was each application of force both reasonable and necessary, as articulated in the *Policy on the Use of Force By CBP Officers and Agents*?)
  - c. Are there any factors that should be referred to IA and/or the CBP Office of Chief Counsel concerning potential litigation?
  - d. What, if any, corrective action is required?
4. The RO (or his or her designee) shall ensure that:
  - a. When any bargaining unit employee is compelled by or through CBP and/or DHS to provide any information that could reasonably lead to disciplinary action against that employee (other than the initial verbal notification outlined herein), he or she is advised in writing of his or her right to Union representation in accordance with the applicable provisions of the law and governing Collective Bargaining Agreement;

- b. Supervisory or investigative officers/agents involved in the investigation of a use of force incident are aware that any information provided by any employee under threat of disciplinary action by CBP, or compelled by any other means, may be subject to exclusion from criminal proceedings consistent with the standards outlined in Garrity v. New Jersey, 385 U.S. 493 (1966); and
- c. In appropriate circumstances, and upon proper authorization, employees will be provided “Kalkines” warnings consistent with Kalkines v. U.S., 473 F.2d 1391 (Ct. Cl 1973) informing them of the requirement to cooperate in management’s examination when the employee has been assured that he or she will not be subject to criminal action.

(1) After receiving such assurances, an employee’s failure to cooperate in an administrative investigation may result in disciplinary action up to and including removal.

5. The RO (or his or her designee) shall ensure that any use of force and/or officer safety issues that are identified during the review (e.g., training, tactics, equipment or policy) are promptly brought to the attention of the Director of UFCE via a written report or memorandum.

#### D. Local CBP Management Review of Use of Less-Lethal Force Incidents

1. Each RO is responsible for convening a local Use of Less-Lethal Force Review Committee at least once per month. The purpose of the Committee will be to review all less-lethal force incidents that occurred within the RO’s area of responsibility in the previous month.
  - a. The meeting of the Review Committee may be deferred if no incidents involving the use of less-lethal force occurred during the previous month.
  - b. The review of incidents under initial investigation may be delayed until the investigation is complete.
2. This Committee will consist of:
  - a. Senior level managers; and
  - b. A Use of Force Instructor (or other subject-matter expert).
3. The Committee will review each incident to determine:
  - a. Is there any indication of criminal misconduct by any CBP employee?

- b. Were the actions of each CBP employee involved in the incident appropriate and in accordance with CBP policies? (e.g., was each application of force both reasonable and necessary, as articulated in the *Policy on the Use of Force By CBP Officers and Agents*?)
  - c. Are there any factors that should be referred to IA and/or the CBP Office of Chief Counsel concerning potential litigation?
  - d. What, if any, corrective action is required?
4. The RO shall ensure that any use of force and/or officer safety issues that are identified during the review (e.g., training, tactics, equipment or policy) are promptly brought to the attention of the Director of UFCE via a written report or memorandum.

#### E. Legal Representation Following an Incident Involving the Use of Force

1. The Department of Justice may provide legal representation to present or former CBP employees sued, subpoenaed or charged in a personal capacity for actions taken within the scope of their employment, provided that the employee's actions were taken in good faith and with a reasonable belief in the lawfulness of the actions taken.
  - a. This representation is discretionary, and is contingent upon a finding that the employee's actions giving rise to the suit reasonably appear to have been performed within the scope of employment, and that it is in the interest of the United States to provide the requested representation.
  - b. The Department of Justice is responsible for making final determinations regarding requests for legal representation.
  - c. Representation requests must be made by formal written request through the local Office of Chief Counsel. Requests should include copies of summonses or complaints as applicable.
  - d. Emergency, interim legal representation for federal law enforcement officials is made available by the Department of Justice in the immediate aftermath of a shooting or other use of force involving serious physical injury. These requests should be coordinated through the local Office of Chief Counsel.

#### F. Employee Status During An Investigation

1. While CBP's internal investigation of the incident, or a criminal investigation of the incident, is being conducted, the RO may, with the concurrence of the appropriate AC, permit the employee to take Administrative Leave with pay until either or both of the investigations are completed.



2. If any such investigation lasts more than 30 days beyond the date of the use of force incident, the RO shall provide the affected employee with a status report of the investigation(s) at 30-day intervals until the employee is returned to full duty status.

The report may be oral or in writing, and shall inform the employee of the status of the investigation(s) to the extent known by CBP and an estimated time of completion of the investigation(s).

#### G. Post-Incident Drug and Alcohol Testing

1. Post-incident drug and alcohol testing shall be required after any use of deadly force against a person.
2. Post-incident drug and alcohol testing shall also be required after any use of force when there is a reasonable suspicion that the actions of the officer/agent were the result of drug or alcohol use.
  - a. The decision to require post-incident testing under subsection G.2 must be based on articulable facts, evidence and circumstances and be undertaken in accordance with applicable standards and procedures.
3. Post-incident drug and alcohol testing shall be undertaken in accordance with applicable standards and procedures.

## Chapter 6: Use of Force Proficiency and Training

### A. Firearms Proficiency and Training Requirements

1. All Authorized Officers/Agents who carry a CBP-issued firearm must maintain and regularly demonstrate an acceptable level of proficiency.
2. All Office of Field Operations personnel are required, at a minimum, to demonstrate their proficiency in the use of each of the firearms that they are issued two times per year during each of the following training periods:
  - a. October through March; and
  - b. April through September.
3. All other armed CBP personnel are required to demonstrate their proficiency in the use of each of the firearms that they are issued four times per year during the following training periods:
  - a. October through December;
  - b. January through March;
  - c. April through June; and
  - d. July through September.
4. Based on operational needs and requirements a RO may require that Authorized Officers/Agents maintain and demonstrate proficiency with additional firearms (e.g., a rifle, shotgun, etc.).
5. Based on operational needs and requirements an AC may require that Authorized Officers/Agents train and/or demonstrate proficiency with greater frequency (e.g., every three months).
6. An acceptable level of proficiency, pursuant to guidelines established by the Director of UFCE, is based on the following:
  - a. Successfully completing an approved CBP qualification course of fire in no more than two consecutive attempts and achieving at least the minimum numerical score, as determined by the Director of UFCE;
  - b. Demonstrating proper handling techniques and manual dexterity required to safely draw, fire, holster, load, unload and operate the firearm;

- c. Demonstrating safe weapon handling skills with the firearm during all firearms training;
  - d. Successfully completing advanced firearms training exercises (AFTE), pursuant to guidelines established or approved by the Director of UFCE; and
  - e. Demonstrating appropriate responses to the failure or malfunction of firearms or ammunition, including immediate action drills and weapons clearing procedures.
7. Successful completion of the demonstration of proficiency requirement authorizes the Authorized Officer/Agent to carry that firearm until the last day of the following training period.
  8. UFCE will publish advanced firearm training exercises (AFTE) that are required to be completed during firearms training. Responsible supervisory personnel shall ensure that each officer/agent completes AFTE each training period.
  9. Each Authorized Officer/Agent must successfully complete, at a minimum, one firearm-based use of force training scenario, approved by the Director of UFCE, on an annual basis.
  10. Each Authorized Officer/Agent must successfully complete a night fire or low-light familiarization course of fire, approved by the Director of UFCE, on an annual basis (sunglasses or similar devices may not be used to simulate night or reduced light conditions).
  11. During each training period, all Authorized Officers/Agents must receive UFCE-approved training on use of force policy.
  12. ROs shall ensure that all Authorized Officers/Agents participate in firearms training each training period. Each training block may include firearms qualifications.
  13. Managers/supervisors are responsible for planning schedules to ensure that Authorized Officers/Agents are able to participate in required training and qualifications. Officers/agents are responsible for planning their activities to ensure that they participate in required training and qualifications.
  14. If an Authorized Officer/Agent is detailed to another duty location and will miss training or qualification at their permanent duty location, the officer/agent shall notify managers/supervisors at the temporary duty location of his or her need to train and qualify during that training period.
  15. No portion or stage of any firearms qualification course may be waived or altered without written authorization from the Director of UFCE.

## B. Less-Lethal Use of Force Proficiency and Training Requirements

1. All Authorized Officers/Agents must maintain and regularly demonstrate an acceptable level of proficiency in the use of less-lethal force.
2. All Authorized Officers/Agents are required, on an annual basis (at least once every fiscal year), to demonstrate their proficiency in the use of less-lethal force, and in each of the less-lethal devices that they are issued.
3. Based on operational needs and requirements, an RO may require that officers/agents maintain and demonstrate proficiency with additional less-lethal devices (e.g., FN303, 40mm, etc.).
4. Based on operational needs and requirements an AC may require that Authorized Officers/Agents train with greater frequency (e.g., every three months).
5. ROs shall ensure that all Authorized Officers/Agents participate in training in less-lethal techniques, tactics and devices each training period. Each such training block may include the annual re-certification on a less-lethal device.
6. During each training period, all Authorized Officers/Agents must receive UFCE-approved training on use of force policy.
7. On an annual basis, all Authorized Officers/Agents must receive UFCE-approved training and/or demonstrate proficiency in the following areas:
  - a. OC Spray<sup>5</sup>;
  - b. CSB;
  - c. Other less-lethal devices they are certified to carry;
  - d. Control and arrest techniques;
  - e. Edged weapons defense; and
  - f. Defensive tactics.

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<sup>5</sup> Authorized Officers/Agents who are not certified to carry OC spray must attend OC training (in order to understand the effects and prepare for decontamination) but are not required to take the written test or participate in the skills assessment for OC spray.

8. Managers/supervisors are responsible for planning schedules to ensure that Authorized Officers/Agents are able to participate in required training and qualifications. Officers/agents are responsible for planning their activities to ensure that they participate in required training and qualifications.
9. If an Authorized Officer/Agent is detailed to another duty location and will miss training or qualification at their permanent duty location, the officer/agent shall notify managers/supervisors at the temporary duty location of his or her need to train and qualify during that training period.
10. No portion or stage of any less-lethal qualification course may be waived or altered without written authorization from the Director of UFCE.

### C. Less-Lethal Device Training and Certification

#### 1. Guidelines and Responsibilities

The following guidelines and responsibilities apply to all CBP less-lethal devices, systems and associated equipment. Additional device-specific guidelines are contained in the following subsections.

- a. No Authorized Officer/Agent shall be allowed to carry a less-lethal device until they have successfully completed the UFCE-approved initial course of instruction for such device and have been certified in its use.
  - b. Only CBP-certified instructors shall instruct and certify CBP law enforcement personnel as less-lethal device end users/operators or instructors.
  - c. Only less-lethal devices, systems and associated equipment authorized by UFCE shall be used for training.
  - d. UFCE shall be responsible for development and approval of less-lethal device training materials and certification standards.
  - e. Appropriate safety equipment shall be worn during any less-lethal training.
  - f. UFCE shall be responsible for the periodic review of the field training and usage of less-lethal devices, systems and associated equipment, in order to evaluate compliance with policy and curriculum, as well as to assess their overall safety and effectiveness.
- #### 2. OC Spray and CSB
- a. Successful completion/certification in the use of both OC spray and the CSB is required at the basic training academies.

- b. Upon successful completion of the OC certification course, an Authorized Officer/Agent shall be issued an OC device and a holder. Such items shall be replaced as necessary without cost to the officer/agent.
  - c. Upon successful completion of the CSB certification course, an Authorized Officer/Agent shall be issued a baton and a holder. Such items shall be replaced as necessary without cost to the officer/agent.
3. Electronic Control Weapons (ECWs)
- a. Exposure to an ECW is not required for end user/operator certification.
  - b. End users may opt to participate in exposure training, so long as the training is conducted under the close supervision of CBP-certified ECW instructors and in a controlled manner with appropriate safety equipment.
  - c. The Instructor must obtain a voluntarily-signed waiver/consent from participants before conducting voluntary exposures. If the end user's exposure will be videotaped and used in later training events or training materials, consent must also be obtained for the videotaping and later use.
4. Compressed Air Launchers (e.g., PLS and/or FN303)
- a. Only Authorized Officers/Agents who are trained and certified in the use of OC spray may be trained and certified to use compressed air launchers.
  - b. Exposure to FN303 projectiles (either kinetic impact or PAVA) during training is not permitted.
  - c. Exposure to PLS projectiles is not required for end user/operator certification.
  - d. End users may opt to participate in PLS exposure training, so long as the training is conducted under the close supervision of CBP-certified instructors and in a controlled manner with appropriate safety equipment.
  - e. PLS voluntary kinetic impact exposures shall be conducted as follows: All participating officers and agents shall wear appropriate safety equipment (including a paintball face shield and protection for the throat, groin and hands) and are permitted to wear additional protective equipment (such as arm and leg protection and/or CBP-issued body armor) at their discretion. The PLS instructor will launch 1 kinetic impact projectile at the male officer's/agent's chest or a female officer's/agent's thigh from a distance of 20 feet.

5. Munition Launcher (e.g., 40mm) and LLSI-CM
  - a. Only Authorized Officers/Agents who are trained and certified in the use of OC spray may be trained and certified to use munition launchers and LLSI-CM.
  - b. Exposure to Less-Lethal Specialty Impact (LLSI) devices is not permitted.
  - c. Exposure to a Less-Lethal Chemical Munition (LLCM) is not required for end user/operator certification.
  - d. End users may opt to participate in LLCM exposure training, so long as the training is conducted under the close supervision of CBP certified LLSI-CM instructors and in a controlled manner with appropriate safety equipment.

#### D. Failure to Qualify and Remedial Training

1. Authorized Officers/Agents who are unable to demonstrate an acceptable level of proficiency with any firearm or less-lethal device shall have their authority to carry that firearm or less-lethal device suspended.
  - a. The Authorized Officer/Agent shall immediately relinquish the firearm or less-lethal device to the instructor.
  - b. The officer/agent will be provided with a record of the transfer of such item(s).
2. Following a failure to qualify, the Authorized Officer/Agent shall promptly be scheduled for and attend remedial training with a CBP-certified instructor.
  - a. Remedial training shall be conducted during normal duty hours and begin as soon as practicable after failure to qualify.
  - b. Remedial training shall not exceed two hours per day for up to eight additional hours (as needed to demonstrate proficiency).
3. An Authorized Officer/Agent who, after completing remedial firearms training, is unable to demonstrate the required level of proficiency shall:
  - a. Have the removal of his or her CBP-issued firearm recorded in FACTS; and
  - b. Not be assigned to perform duties that require the carrying of a firearm or less-lethal device and may be subject to reassignment or removal.
  - c. If such inability to demonstrate proficiency is for reasons that are beyond the officer's/agent's control, he or she may be reassigned to a position that does not require the carrying of a firearm.

Such reassignment shall not obligate CBP to pay relocation expenses and shall not involve reassignment to a position which has non-competitive promotion potential beyond the position from which the officer/agent is reassigned.

- d. If such inability to demonstrate proficiency is for reasons that reasonably appear to be within the officer's/agent's control, he or she may be removed from employment in accordance with applicable laws, government-wide regulations and CBP policies.
4. In instances where an Authorized Officer/Agent is unable to demonstrate the required level of proficiency with a shoulder-fired weapon or less-lethal device, and the authority to carry such weapon/device is revoked, the officer/agent shall not be assigned to duties that normally require the carrying of such weapon(s)/device(s).

#### E. Unable to Participate

1. Authorized Absences - Authorized Officers/Agents who are unable to participate in qualifications due to an authorized absence shall be excused from such requirement(s) in accordance with the provisions of this subsection.
  - a. An authorized absence must be approved, in writing, by the officer's/agent's RO (or his/her designee), and shall generally be limited to circumstances beyond the officer's/agent's control.
  - b. RO's may, on a case-by-case basis, grant an extension of up to 30 days beyond the last day of the current training period.
2. Officer/Agent on Detail - If an Authorized Officer/Agent is detailed to another duty location and will miss one or more firearms qualification(s) and/or an annual less-lethal device qualification at his or her permanent duty location, the officer/agent shall notify supervisory or management officials at the temporary duty location of his or her need to qualify during that training period.
  - a. If the detailed Authorized Officer/Agent is performing duties that normally require the carrying of a firearm and/or less-lethal device, the RO who is responsible for the officer's/agent's temporary duty location shall make reasonable efforts to provide the means and the opportunity for the officer/agent to qualify during that training period.
  - b. If the detailed Authorized Officer/Agent is performing duties that are routinely performed by officers/agents who do not carry a firearm and/or less-lethal device, the officer may be exempted from the requirement to qualify until he or she returns to his or her permanent duty location.



3. Exemptions to Qualification Requirements - On a case-by-case basis (and consistent with the requirements of the subsections below) an Authorized Officer/Agent may be granted an exemption by the RO to the requirement to participate in firearms qualifications and/or annual less-lethal device qualifications.
  - a. An exemption (not to exceed 270 days) may be granted:
    - (1) Due to a temporary physical condition (e.g., injury, surgery, illness or pregnancy) which affects the officer's/agent's ability to properly utilize a firearm and/or less-lethal device; or
    - (2) Due to circumstances beyond the officer's/agent's control.
  - b. The time period for an exemption begins from the day it is granted by the RO.
  - c. Authorized Officers/Agents requesting a medical exemption must provide their supervisor with a written doctor's recommendation. The recommendation must describe the nature of the disability and the anticipated duration of the disability.
  - d. The authority to grant these exemptions is limited to ROs, and his/her decision regarding the granting of an exemption, and the duration thereof, shall be based on all available relevant information.
    - (1) Such information may include the medical documentation submitted by the officer/agent, records of the officer's/agent's prior firearms and/or less-lethal device qualifications and the recommendations of the Firearms Instructor(s) and/or Less-Lethal Instructor(s) and supervisory personnel.
  - e. Authorized Officers/Agents granted an exemption from qualifying shall receive a written authorization to continue carrying firearm(s) and/or less-lethal device(s).
    - (1) The written notice shall include a specific expiration date of the exemption, and a description of the firearm(s) and/or less-lethal device(s) the officer/agent is authorized to carry.
  - f. An exemption shall not be granted for non-physical conditions or mental trauma related to mental illness deemed by a mental health professional to adversely affect the Authorized Officer's/Agent's judgment regarding the use of force. Such mental disability shall require immediate revocation of authority to carry a firearm and/or less-lethal device.

**F. Exposure to Oleoresin Capsicum (OC) Spray**

One exposure to OC spray shall be required as part of the basic certification course for Authorized Officers/Agents to carry OC.

1. As part of the basic training at the CBP academies, officers/agents shall be exposed as part of the course of instruction.
2. Authorized Officers/Agents who have already completed the basic academy prior to the effective date of this policy, but who have not been exposed to OC, are not required to be exposed but are required to attend the OC re-certification course and participate in less-lethal training.

## Chapter 7: CBP Body Armor

### A. General Guidelines and Responsibilities

1. Authorized Officers/Agents (and other employees as approved) shall be issued personal protective body armor.
  - a. The minimum ballistic threat protection level of new CBP-issued body armor shall be Level IIIA, as certified by and in accordance with the standards of, the National Institute of Justice (NIJ).
  - b. Body armor that has exceeded its expiration date (as listed in FACTS) or become unserviceable shall be replaced (as funds are available).
  - c. Body armor carriers and accessories that become unserviceable shall be replaced (as funds are available).
2. CBP employees who are issued body armor are responsible for the general care, maintenance and safekeeping of body armor in accordance with the requirements of Chapter 8 and the manufacturer's recommendations and ballistic panel labeling.
3. CBP employees who are issued body armor are required to complete mandatory UFCE-approved body armor training.
4. CBP employees changing duty locations or duty assignments within CBP (and whose new position requires/is authorized for body armor) shall retain their assigned body armor.
5. Departing CBP employees (transferring to other agencies, separating, or retiring) shall turn in their body armor to their Body Armor Coordinator (BAC) and complete the appropriate transfer in FACTS.
6. BACs (or other designated personnel who have received training in the characteristics, care, and maintenance of soft body armor) are responsible for coordinating requests for body armor, ensuring that training requirements are met, and conducting inspections and inventory of all body armor as required.
7. BACs should maintain an adequate supply of various sizes of serviceable body armor on hand for use in emergency situations or to replace body armor in a timely manner.
  - a. This supply should not exceed 5% of the total number of employees issued body armor at the duty location. For smaller duty locations (less than 100 officers/agents) up to 5 sets of unissued armor are authorized.

- b. Any unissued body armor in excess of 5% should be transferred/sent to UFCE.
  - c. Body armor held on behalf of CBP employees on leave or detail, or new armor awaiting initial issue, shall not count against the limits outlined in this subsection.
8. Unserviceable body armor shall be transferred/sent to UFCE for processing and destruction.

#### B. Policy on the Wear of Body Armor

1. CBP strongly encourages the use of body armor at all times while performing law enforcement duties.
2. While the wearing of body armor during normal operations is at the discretion of the employee, managers may mandate the wearing of body armor in a limited number of high-risk situations or during activities as specified in subsection 3 below.
3. The wearing of body armor by CBP employees is mandatory during the following activities:
  - a. Firearms training and qualification (after being issued body armor);
  - b. Special response team deployments, when officers/agents are part of an arrest, entry, or perimeter element;
  - c. Execution of high-risk search or arrest warrants, terrorism related or other high-risk operations, and specialty unit operations, as directed by the CBP operational component Assistant Commissioner (AC) or Chief;
  - d. Air and marine operations, as directed by the AC of the Office of Air and Marine (OAM);
  - e. For marine personnel aboard CBP vessels, while conducting vessel boardings or actively engaged in the employment of warning shots and disabling fire;
  - f. Emergency situations, when management determines that there is an immediate threat to the safety of CBP employees (affected employees will be notified that the wearing of body armor is required); and
  - g. When practical, for the transportation, storage or destruction of seized narcotics, currency, or other high-risk or valuable commodities.

4. When CBP employees are required to wear body armor, they will be provided opportunities to rehydrate and remove the body armor when practicable.
5. Authorized Officers/Agents working in an undercover capacity, or in support of an officer/agent working in an undercover capacity, may be exempted from the requirement of wearing body armor if the wearing of the body armor presents a danger of being exposed as a law enforcement officer.
  - a. This exemption pertains to officers/agents who will be working in close proximity to violators who may identify the officer/agent as a law enforcement officer if he or she is wearing body armor.
  - b. In all cases, the exemption must be approved by a supervisor.

#### C. Replacement of CBP-Issued Body Armor

1. CBP employees are responsible for requesting the issuance of replacement body armor, as needed, and for ensuring that their issued armor has not exceeded its designated replacement date (as listed in FACTS).
2. CBP employees issued body armor shall, as soon as practicable, notify their supervisor of the need to replace lost, stolen, worn, damaged, or ill-fitting body armor, should such a need be identified between periodic inspections.
3. Body armor measurements and officer/agent information shall be entered into the FACTS Body Armor Request module by the BAC, where it must be approved by the respective operational component and forwarded to UFCE for processing.
4. Once replacement body armor has been received and issued to the employee, the previously issued armor shall be transferred to the BAC. Unserviceable armor shall be transferred/sent to UFCE for processing and destruction.
5. The Office of Training and Development (OTD) is responsible for the purchase of initial issue body armor for students at the CBP training academies. CBP offices are responsible for funding the purchase of replacement body armor for their respective employees.

#### D. Storage and Accountability for CBP Body Armor

1. Body armor shall be stored in accordance with the requirements of Chapter 8.H.
2. Body armor shall be inventoried/accounted for in accordance with the requirements of Chapter 8.C.
3. Body armor that is lost or stolen shall be reported in accordance with the requirements of Chapter 8.D.

**E. Testing, Acquisition and Disposal**

1. The Director of UFCE is responsible for overseeing all testing and evaluation of CBP body armor. No testing or evaluation of body armor, and associated carriers may be undertaken without the prior consent of the Director of UFCE.
2. The Director of UFCE is responsible for overseeing the acquisition of all CBP-issued body armor. No CBP component or individual officer/agent or employee is authorized to solicit, accept or otherwise acquire body armor outside of authorized CBP equipment procurement and distribution procedures for any CBP purpose or operation without the written consent of the Director of UFCE.
3. All CBP body armor that is no longer required at the field location shall be transferred in FACTS and shipped to UFCE.
4. Field entities are not authorized to dispose of or otherwise remove body armor from CBP inventory.

**F. Personally-Owned Body Armor**

1. CBP employees eligible for CBP-issued body armor may purchase and wear personally-owned Level IIIA body armor.
  - a. The armor must meet current NIJ body armor standards and be maintained and replaced according to the manufacturer's recommendations.
  - b. The Director of UFCE must approve all personally-owned armor worn on duty.
  - c. The Director of UFCE shall maintain a list of NIJ-approved Level IIIA body armor.

## Chapter 8: Accountability for Firearms, Body Armor and Other Use of Force Equipment

### A. General Guidelines and Responsibilities

1. Each Authorized Officer/Agent shall be responsible for the general care, maintenance and safekeeping of CBP-issued firearms, body armor and other use of force equipment.
  - a. Authorized Officers/Agents are expected to exercise good judgment in providing sufficient security for CBP-issued use of force equipment to protect against theft or unauthorized use.
  - b. Authorized Officers/Agents may be subject to disciplinary action if CBP-issued use of force equipment is lost or stolen, and a determination is made that the officer/agent was negligent or used poor judgment in safeguarding that equipment.

### B. The Firearms, Armor and Credentials Tracking System (FACTS)

1. The Firearms, Armor and Credentials Tracking System (FACTS) provides oversight and lifecycle accountability for specified law enforcement assets and equipment (including firearms, body armor, ECWs and munition launchers).
2. All specified law enforcement assets must have accountability and lifecycle data recorded in FACTS, including acquisition, issuance, repair, transfer, loss (if applicable) and destruction.
3. Prior to the separation of an employee from CBP, the immediate supervisor is responsible for ensuring that all assigned assets in FACTS have been turned in to the appropriate coordinator, and that action has been recorded in FACTS.
4. Responsible Officials (ROs), managers and supervisors are responsible for ensuring that the data contained in FACTS is accurate.
5. The Director of UFCE is responsible for providing policy guidance and system oversight of FACTS.
6. Firearms Coordinators (FCOs) must notify UFCE when a FACTS asset undergoes any atypical change of disposition (e.g., use for competition, firearm being held as evidence, etc.).

### C. Inventory of Accountable Assets in FACTS

1. The Director of UFCE shall direct an inventory for all law enforcement assets that are accountable in FACTS at least once per year. Additional periodic inventories may be directed as necessary.
2. Firearms Instructors shall physically verify the serial numbers of all assigned firearms used during demonstrations of proficiency and enter them into FACTS.
3. Authorized Officers/Agents shall physically inventory assigned assets in their possession and record such action as required in FACTS.
4. Supervisors shall physically verify an employee's inventoried property and record such action as required in FACTS.
5. ROs, managers and supervisors are responsible for the accuracy and timeliness of inventories for their organizational components.

### D. Lost or Stolen Firearms, Body Armor and/or Other Equipment in FACTS

1. If a law enforcement asset that is accountable in FACTS is lost or stolen, it shall be reported as follows:
  - a. The employee shall report the loss to a supervisor (within two hours of the discovery of the loss or theft).
  - b. Upon notification of a loss or theft, the supervisor shall:
    - (1) Ensure that the loss or theft is reported immediately through the chain of command, to the Commissioner's Situation Room and to the Joint Intake Center (JIC);
    - (2) Ensure that the make, model and serial number are entered into the National Crime Information Center (NCIC) database (within 24 hours); and
    - (3) Ensure that the accountable officer/agent initiates a loss action in FACTS (within 24 hours).

Detailed instructions for completing this process are outlined in the applicable Standard Operating Procedures, available in the UFCE section of CBPnet Secure.

2. CBP employees must comply with applicable local law enforcement reporting requirements.



3. When a CBP-issued firearm has been lost or stolen the employee shall (so long as the authority to carry a firearm has not been revoked) promptly be provided with:
  - a. A replacement CBP-issued firearm; and
  - b. The opportunity to familiarize himself or herself with the replacement firearm under the supervision of a FI.

The employee shall qualify with the replacement firearm as soon as practicable.

4. Lost or stolen body armor will be replaced as soon as practicable.

#### E. Personal Property Management Oversight Board (PPMOB)

1. The PPMOB should meet within thirty days of receipt of a Report of Survey.
2. UFCE is responsible for documenting the PPMOB findings in FACTS in order to terminate the asset record.

#### F. Requests for Firearms/Assets in FACTS

1. Requests for firearms and/or other assets shall be initiated and approved in FACTS.
  - a. The appropriate FACTS coordinator shall request the asset from UFCE, with the concurrence/approval of the RO or COA.
  - b. Requests for firearms (other than handguns) and/or munition launchers require review/approval by operational component headquarters personnel and the concurrence of the Director of UFCE.

#### G. Transfers of Accountability in FACTS

1. CBP employees shall electronically transfer any FACTS asset via a FACTS Transfer Action.
2. The employee receiving the asset must electronically accept it in FACTS (within three days of receipt).
3. Accountability does not change until the transfer is accepted in the system.
4. All unissued (or pool) firearms and/or other unissued assets that are accountable in FACTS shall be assigned to the appropriate FACTS Coordinator for that office.

## H. Storage of Firearms and Body Armor

1. A safety-locking device (cable lock, trigger lock and/or lock box) shall be issued to all Authorized Officers/Agents and other CBP armed personnel.
2. A safety-locking device (e.g., a cable lock, trigger lock, lock box) shall be used when storing a CBP-issued firearm in a residence, temporary residence or lodging unless the weapon is within the immediate reach of the employee.
  - a. When stored, firearms shall be placed out of plain view and in a location that affords reasonable protection against theft or unauthorized use.
3. Off Duty Storage - CBP firearms and body armor shall not be left unattended in vehicles, vessels, or aircraft unless there is a justified operational need and the storage is approved, in writing, by a supervisor.
  - a. Such approval must be obtained in advance; however the employee is not required to have a copy of the documentation with him/her.
  - b. Due to the possibility of loss or theft, the employee must, at a minimum, lock the vehicle and store the equipment out of plain view.
4. When CBP employees are on extended leave that is expected to exceed ninety days, their CBP-issued firearm(s) and body armor shall be returned to the appropriate FACTS Coordinator until they return to duty.
5. CBP firearms and/or body armor may not be stored in storage units or with commercial storage vendors.
6. Local Stations, Branches and Ports of Entry shall be responsible for the issue, storage, proper care and maintenance of non-issued firearms.
7. All unissued CBP firearms shall be stored in locked firearms storage containers and in accordance with the policies and procedures cited in the *CBP Security Policy and Procedures Handbook* (HB1400-02B), dated August 13, 2009 (available on CBPnet).

## I. Storage of Less-Lethal Devices and Other Use of Force Equipment

The following guidelines and responsibilities apply to all CBP less-lethal devices and other use of force equipment. Additional device-specific guidelines are contained in the following subsections.

1. Responsible CBP supervisory personnel shall ensure that CBP less-lethal devices and other use of force equipment (when not in use) are stored in a limited access location and in a manner consistent with the manufacturer's suggestions for storage.
  2. Local Stations, Branches and Ports of Entry shall be responsible for the issue, storage, proper care and maintenance of CBP less-lethal devices and other use of force equipment.
  3. When storing a CBP-issued less-lethal device or other use of force equipment in a residence, temporary residence or lodging, it shall be stored out of plain view and in a location that affords reasonable protection against theft or unauthorized use.
  4. Off Duty Storage - CBP less-lethal devices and other use of force equipment that is accountable in FACTS shall not be left unattended in vehicles, vessels, or aircraft unless there is a justified operational need.
    - a. Such approval must be obtained in advance; however the employee is not required to have a copy of the documentation with him/her.
    - b. Due to the possibility of loss or theft, the employee must, at a minimum, lock the vehicle and store the equipment out of plain view.
  5. When CBP employees are on extended leave that is expected to exceed ninety days, their CBP-issued less-lethal devices or other use of force equipment shall be returned to the appropriate coordinator until they return to duty.
  6. CBP less-lethal devices or other use of force equipment may not be stored in storage units / with commercial storage vendors.
- J. Storage of Less-Lethal Devices – Device-Specific Guidelines
1. Electronic Control Weapons (ECWs)
    - a. Responsible CBP supervisory personnel shall ensure that ECWs (when not in use) are stored with the batteries in and the cartridges removed.
  2. Compressed Air Launchers
    - a. When left unattended for short periods of time, compressed air launchers must be stored in a locked service vehicle, trunk, or other limited access location or in a secure CBP-issued container.

3. Less-Lethal Specialty Impact - Chemical Munitions (LLSI-CM)
    - a. LLSI-CM shall be stored in a safe and secure area. Requirements for the storage of LLSI-CM will be the same as for ammunition and firearms. The munitions must be stored in a secure room that meets the requirements of the *CBP Security Policy and Procedures Handbook (HB1400-02B)*, dated August 13, 2009 (available on CBPnet).
    - b. A Department of Transportation (DOT) 1.4D explosive placard will be posted on the door of CBP LLSI-CM storage site (contact OTD/UFCE if further guidance is needed).
    - c. When left unattended for short periods of time, LLSI-CM must be stored in a locked service vehicle, trunk, or other limited access location or in a secure CBP-issued container.
  4. Controlled Noise and Light Distraction Devices (CNLDDs)
    - a. All unissued CBP CNLDDs shall be stored in locked storage containers and in accordance with the policies and procedures cited in the *CBP Security Policy and Procedures Handbook (HB1400-02B)*, dated August 13, 2009 (available on CBPnet) and/or in accordance with Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) guidelines (see e.g., ATF Ruling 2009-3 and ATF Publication 5400.7).
    - b. Annual inventories of CNLDDs will be conducted, and any lost, stolen or missing CNLDDs will be noted and forwarded to appropriate supervisory personnel.
    - c. CNLDDs shall not be stored in residences, vehicles, vessels, or aircraft overnight (or equivalent) unless there is a justified operational purpose and it is approved, in writing, by a supervisor.
      - (1) Such approval must be obtained in advance; however the employee is not required to have a copy of the documentation with him/her.
      - (2) To receive approval for storage of a CNLDD under this subsection it must be able to be secured in a residence or to a vehicle, vessel, or aircraft by locked chain, cable, or CBP-approved safety-locking device and concealed from view.
- K. Unissued Firearms
1. The maximum allowable number of unissued firearms for each type of handgun is limited to 5% of the number of officers/agents at the duty location. For smaller duty locations (less than 100 officers/agents) up to 5 unissued handguns are authorized.

2. The number of handguns authorized to be retained in reserve as unissued by the Director of UFCE shall be 10% of the total number of Authorized Officers/Agents.
3. The maximum allowable number of each type of Shoulder Fired Weapon (SFW) is limited to 105% of the number of Authorized Officers/Agents at the duty location.
4. The number of SFWs authorized to be retained in reserve as unissued by the Director of UFCE shall be 5% of the total number of Authorized Officers/Agents.
5. Firearms held on behalf of officers/agents on leave or detail, for repair, or for use in training or ceremonial duties shall not count against the limits outlined in this subsection.
6. For special weapons in support of specific missions, the type, number, and deployment shall be determined by the appropriate RO with the written concurrence of the AC of the operational component.

#### L. Non-Standard Firearms

1. The AC of the respective operational component may, with concurrence of the Director of UFCE, approve requests from an RO for a non-standard firearm.
2. Requests for authorization to carry non-standard firearms must be submitted through FACTS for approval by the RO and the Director of UFCE. Specific mission needs must be addressed in the form.
3. Authorizations are valid for the time period specified, or until revoked by the RO or the Director of UFCE.
4. Non-standard firearms shall be transferred, stored, inventoried and accounted for in accordance with the requirements of this chapter.
5. Responsible supervisory personnel shall ensure that the CBP employees using non-standard firearm(s) have qualified with the firearm(s) in accordance with this policy.

#### M. Acquisition, External Transfer or Destruction of FACTS Assets

1. UFCE is the only authorized entry and exit point for all CBP firearms, less-lethal devices, and other use of force equipment that is accountable in FACTS.
2. No entity outside of UFCE is approved to loan or transfer CBP firearms, less-lethal devices, or other use of force equipment that is accountable in FACTS to another agency or to individuals within another agency without the written approval of the Director of UFCE.

## Chapter 9: Inspection, Maintenance and Repair

### A. Inspection of CBP Firearms

1. UFCE shall receive and inspect ALL newly acquired firearms to ensure proper functioning and compliance with CBP specifications and standards.
2. A CBP Field Armorer (FA) or Firearms Instructor (FI) shall inspect all CBP-issued firearms during qualification periods to ensure safe and proper functioning.
3. Only UFCE-authorized optics, lights and slings may be mounted on a CBP-issued firearm. A list of authorized optics, lights and slings may be found on the UFCE Authorized Equipment List.
4. UFCE has the authority to recall and/or inspect any CBP-issued firearm as necessary.

### B. Maintenance of CBP Firearms

1. All armed CBP employees are responsible for normal cleaning and preventive maintenance of their CBP-issued firearms. During normal training operations, firearms shall be cleaned as soon as practicable after being fired.
2. FIs shall provide Authorized Officers/Agents with training regarding proper care, maintenance, and inspection procedures. This training shall be incorporated into the training curriculum each training period.
3. Authorized Officers/Agents shall be provided with sufficient materials and sufficient duty time (consistent with operational needs) to clean their CBP-issued weapons. A failure to perform normal cleaning and preventative maintenance may result in disciplinary action.
4. Maintenance should only be done in accordance with the instructions provided by UFCE or as described in the operator manuals for that particular firearm. Operator manuals shall be made available to all employees for each of their CBP-issued firearms.
5. FIs shall ensure that all unissued or pool weapons used in training, practice, or qualification sessions are cleaned and preventive maintenance performed prior to returning the weapon to storage.

**NOTE: Firearms should not be cleaned if they have been involved in a reportable use of force, or in an unintentional discharge where a malfunction is suspected.**

### C. Repair of CBP Firearms

1. CBP employees (except those certified and designated as FAs) are prohibited from making any repairs, adjustments and/or modifications to CBP-issued firearms unless expressly authorized by the Director of UFCE.
2. CBP-certified FAs are authorized to make certain repairs and/or modifications, as provided in FA training, and subsequent UFCE-directed repairs and/or modifications.
3. Firearms requiring repairs beyond FA authorization shall be transferred and shipped to UFCE in accordance with the procedures outlined in the UFCE Standard Operating Procedures (available on CBPnet Secure).

### D. Inspection of CBP Less-Lethal Devices or Other Use of Force Equipment

1. UFCE shall receive and inspect ALL newly acquired CBP use of force equipment that is accountable in FACTS to ensure proper functioning and compliance with CBP specifications and standards.
2. Less-Lethal Instructors (LLIs) shall inspect all less-lethal devices annually.
3. If CBP use of force equipment that is accountable in FACTS becomes damaged or nonfunctional, it shall be transferred and shipped to UFCE in accordance with the procedures outlined in the UFCE Standard Operating Procedures (available on CBPnet Secure).
4. UFCE has the authority to recall and/or inspect any CBP less-lethal device or other use of force equipment that is accountable in FACTS as necessary.

### E. Maintenance of CBP Less-Lethal Devices or Other Use of Force Equipment

1. All CBP employees are responsible for normal cleaning and preventive maintenance of their CBP-issued less-lethal devices and equipment.
2. LLIs shall provide Authorized Officers/Agents with training regarding proper care, maintenance, and inspection procedures. This training shall be incorporated into the training curriculum each training period.
3. Authorized Officers/Agents shall be provided with sufficient materials and sufficient duty time (consistent with operational needs) to clean their devices. A failure to perform normal cleaning and preventative maintenance may result in disciplinary action.
4. Maintenance should only be done in accordance with the instructions provided by UFCE or as described in the operator manuals for that particular device.

5. LLIs shall ensure that all unissued or pool devices used in training, practice, or qualification sessions are cleaned and preventive maintenance performed prior to returning the devices to storage.

#### F. Repair of CBP Less-Lethal Devices or Other Use of Force Equipment

1. CBP employees (except those certified and designated as armorers for a particular less-lethal device) are prohibited from making any repairs, adjustments and/or modifications to CBP-issued less-lethal devices or other use of force equipment unless expressly authorized by the Director of UFCE.
2. If CBP use of force equipment that is accountable in FACTS requires repairs beyond armorer authorization it shall be transferred and shipped to UFCE in accordance with the procedures outlined in the UFCE Standard Operating Procedures (available on CBPnet Secure).

#### G. Shipping of Firearms or Other Use of Force Equipment

1. The appropriate field coordinator is responsible for shipping and receiving all CBP firearms or other use of force equipment that is accountable in FACTS that is assigned within their area of responsibility.
2. The shipment of any CBP firearm or other use of force equipment shall be done in accordance with UFCE Standard Operating Procedures (available in the UFCE section of CBPnet Secure) and sent by a carrier that can control and track secure packages.
3. All handguns shall be shipped next day air. Long guns, body armor and less-lethal devices may be shipped by ground. Contents shall not be identified on the outside of the box.

#### H. Replacement of CBP Firearms or Other Use of Force Equipment

1. CBP employees shall immediately notify a FI, LLI or appropriate coordinator when any CBP-issued firearm or other use of force equipment becomes inoperable or appears to be unsafe to use. Based on the inspection (and availability) a replacement shall be issued.
2. Body armor shall be replaced in accordance with the requirements of Chapter 7.
3. Coordinators shall return any inoperable or unsafe firearm or other use of force equipment that is accountable in FACTS to UFCE via the procedures outlined in the UFCE Standard Operating Procedures (available on CBPnet Secure).



## Chapter 10: CBP-Issued/Approved Ammunition

### A. Ammunition Procurement and Use

1. Only CBP-issued/approved ammunition shall be used in CBP-issued firearms.
2. All CBP-issued ammunition shall be new, commercially manufactured and procured through authorized procurement channels.
3. UFCE is responsible for the research, development, testing and evaluation of all ammunition within CBP.
4. A list of authorized brands and types of ammunition shall be compiled by UFCE. This list shall be updated as necessary and made available to the field by UFCE.
5. Purchase Card acquisition of ammunition must be approved in writing by the Director of UFCE.

### B. Special Ammunition Requests

Requests for any specialized ammunition not listed on the approved ammunition list must be submitted in writing through the respective chain of command to the Director of UFCE for approval.

### C. Ammunition Issue

1. Replacement ammunition for duty carry shall be issued (as needed) after each firearms qualification session.
2. In addition to the handgun ammunition necessary for duty carry and official qualifications, operational component ACs may authorize the issue of handgun proficiency ammunition to each Authorized Officer/Agent upon request, contingent on the availability of funds.
  - a. The sale of CBP-issued ammunition by individual employees is prohibited.
  - b. CBP employees shall expend proficiency ammunition in accordance with all applicable laws, ordinances and policies.

### D. Ammunition Storage

1. Unissued ammunition shall be stored in a secure room with limited access and in accordance with the policies and procedures cited in the *CBP Security Policy and Procedures Handbook* (HB1400-02B), dated August 13, 2009 (available on CBPnet).

2. CBP employees are personally responsible for all CBP ammunition issued to them and must take reasonable measures to ensure its safe storage and general care in accordance with this policy.

#### E. Ammunition Inventory

1. All locations should have an inventory of ammunition on hand sufficient to conduct training, qualifications and operations. On an annual basis, CBP operational components should anticipate the need for:
  - a. 800 rounds of handgun ammunition per armed CBP employee;
  - b. 400 rounds of rifle ammunition per armed CBP employee; and
  - c. 200 rounds of shotgun ammunition per armed CBP employee.
2. As the inventory of ammunition changes, that change shall be accounted for and records maintained.
3. Responsible supervisory personnel shall ensure that ammunition inventory is, at a minimum, recorded in in the Firearms, Armor and Credentials Tracking System (FACTS) on a monthly basis.
4. The RO (or his or her designee) shall conduct an annual audit for each CBP location. Records of these audits shall be maintained locally for a period of no less than five years.

#### F. Emergency Situations

In threatening, emergent situations, Authorized Officers/Agents are authorized to use any ammunition available.

However, this statement does not authorize the general carrying of ammunition for duty that is not specified on the UFCE Authorized Equipment List (or specifically approved by the Director of UFCE).

## Chapter 11: Use of Force Instructors and Range Operations

### A. Firearms Coordinator (FCO)

1. Each RO shall designate a FCO. The FCO shall perform the following functions as required:
  - a. Manage the overall firearms and use of force program within his or her area of responsibility;
  - b. Schedule and direct the other FIs and Range Safety Officers (RSOs);
  - c. Ensure that all qualification scores are recorded in FACTS;
  - d. Maintain sufficient quantities of supplies to conduct the firearms program;
  - e. Oversee the shipment, receipt, transfer and issuance of firearms at the location they are assigned within the Firearms, Armor and Credentials Tracking System (FACTS) and conduct periodic physical inventories of weapons, ammunition and related equipment and verify the results in the system;
  - f. Coordinate the scheduling of officers/agents to participate in the required firearms qualifications and all applicable training, including use of force, tactical exercises and other required training; and
  - g. Make final determinations regarding proficiency, consistent with the provisions and requirements of this policy.

### B. Firearms Instructors (FIs)

1. Each RO shall designate Authorized Officers/Agents to perform full-time or collateral duties as a FI.
2. The Director of UFCE shall establish the criteria for the selection and certification of an FI. The Director of UFCE shall maintain a record of all certified FIs.
3. All FIs must have successfully completed a UFCE-approved Firearms Instructor Training Program (FITP). FIs must be able to cross-train other CBP operational components.
4. FIs are required to be re-certified at least once every three years through a re-certification program approved by the Director of UFCE. On a case-by-case basis, an extension of one year may be approved by the Director of UFCE.

- a. For Authorized Officers/Agents who are assigned to instructional duties as a FI at a CBP academy (either full time or on an extended detail), the three year time frame for recertification begins once they leave or their detail ends.
5. All FIs must participate as an instructor in (and record at least one qualification score in FACTS for) at least one qualification event per year to maintain certification.
6. All FIs must complete an annual training update, which will address any updates to training, tactics, policy and/or equipment.
7. During firearms training, practice or qualification sessions, FIs are responsible for taking all reasonable steps to ensure the safety and security of all personnel and property. They are authorized to remove any person from the range who refuses to comply with safety instructions or otherwise would pose a safety risk.

#### C. Range Safety Officers (RSOs)

1. Range Safety Officers (RSOs) are utilized to augment safety requirements on a range during authorized firearms training. They are trained locally using a prescribed program authorized by the Director of UFCE and administered by a FI.
2. Once they complete the program requirements they can act as safety officers during established qualification and familiarization courses of fire.
3. RSOs do not carry any firearms instructor certification and therefore cannot take the place of certified FIs. A certified FI is required to conduct any and all training that utilizes RSOs.

#### D. Primary Less-Lethal Instructor (PLLI)

1. Each RO shall designate a PLLI. The PLLI shall perform the following functions as required:
  - a. Manage the less-lethal training program within his or her area of responsibility;
  - b. Schedule and direct the other LLIs and Less-Lethal Training Safety Officers (LLTSOs);
  - c. Ensure that less-lethal qualifications and training are input into FACTS;
  - d. Maintain sufficient quantities of supplies to conduct the less-lethal program;

- e. Oversee the shipment, receipt, transfer and issuance of less-lethal devices at the location they are assigned and conduct periodic physical inventories of weapons, ammunition and related equipment and verify the results in the system;
- f. Coordinate the scheduling of officers/agents to participate in the required qualifications and all applicable training, including use of force, tactical exercises and other required training; and
- g. Make final determinations regarding proficiency, consistent with the provisions and requirements of this policy.

#### E. Less-Lethal Instructors (LLIs)

1. Each RO shall designate Authorized Officers/Agents to perform full-time or collateral duties as a LLI.
2. The Director of UFCE shall establish the criteria for the selection, certification and re-certification of LLIs. Such criteria must be reasonable and fairly applied in all selection, certification and re-certification actions. The Director of UFCE shall maintain a record of all certified LLIs.
3. LLIs are required to be re-certified at least once every three years through a re-certification program approved by the Director of UFCE. On a case-by-case basis, an extension of one year may be approved by the Director of UFCE.
  - a. For Authorized Officers/Agents who are assigned to instructional duties as a LLI at a CBP academy (either full time or on an extended detail), the three year time frame for recertification begins once they leave or their detail ends.
4. All LLIs must participate as an instructor in (and update at least one training record in FACTS for) at least one training class per year to maintain certification.
5. All LLIs must complete an annual training update, which will address any updates to training, tactics, policy and/or equipment.
6. During less-lethal training, practice or certification sessions, LLIs are responsible for taking all reasonable steps to ensure the safety and security of all personnel and property. LLIs are authorized to remove any person from the training area who refuses to comply with safety instructions or otherwise would pose a safety risk.

#### F. Less-Lethal Training Safety Officers (LLTSOs)

1. Less-Lethal Training Safety Officers (LLTSOs) are utilized to augment safety requirements during authorized less-lethal training. They are trained locally using a prescribed program authorized by the Director of UFCE and administered by a LLI.
2. Once they complete the program requirements they can act as safety officers during less-lethal training and qualification.
3. LLTSOs do not carry any less-lethal instructor certification and therefore cannot take the place of certified LLIs. A certified LLI is required to conduct any and all training that utilizes LLTSOs.

#### G. Range Operations and Safety

1. All personnel participating in firearms qualifications shall conduct themselves in a safe and professional manner at all times. Any employee who observes a dangerous or unsafe condition while on the range should immediately call "CEASE FIRE" in a voice that can be heard by all shooters.
2. When conducting firearms training, the FI has the absolute and final authority on matters of range operation and safety.
3. FIs shall remove from the range any person who fails to comply with safety practices, procedures or instructions.
4. Prior to commencing range activities, FIs shall ensure that the following minimum safety precautions are adhered to:
  - a. An emergency transport vehicle is designated;
  - b. A telephone, a wireless telephone, and/or radio is available;
  - c. Emergency numbers are available;
  - d. A first aid trauma kit is available; and
  - e. A Standard Operating Procedure (SOP) is in place for the possibility of injuries. This SOP should be designed for the specific range location and shall include the location of appropriate medical facilities and access to local Emergency Medical Services (EMS).
5. FIs shall ensure that all personnel on or near the firing line use appropriate eye and hearing protection.
  - a. Eye protection shall cover the front and sides of the eyes.

- b. Hearing protection shall be both inner ear plugs and outer ear protection of a hard shell design. Such protective devices shall be available to all employees at the firearms range.
6. When participating in firearms qualifications, Authorized Officers/Agents shall wear their normal duty uniform and equipment (as determined by the RO, or his or her designee).
7. During qualification and structured training, CBP employees shall use only CBP-issued weapons.
8. CBP employees shall qualify with their assigned CBP weapons. If a weapon malfunctions during qualification and cannot be repaired on-site, the employee may qualify with a different weapon of identical make and model (if available).
9. FIs shall manually inventory weapons used during qualification and ensure that officers/agents qualify with their assigned weapons. The FI shall ensure that the inventory and qualification scores are properly entered in FACTS.
10. The minimum ratios of FIs/RSOs to shooters on the firing line are:
  - a. For practice and demonstration of firearms proficiency sessions, one FI/RSO per every six shooters; and
  - b. For tactical firearms training exercises, one FI per every two shooters during static shooting and one FI for each shooter during dynamic movement shooting.

## Appendix I: Acknowledgement of Receipt of CBP Use of Force Policy, Guidelines and Procedures Handbook

As a CBP Officer or Agent who is authorized to carry a firearm and less-lethal device(s), you are required to comply with and be thoroughly familiar with all aspects of the *CBP Use of Force Policy, Guidelines and Procedures Handbook*. You have been provided a complete copy of the *Handbook* and the opportunity to discuss the contents with your supervisor or other management officials. Due to the critical nature of certain aspects of the *Handbook*, your attention is particularly directed to the following:

Part I: Policy on the Use of Force By CBP Officers and Agents – This section addresses DHS and CBP policy regarding the use of force.

Part II, Chapter 1: Authorized Officers/Agents and the Authority to Carry Firearms – This section specifically addresses the requirements for an Authorized Officer/Agent to carry a firearm and the circumstances under which a firearm may be carried.

Part II, Chapter 3: Guidelines and Procedures Following the Use of Deadly Force – This section provides guidelines and procedures on the specific actions that shall be taken in the event that an incident involving the use of deadly force occurs.

Part II, Chapter 4: Guidelines and Procedures on the Use of Less-Lethal Force – This section provides guidelines and procedures on the use of the use of less-lethal force, including the specific actions that shall be taken in the event that an incident involving the use of less-lethal force occurs.

Part II, Chapter 6: Use of Force Proficiency and Training – This section addresses training requirements and the requirements to maintain firearm and less-lethal device certification.

**By signing this statement, you acknowledge that you have read, understand, and agree to comply with all parts and chapters of the *CBP Use of Force Policy, Guidelines and Procedures Handbook*.**

_____	_____	_____
Officer's/Agent's Name (Printed)	Officer's/Agent's Signature	Date

\_\_\_\_\_

Officer's/Agent's Duty Location

_____	_____	_____
Supervisor's Name (Printed)	Supervisor's Signature	Date

This signed acknowledgment shall be included in the employee's local personnel file.



## Appendix II: DHS Policy on the Use of Deadly Force

*Secretary*


U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

July 1, 2004

MEMORANDUM FOR: Deputy Secretary  
Under Secretaries  
Director, U.S. Secret Service  
Commandant, U.S. Coast Guard  
Assistant Secretary, ICE  
Commissioner, CBP  
Acting Administrator, TSA

FROM: Tom Ridge 

SUBJECT: Use of Deadly Force Policy

Attached is the Department of Homeland Security (DHS) Use of Deadly Force Policy which I issued today. The policy, applicable to all DHS law enforcement officers and agents, is intended to provide the standard for all DHS components. Officials and supervisors should take appropriate steps to ensure that pre-existing use of force policies comply with this new standard and incorporate its core principles.

The following Use of Deadly Force Policy was developed by a Task Force comprised of DHS headquarters and component representatives to unify to the extent feasible and practicable existing DHS agency policies. The resulting umbrella policy reflects the components' different law enforcement missions and activities, and permits the agencies to adopt more detailed operational guidance with DHS approval.

DEPARTMENT OF HOMELAND SECURITY POLICY ON THE  
USE OF DEADLY FORCE

June 25, 2004

By virtue of the authority vested in the Secretary of the Department of Homeland Security, including the authority vested by 6 U.S.C. §112(a), I hereby establish a Department of Homeland Security policy on the use of deadly force for law enforcement. The policy set forth herein is intended to set uniform standards and provide broad guidelines for the use of force by law enforcement officers and agents of the Department of Homeland Security performing law enforcement missions. The provisions of this Order apply to all law enforcement officers and agents of the Department of Homeland Security.

I. GENERAL PRINCIPLES

Law enforcement officers and agents of the Department of Homeland Security may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

A. Fleeing subjects. Deadly force may not be used solely to prevent the escape of a fleeing suspect.

B. Firearms may not be fired solely to disable moving vehicles, vessels, aircraft, and other conveyances, except as follows:

1. United States Secret Service agents and officers, in exercising the United States Secret Service's protective responsibilities, may discharge firearms to disable moving vehicles, vessels, and other conveyances. United States Secret Service agents and officers may discharge firearms to disable aircraft in flight, only if the use of deadly force against the occupants of the aircraft would be authorized under this policy.

2. U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and U.S. Coast Guard law enforcement officers and agents, when conducting maritime law enforcement, may fire firearms to disable moving vessels or other conveyances.

C. If feasible and if to do so would not increase the danger to the officer or others, a warning to submit to the authority of the officer shall be given prior to the use of deadly force.

D. Warning shots are not permitted, except as follows:

1. Warning shots may be used by United States Secret Service agents and officers in exercising the United States Secret Service's protective responsibilities.

2. Warning shots may be used by U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and U.S. Coast Guard law enforcement officers and agents when conducting maritime law enforcement only as a signal to a vessel to stop.

3. Warning shots may be used by U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and U.S. Coast Guard law enforcement officers and agents when conducting aviation law enforcement operations only as a signal to an aircraft to change course and follow direction to leave airspace.

E. Officers will be trained in alternative methods and tactics for handling resisting subjects which must be used when the use of deadly force is not authorized by this policy.

## II. GUIDELINES

A. Homeland Security Directorates and Agencies shall, to the extent necessary, supplement this policy with policy statements or guidance consistent with this policy. Such policy statements shall be subject to review and approval by appropriate departmental offices, including the Office of General Counsel, to ensure consistency with law and departmental standards and policies.

B. The respective Homeland Security Directorate Under Secretaries, the Commandant of the United States Coast Guard, and the Director of the United States Secret Service shall approve guidelines for weaponless control techniques, intermediate weapons, and firearms or lethal weapons with non-lethal munitions, in accordance with this policy and that directorate's or agency's unique law enforcement mission, training, and equipment.

## III. MILITARY ACTIVITIES

This policy shall not apply to the United States Coast Guard when engaged in warfighting, the military defense of the United States, or other military activities where Standing Rules of Engagement apply or to other operations at sea addressed by other policies or direction.

## IV. SAVINGS

To the extent agency and component policies and procedures in place prior to the creation of the Department of Homeland Security are consistent with this policy, they remain in full force and effect unless otherwise revoked or modified.

## V. APPLICATION OF THE POLICY

This Policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

A handwritten signature in black ink that reads "Tom Ridge" with a long horizontal line extending to the right from the end of the name.

Tom Ridge

## Appendix III: DHS Commitment to Nondiscriminatory Law Enforcement and Screening Activities

Secretary


U.S. Department of Homeland Security  
Washington, DC 20528



Homeland  
Security

April 26, 2013

### MEMORANDUM FOR COMPONENT HEADS

FROM: Secretary Napolitano 

Subject: The Department of Homeland Security's Commitment to Nondiscriminatory Law Enforcement and Screening Activities

The Department of Homeland Security's mission is to ensure that the Nation remains a safe, secure, resilient place where the American way of life can thrive. As former Secretary Ridge explained in the predecessor to this policy, "In all we do to secure America, our strategies and our actions must be consistent with the individual rights and civil liberties protected by the Constitution and the rule of law."

The Department of Homeland Security's policy is to prohibit the consideration of race or ethnicity in our investigation, screening, and enforcement activities in all but the most exceptional instances. The following is the Department's official policy on this issue:

*"Racial profiling" is the invidious use of race or ethnicity as a criterion in conducting stops, searches, and other law enforcement, investigation, or screening activities. It is premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity. The Department of Homeland Security (DHS) has explicitly adopted the Department of Justice's "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," issued in June 2003. It is the policy of DHS to prohibit the consideration of race or ethnicity in our daily law enforcement and screening activities in all but the most exceptional instances, as defined in the DOJ Guidance. DHS personnel may use race or ethnicity only when a compelling governmental interest is present, and only in a way narrowly tailored to meet that compelling interest. Of course, race- or ethnicity-based information that is specific to particular suspects or incidents, or ongoing criminal activities, schemes or enterprises, may be considered, as stated in the DOJ Guidance.*

*Except as noted below, it is DHS policy, although not required by the Constitution, that tools, policies, directives, and rules in law enforcement and security settings that consider, as an investigative or screening criterion, an individual's simple connection to a particular country, by birth or citizenship, should be reserved for situations in which such consideration is based on an assessment of intelligence and risk, and in which alternatives do not meet security needs, and*

*such consideration should remain in place only as long as necessary. These self-imposed limits, however, do not apply to antiterrorism, immigration, or customs activities in which nationality is expressly relevant to the administration or enforcement of a statute, regulation, or executive order, or in individualized discretionary use of nationality as a screening, investigation, or enforcement factor).*

All Components should include the DHS policy stated above in all manuals, policies, directives, and guidelines regarding any activity in which the use of race, ethnicity, or nationality may arise as a security screening, enforcement, or investigative criterion. Each Component, in coordination with the Department's Office for Civil Rights and Civil Liberties, should implement Component-specific policy and procedures to implement this guidance for law enforcement, investigation, and security activities. Moreover, all Components should ensure that all law enforcement personnel, including supervisors and managers, are trained to the standards set forth in the DOJ Guidance and the DHS policy stated above, and are held accountable for meeting those standards.

## Appendix IV: Reporting Significant Incidents to the Commissioner's Situation Room – CBP Memorandum 3340-025D

**ORIGINATING OFFICE:** OIOC

**DISTRIBUTION:** S-01

**CBP DIRECTIVE NO:** 3340-025D

**DATE:** September 30, 2010

**SUPERSEDES:** 3340-025C, 01/28/05

**REVIEW DATE:** September 30, 2013

**SUBJECT:** Reporting Significant Incidents to the Commissioner's Situation Room

### 1 PURPOSE

- 1.1 To establish U.S. Customs and Border Protection's (CBP) policy for the timely reporting of significant incidents, terrorist related events, and significant emerging issues.

### 2 AUTHORITY

- 2.1 The authority regulating the issuance of this Directive is derived from the original memorandum dated October 30, 1998, FILE: MAN-1 OI: ICD KKQ, establishing the Commissioner's Situation Room (Situation Room).

### 3 SCOPE/DEFINITION

- 3.1 The scope of this directive is CBP wide and is to be used by all CBP operational components and offices.
- 3.1.1 For the purposes of this directive, CBP operational components will be defined as Office of Air and Marine, Office of Border Patrol and Office of Field Operations. Offices will be defined as offices that play a mission support role to the operational components and include the following and any successors: Office of the Commissioner, Office of Chief Counsel, Office of Human Resources Management, Office of International Trade, Office of Congressional Affairs, Office of Public Affairs, Office of Administration, Office of Information and Technology, Office of Training and Development, Office of Internal Affairs, and the Office of Intelligence and Operations Coordination.
- 3.2 The Situation Room is located in CBP Headquarters and is a 24 hours a day, 7 days a week incident notification and information coordination center. The Situation Room is the primary point of contact for significant incident reporting from all CBP operational components and offices, including ports of entry, sectors, stations, air and marine branches, international offices and CBP Headquarters.
- 3.3 The Situation Room collects all CBP component and offices' reports to provide complete, accurate, and timely reporting to the Commissioner, Deputy Commissioner and CBP senior management.

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- 3.4 The Situation Room provides connectivity to the Department of Homeland Security's (DHS) National Operations Center (NOC) and other agencies on significant CBP events. The Situation Room serves as an information coordination center during times of national incidents, such as disaster management, emergency management or international events that require CBP support. The Situation Room also acts as the primary point of contact to receive and coordinate responses to DHS NOC requests for operational information.
- 3.5 Reporting to and from the Situation Room is not limited to incidents outlined in this directive.

**4 REPORTING PROCEDURE**

- 4.1 Proper notification is essential to ensure the Commissioner, Deputy Commissioner and CBP Senior management are accurately informed of significant incidents on a timely basis.
- 4.2 Reporting information to the Situation Room applies to all CBP personnel both assigned to locations within the Continental United States (CONUS) and Outside the Continental United States (OCONUS).
- 4.3 Immediate telephonic notification to the Situation Room is required for all CBP events related to:
- terrorism (See section 7.3 for guidance),
  - on-duty or off-duty death and/or serious injury of any CBP employee,
  - change in the threat posture at or between the ports of entry, and/or
  - death, serious injury, or escape of an individual which was caused by the actions of CBP personnel, on or off-duty, or occurred while the individual was detained in CBP custody (including suicide attempts).

Written notification to the Situation Room is required immediately thereafter.

- 4.3.1 All other incident notifications must be telephonically reported to the Situation Room within two (2) hours of occurrence, followed by written notification within four (4) hours by a CBP Supervisor or Manager via the Significant Incident Report (SIR) module. The link for the SIR module is located on the CBPnet home page at:  
<http://cbpnet/xp/cbpnet/home.xml>

If there are connectivity issues with the SIR module or questions, contact the Situation Room at the numbers provided below for guidance.

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- 4.3.2 Situation Room contact information is below:
- Telephone numbers to file a SIR are:
    - (877) 748-7666
    - (202) 344-3920 (OBP Primary)
    - (202) 344-3910 (OFO Primary)
  - Senior Watch Officer telephone numbers are (202) 344-3926 or (202) 344-3924
  - Fax number is (202) 344-3930
  - Email address is [Sitroom@cbp.dhs.gov](mailto:Sitroom@cbp.dhs.gov)
- 4.4 Initial reports should include as much concise detail as available to describe the incident that is being reported. This information should include relevant facts including: location of incident, time of incident, individuals involved, actions taken, impact on CBP operations, and the possibility of media attention.
- 4.4.1 Each reportable incident will be accompanied where possible by a GPS coordinate in latitude and longitude format of degrees/minutes/seconds indicating the exact location of the incident geographically. For example, at and between the ports of entry, the GPS should reflect the actual physical location where the incident occurred (e.g., lane three on bridge two at a port of entry, or lane one at a Border Patrol checkpoint), not a single GPS for the entire facility. Where applicable, this reporting shall be in a format consistent with existing geo-tracking capabilities utilized operational components.
- 4.5 Initial notifications should not be delayed for details, since additional information can be provided in subsequent updates as needed.
- 4.6 Additional information should be forwarded in updates after the initial notification until the situation is resolved, stabilized, or under control.
- 4.7 Once the situation is closed out, resolved or normal operations are restored, the Situation Room should be advised by telephone, and the original written report submitted with a final written update.
- 5 WRITTEN RESPONSE**
- 5.1 Attached is a template detailing the information and narrative expected in the written Significant Incident Report (SIR).
- 6 RESPONSIBILITIES**
- 6.1 All Assistant Commissioners, Chief of the Border Patrol and the Chief Counsel, through their respective executive staffs, are responsible for ensuring that their Office and all CBP operational components notify the Situation Room in a timely manner as specified in this directive.

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- 6.2 In conjunction with this directive, it is the responsibility of the reporting office to determine if any incident, event, or information is reportable to the Situation Room. The reporting office will include those organizations where CBP manpower is allocated to non-CBP organizations (i.e. Joint Terrorism Task Force, Interpol, etc.) whether within CONUS or OCONUS.
- 6.3 The specific responsibility to telephonically notify and provide written follow-up to the Situation Room rests with the on-duty supervisor. In the absence of an on-duty supervisor, the assigned lead agent/officer is responsible.

**7 REPORTABLE INCIDENTS**

- 7.1 The Situation Room can and will provide policy clarification and guidance as requested, however, the decision to make a notification rests with the CBP supervisors/managers responsible for the area where the incident occurred.
- 7.1.1 All CBP personnel both assigned to locations within CONUS or OCONUS must notify the Situation Room as outlined above of any situation that may create significant international media attention.
- 7.2 While it is difficult to provide an all-inclusive list of the types of incidents, events, or issues that could be encountered and should be reported, the following types of significant incidents require a SIR be reported to the Situation Room:
- 7.3 **Terrorist Related Events**
- 7.3.1 The arrest, detention, parole, deferred inspection or determination of inadmissibility by CBP personnel of any subject with a terrorist related record or suspected ties to terrorism in the operational components or as outlined in Section 7. This reporting requirement supersedes Section 7.3.1 of CBP Directive No: 3340-021 B titled, "Responding to Potential Terrorists Seeking Entry Into the United States", dated September 7, 2006.
- 7.3.1.1 CBP operational components should file a SIR on encounters with known or suspected terrorists when the subject encountered is a non-resident alien AND is a positive match to a terrorist watchlist record for example, the Terrorist Screening Database (TSDB), OR if routine enforcement activities disclose information potentially related to terrorism even if no watchlist record exists.
- 7.3.1.2 CBP operational components are not required to file a SIR on encounters with known or suspected terrorists when the subject encountered:
- is a U.S. citizen, National of the U.S. or Lawful Permanent Resident, AND
    - is a positive match to a watchlist record (i.e., TSDB),
- UNLESS--

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- adverse action (*i.e.* arrest) and/or parole or deferred inspection of the individual is taken and/or the secondary examination of that individual did reveal additional potentially related terrorism information.
- 7.3.2 Any bomb threat or other terrorist related threat.
- 7.3.3 Any discovery or seizure of currency, negotiable instruments, documents, passports, birth certificates, recorded media, printed matter, journals, writings, or any other items suspected of being possibly associated with a terrorist, terrorist related activity or organizations.
- 7.3.4 Any seizure or arrest resulting from a coordinated CBP anti-terrorism enforcement action initiated from terrorist related intelligence or targeting effort.
- 7.3.5 Any significant suspicious encounter or activity at or near any CBP operational component and/or office that involves law enforcement intervention or has potential international media interest.
- 7.3.6 Absconders, stowaways, or arrests of Aliens from Special Interest Countries as identified by each office, should be reported to the Situation Room.
- 7.3.7 Any other incident or activity not specifically addressed that, in the judgment of the reporting supervisor, has the potential to contribute to the interagency effort to combat terrorism.
- 7.4 **Weapons of Mass Destruction**
- 7.4.1 Any CBP seizure, situation, incident, or other enforcement action associated with a potential Weapon of Mass Destruction (WMD). WMD would include chemical, biological, radiological, nuclear or explosive device, or a precursor or component of such a device.
- 7.4.2 Any detection incident where the CBP Office of Information and Technology, Laboratories and Scientific Services Division (LSS) has determined that a radiation alarm warrants a request for response from the DHS Secondary Reachback program or the Department of Energy, as outlined in the Radiation Detection Program standard operating procedures, CBP Directive 5290-015. In this instance, the operational component would file the SIR while LSS will be responsible for notifying the Situation Room of the DHS Secondary Reachback request.
- 7.4.3 Any intelligence information discovered or received indicating that a suspected terrorist, WMD or precursor component, or explosive device, will enter or depart the United States by any means at a specific time or place--or that any dangerous device has been or will be placed at or near a CBP facility.

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**FOR OFFICIAL USE ONLY****7.5 Public Health**

- 7.5.1 Any admission or denial of admission of any person that is an exact match to a Centers for Disease Control (CDC) public health related lookout, or who in the judgment of CBP personnel is showing symptoms of a highly contagious and serious disease that requires public health notification.
- 7.5.2 Any refused entry or quarantine of any animal for showing signs or symptoms of a highly contagious disease requiring veterinary health notification.

**7.6 Arrests**

- 7.6.1 Arrest of a subject for a high profile crime that is the subject of media interest.
- 7.6.2 Any arrest involving a rescue. For the purposes of this directive rescue would be defined as where lack of intervention by a CBP officer or agent could result in imminent death or serious bodily injury.
- 7.6.3 Any arrest or detention of a high profile individual, dignitary, government representative or official regardless of the charges.
- 7.6.4 Arrest of aliens with significant felony history of murder, forcible rape, arson, manslaughter or other felonies related to sexual crimes.
- 7.6.5 Any arrests related to child pornography.
- 7.6.6 Any arrest or detention of a member of a high profile gang or drug trafficking organization as listed in the Department of Justice's "Consolidated Priority Organization Target List".

**7.7 Seizures**

- 7.7.1 The following are the thresholds for reporting seizures and penalties to the Situation Room.
- 7.7.2 Seizure or extended detention of a foreign or domestic commercial passenger or cargo conveyance.
- 7.7.3 Seizure or detention of any foreign government vehicle, aircraft, or vessel.
- 7.7.4 Seizure of \$100,000 or more in currency or negotiable instruments.
- 7.7.5 Property seizures with a domestic value of \$500,000 or more and issuance of penalties or \$1,000,000 or more.
- 7.7.6 Inbound or outbound stolen vehicles, vessels, or aircraft with an estimated total value of \$100,000 or more.

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- 7.7.7 Discovery and/or seizure of weapons and/or ammunition. In the event of an ammunition seizure, the operational components will provide an exact count of each round by caliber.
- 7.7.8 Discovery and/or seizure of illegal drugs will be reported in kilograms (using a pounds to kilograms conversion factor of 2.2046 and a pill/tablet count to kilogram conversion factor of .00312) if the seizure of illegal drugs meets and/or exceeds the following thresholds:
- 500 kgs of Marijuana
  - 500 kgs of Khat
  - 200 kgs of Hashish
  - 50 kgs of Hashish Oil
  - 30 kgs of Cocaine
  - 15 kgs of Methamphetamine/Amphetamine
  - 1 kgs of Heroin
  - 2 kgs of Opium
  - 2 kgs of MDMA (ecstasy)
  - 2 kgs of PCP
  - 2 kgs of other Dangerous Drugs (*e.g.*, steroids, precursor chemicals used to create illicit drugs such as MDMA, or counterfeit pharmaceuticals)
- 7.7.9 Each seizure will be annotated as to the method of apprehension (*i.e.* cold hit, K-9 detection, TECS match, VACIS, etc.) and how it was concealed. Seizures below the established thresholds should be reported when there is an unusual circumstance or other significance associated with the seizure, and/or the possibility of national and/or international media attention.
- 7.8 **Employee Issues**
- 7.8.1 Death or serious injury of any CBP employee, any other individual, canine, or horse working directly with CBP either on or off-duty. Serious injury for the purposes of this directive would be any injury that would require hospitalization.
- 7.8.2 Assault of a CBP employee or any individual directly working with CBP during the performance of his or her duties or as the result of his or her position.
- 7.8.3 Arrest, detention, incarceration or indictment of a CBP employee or any individual directly working with CBP while on or off-duty.
- 7.8.4 Threats or allegations against or by a CBP employee, or any individual directly working with CBP, or their family as a result of their position.

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- 7.8.5 Any incident that involves the discharge of a firearm/weapon as an act of assault against any CBP officer, agent or employee, and the assault is, or reasonably appears to be, related to his or her CBP employment.
- 7.8.6 Accident in a government conveyance that results in extensive property damage and/or results in serious injury to those involved.
- 7.8.7 Accidental or intentional death or serious injury of an individual caused by any off-duty CBP employee.
- 7.8.8 Lost or stolen government issued badge, credentials, or any government controlled equipment that is considered sensitive in nature to the degree that CBP operations may potentially be impeded or compromised if lost or stolen, e.g. weapons, body armor, vehicles, radios, scopes, etc.
- 7.8.9 Reports of integrity issues involving CBP personnel and physical security of CBP facilities should be reported to both the Situation Room and the Internal Affairs Joint Intake Center (JIC) in CBP Headquarters at 202-344-1016 (fax 202-344-3390). In addition, as outlined in the April 6, 2009 memorandum from the Commissioner's Office regarding Response to Incidents Involving CBP Use of Deadly Force, proper notification to the CBP Office of Internal Affairs is required.
- 7.9 **Detection Events**
- 7.9.1 Detection of any cross border tunnel.
- 7.9.2 Detection of a significant concealed human smuggling attempt in a conveyance, including the trailer portion of a tractor trailer, rail car, aircraft, vessel or air/sea cargo container. Concealed smuggling, for the purposes of this directive is defined as humans concealed in a way in which they cannot escape or exit the conveyance they are being smuggled in without assistance from someone else.
- 7.10 **Discharge of Service Issued Weapons**
- 7.10.1 All firearms/weapons discharges, whether intentional or unintentional, must be reported as follows:
- 7.10.1.1 While on-duty (except for intentional discharges which occur during firearms training, practice, or qualification, and do not cause any injury to a person or animal, or damage to private, public, or government property); or,
- 7.10.1.2 While off-duty, and causes any injury to any person, or any damage to either private, public, or government property in violation of any law or ordinance, or results in an investigation by any law enforcement agency.

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- 7.10.2 Any incident that involves the discharge of a CBP-issued firearm/weapon, including by any person other than a CBP employee, and causes any injury to any person, or any damage to either private, public, or government property in violation of any law or ordinance, or causes an investigation by any law enforcement agency.
- 7.11 **Incidents Involving Subjects Encountered by CBP**
- 7.11.1 The death, injury, or attempted suicide of an individual occurring while in CBP custody or during an encounter with CBP officers/agents or any individual directly working with CBP.
- 7.11.2 Escape of a subject in CBP custody; this requirement does not extend to incidents involving subjects who abscond during field encounters prior to the establishment of a full custody arrest.
- 7.12 **Agriculture Related Events**
- 7.12.1 Any suspected agro terrorism or bioterrorism related event.
- 7.12.2 Cargo arriving from a country with any foreign animal disease status of concern (such as Foot & Mouth Disease, Highly Pathogenic Avian Influenza) that is erroneously or illegally allowed to enter into U.S. commerce.
- 7.12.3 Any discovery or positive identification of a plant pest, noxious weed, mollusk, or animal/plant disease encountered in the cargo environment that may have very severe agricultural and economic consequences in the United States and for which immediate action and response is critical.
- 7.13 **Facility and Technology Disruptions**
- 7.13.1 Any unscheduled major disruption of a CBP facility as a result of weather, fire, hazmat, power disruption, and/or unscheduled computer communication systems outages (e.g., Automated Targeting Systems [ATS-AT/L/N/P], TECS, Intelligence & Operations Framework System [IOFS]), bomb threat, or other causes.
- 7.13.2 Incidents at facilities used by CBP resulting in a major law enforcement response.
- 7.13.3 CBP ports of entry experiencing processing wait times must report:
- processing wait times exceed 60 minutes, but less than 100 minutes, for three (3) consecutive hours, or processing wait times of 100 minutes or more.
  - must report the reason for the extended wait times and the actions taken to mitigate wait times.
- 7.13.4 Major communication system outages of two hours or more.

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- 7.13.5 If the National Data Center (NDC) has determined and advised the affected office that the incident is the result of a Nation-wide or regional outage, disruption, or brown out of major cargo processing or enforcement systems, the field office can contact the Situation Room to advise of the outage and its impact on operations, but no report is necessary since the NDC will notify the Situation Room in these circumstances and file the required SIR.
- 7.13.6 Any unscheduled shutdowns of non-intrusive examination systems or other detection systems for more than eight hours.
- 7.14 **Any Incursion of the U.S. Border**
- 7.14.1 Any border incursion by a foreign government, military, or law enforcement official must be reported, whether armed or unarmed, regardless of length of time or distance.
- 7.15 **Air and Marine Events**
- 7.15.1 Any Air and Marine event that results in the arrest and/or seizure of contraband, vessel(s), aircraft or conveyance that falls within the parameters otherwise outlined in this directive.
- 7.16 **Sensitive Information and Controlled Deliveries**
- 7.16.1 CBP personnel are responsible to report encounters and seizures meeting the established thresholds in this document, however, if sensitive or potentially classifiable information is discovered or revealed during an interview of a subject or during processing of a seizure, the reporting office should consult with their chain of command to determine whether to include the information in the incident report and proper means of transmitting the information if the information should be transmitted. For further guidance see DHS Management Directive 11044, "Protection of classified National Security Information Classification Management".
- 7.16.2 In the event of a pending controlled delivery, the reporting office should consult with their chain of command, as well as the involved investigatory agency, to determine what information would be reasonable and prudent to include in the written report prior to the conclusion of the investigation.
- 8 NO PRIVATE RIGHTS CREATED**
- 8.1 This document is an internal policy statement of CBP and does not create or confer any rights, privileges, or benefits for any person or party.

  
Commissioner  
U.S. Customs and Border Protection

*for*

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## Appendix V: The Law Enforcement Officers Safety Act (LEOSA)


1300 Pennsylvania Avenue NW  
Washington, DC 20229



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

AUG 13 2013

MEMORANDUM FOR: Active CBP Law Enforcement Personnel

FROM: Thomas S. Winkowski   
Acting Commissioner

SUBJECT: The Law Enforcement Officers Safety Act (LEOSA)

The Law Enforcement Officers Safety Act (LEOSA) of 2004, also sometimes referred to as "HR 218," Pub. L. 108-277, as amended by the Law Enforcement Officers Safety Act Improvements Act of 2010, Pub. L. 111-272, and the National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, codified at 18 U.S.C. § 926B, allows qualified law enforcement officers that meet certain criteria and who are carrying an adequate form of identification to carry a concealed firearm, subject to certain limitations. For simplified reference, Pub. L. 108-277, as amended by Pub. L. 111-272 and Pub. L. 112-239, is referred to hereinafter as LEOSA.

A "qualified law enforcement officer" is defined by LEOSA as an employee of a governmental agency who:

- a. is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);<sup>1</sup>
- b. is authorized by the agency to carry a firearm;
- c. is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
- d. meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- e. is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- f. is not prohibited by Federal law from receiving a firearm.

The identification requirement in LEOSA is the photographic identification issued by the governmental agency for which the individual is employed as a police officer or law enforcement

<sup>1</sup>The National Defense Authorization Act for Fiscal Year 2013, amended 18 U.S.C. § 926B by, among other revisions, adding at the end the following: "(f) For the purposes of this section, a law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice)."

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The identification requirement in LEOSA is the photographic identification issued by the governmental agency for which the individual is employed as a police officer or law enforcement officer. LEOSA is applicable for Authorized Officers/Agents who possess CBP Form 3701 or 3705. These credentials convey statutory powers of arrest to the possessor.

The term “firearm”, as used in LEOSA, incorporates the definition of “firearm” found in 18 U.S.C. § 921(a)(3); including ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act, but excludes the following items from such definition: (1) antique firearm, as defined in 18 U.S.C. § 921(a)(16); (2) any machinegun (as defined in 26 U.S.C. § 5845(b)); (3) any firearm silencer (as defined in 18 U.S.C. § 921(a)(24)), and (4) any destructive device (as defined in 18 U.S.C. § 921(a)(4)).

CBP law enforcement personnel are reminded that the authority of qualified law enforcement personnel to carry a concealed firearm pursuant to LEOSA does not supersede or limit the laws of any State that:

- a. Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
- b. Prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

See 18 U.S.C. § 926B(b)

**CBP-Authorized Carriage of Handguns:** Authorized officers/agents are required, pursuant to chapter 2, paragraph C.2 of the CBP Use of Force Policy Handbook, HB 4500-01B, to carry a CBP-authorized handgun during duty hours in the performance of their normal duties, unless operational circumstances preclude use of these handguns. Off-duty, authorized officers/agents may continue to carry a CBP-authorized handgun as provided in chapter 2, paragraph C.5 of the CBP Use of Force Policy Handbook. These existing CBP authorities and policies, with respect to carriage of CBP-authorized handguns, continue in force.

**LEOSA-Authorized Carriage of Handguns:** Off-duty CBP law enforcement personnel who meet the LEOSA definition of a qualified law enforcement officer may, pursuant to LEOSA, carry a concealed firearm, including personally-owned firearm in accordance with LEOSA, subject to any limitations under state law made pursuant to 18 U.S.C. § 926B(b), and notwithstanding any limitation on the model of firearm approved pursuant to chapter 2, paragraph C.5 of the Use of Force Policy Handbook. Off-duty CBP law enforcement personnel who elect to undertake carriage of a concealed personally-owned firearm pursuant to LEOSA are subject to all criteria and terms of LEOSA, including prohibitions, restrictions, and permissions under applicable state law pursuant to 18 U.S.C. § 926B(b).

CBP Authorized Officers/Agents are reminded of the requirement contained in chapter 4, paragraph A.2 of the Use of Force Policy Handbook:

Authorized Officers/Agents are to act in a professional manner and therefore shall not carelessly or unnecessarily display firearms and/or intermediate force devices. The

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authority to carry this equipment carries with it an obligation and responsibility to exercise discipline, restraint and good judgment.

Officers/Agents are further reminded that agency directives addressing intervention in state crimes – Customs Directive 4510-016A, INS Law of Search M-69 Manual Chapter VI, and any successor guidance thereto – address CBP’s position in scope of employment determinations for Officers/Agents who elect to intervene in state crimes.

Please refer any questions regarding LEOSA to Matt Sherman, Acting Director, Use of Force Policy Division, at (202) 325-7191.

**Appendix VI: Authorized CBP Courses of Fire**

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<b>72 Round / 25 Yard – Handgun Course of Fire</b>	
Load (3) Magazines for Duty Carry & Face TQ-15 Targets	
Start at the 1.5 Yard Line (6) Rounds Load and Charge a 12 round magazine	
1.5 Yards	Strong Hand Only, Bent Elbow Shooting Position
	Draw & Fire 1 round in 2 Seconds then scan & holster
	Draw & Fire 2 rounds in 2 Seconds then scan & holster
	Draw & Fire 3 rounds in 2 Seconds then scan & holster
Move to the 3 Yard Line (6) Rounds	
3 Yards	Two Handed Point Shoulder Shooting Referencing Front Sights
	Draw & Fire 1 round in 3 seconds then scan & holster
	Draw & Fire 2 rounds in 3 seconds then scan & holster
	Draw & Fire 3 rounds in 3 seconds then <b>Reload</b> scan & holster
Move to the 7 Yard Line (12) Rounds	
7 Yards	Two Handed Shooting Using Front Sights
	Draw & Fire 1 round in 3 Seconds then remain at High Search
	Fire 1 additional round in 3 Seconds then scan & holster
	Draw & Fire 2 rounds in 3 Seconds then remain at High Search
	Fire 2 additional rounds in 3 Seconds then scan & holster
	Draw & Fire 3 rounds in 3 Seconds then remain at High Search
	Fire 3 additional rounds in 3 Seconds <b>Reload</b> then scan & holster
7 Yard Line Part II (12) Rounds	
7 Yards	Two Handed Shooting & Transfer to One Handed Shooting
	Draw & Fire 2 rounds then transition to right hand only and fire 1 additional round in 6 Seconds then remain at high search
	Fire 3 additional rounds in 5 Seconds then scan & holster
	Draw & Fire 2 rounds then transition to left hand only and fire 1 additional round in 6 Seconds then remain at high search
	Fire 3 additional rounds in 5 Seconds <b>Clear &amp; Holster</b>
End of First Half (36) Rounds (180) Points Score Targets, Record Scores, and Reface Targets	

<b>72 Round / 25 Yard – Second Half</b>	
Load (3) Magazines for Duty Carry & Face TQ-15 Targets	
Start at the 15 Yard Line (20) Rounds Load and Charge a 12 round magazine	
15 Yards	Two Handed Shooting From Standing & Kneeling
	Draw & Fire 1 round in 3 Seconds then scan & holster
	Draw & Fire 2 rounds in 4 Seconds then scan & holster
	Draw & Fire 3 rounds in 5 Seconds then scan & holster
	Draw & Fire 4 rounds in 6 Seconds then scan & holster
	Draw & Fire 2 rounds then <b>Reload</b> while transitioning to kneeling fire 2 additional rounds in 12 Seconds then remain at High Search
	Fire 1 round in 2 Seconds then remain at High Search
	Fire 2 rounds in 3 Seconds then remain at High Search
	Fire 3 rounds in 4 Seconds <b>Exchange</b> magazines then scan & holster.
Move to the 25 Yard Line (16) Rounds	
25 Yards	Barricade Shooting Start to the right rear of the barricade.
	Move to cover, draw and fire (4) Rounds standing and (4) Rounds kneeling in 30 Seconds. <b>Exchange</b> magazines before standing.
	Barricade Shooting Start to the left rear of the barricade.
	Move to cover, draw and fire (4) Rounds standing and (4) Rounds kneeling in 30 Seconds.
	<b>Clear and holster</b> an empty weapon before standing.
End of Second Half (36) Rounds (180) Points Score Targets, Combine With First Half and Record Scores Scoring-252 Minimum Qualifying Score out of 360 Points Possible	
50 Yard Familiarization ( <b>Optional</b> ) (12) Rounds	
50 Yards	Barricade Shooting Start to the right rear of the barricade.
	In 50 Seconds, Move to cover, draw and fire (3) Rounds standing and (3) Rounds Kneeling Right Side
	<b>Clear and holster</b> an empty weapon before standing.

<b>30 Round / 15 Yard – Handgun Course of Fire</b>	
Load (5) Six Round Magazines & Face CAT-1 Targets	
Start at the 3 Yard Line (12) Rounds Load and charge a 6 round magazine	
3 Yards	Strong Hand & Support Hand Shooting Position
	Draw & Fire 6 Rounds Strong Hand Only <b>RELOAD</b>
	Transition to Support-hand Only
	Fire 6 additional rounds in <b>25</b> Seconds then <b>RELOAD</b> , scan & holster
Move to the 7 Yard Line (6) Rounds	
7 Yards	Two Handed Point Shoulder Shooting Referencing Front Sights
	Draw & Fire 2 Rounds in 3 Seconds then remain at High Search
	Fire 2 additional rounds in 3 Seconds then remain at High Search
	Fire 2 additional rounds <b>RELOAD</b> then scan & holster
7 Yard Line Part II Body Armor Drill (6) Rounds	
7 Yards	Two Handed Point Shoulder Shooting Referencing Front Sights
	Draw & Fire 2 Rounds to the Body and 1 Round to the head in 6 Seconds then remain at High Search
	From High Search, Fire 2 Rounds to the Body and 1 Round to the Head in <b>4</b> Seconds then <b>RELOAD</b> , Scan & Holster
Move to the 15 Yard Line (6) Rounds	
15 Yards	Barricade Shooting Start to the right rear of the barricade.
	Move to cover, draw and fire
	(2) Rounds standing Support Side (2) Rounds standing Strong Side (2) Rounds kneeling Strong Side in <b>20</b> Seconds
	Clear and holster an <b>EMPTY</b> weapon before standing.
Score Targets and Record Scores Scoring-120 Minimum Qualifying Score out of 150 Points Possible	

<b>50 Round / 25 Yard – Handgun Course of Fire</b>	
Load for Duty Carry & Face ICE-QT Targets	
<b>Note:</b> Shooters are responsible for maintaining full magazines throughout the course of fire. The <b>Reload</b> command will prompt the shooter to perform an emergency reload or magazine exchange as necessary.	
Start at the 1.5 Yard Line (6) Rounds Load and Charge a full magazine	
1.5 Yards	Strong Hand Only, Bent Elbow Shooting Position
	Draw & Fire 1 round in 2 Seconds then scan & holster
	Draw & Fire 2 rounds in 2 Seconds then scan & holster
	Draw & Fire 3 rounds in 2 Seconds then <b>Reload</b> scan & holster
Move to the 3 Yard Line (6) Rounds	
3 Yards	Two Handed Point Shoulder Shooting Referencing Front Sights
	Draw & Fire 3 rounds in 3 seconds then scan & holster
	Draw & Fire 3 rounds in 3 seconds then <b>Reload</b> scan & holster
Move to the 7 Yard Line (6) Rounds	
7 Yards	Two Handed Shooting Using Front Sights. Body Armor Drills
	Draw & Fire 2 Rounds to the Body and 1 Round to the head in 5 Seconds then remain at High Search
	From High Search, Fire 2 Rounds to the Body and 1 Round to the Head in 4 Seconds then <b>Reload</b> scan & holster
7 Yard Line (12) Rounds	
7 Yards	Two Handed Shooting & Transfer to One Handed Shooting
	Draw & Fire 3 rounds then transition to strong hand only and fire 3 additional rounds in 10 Seconds then <b>Reload</b> scan & holster
	Draw & Fire 3 rounds then transition to support hand only and fire 3 additional rounds in 10 Seconds then <b>Reload</b> scan & holster
Move to the 15 Yard Line (12) Rounds	
15 Yards	Two Handed Shooting From Standing & Kneeling
	Draw & Fire 6 rounds standing in 10 Seconds then transition to kneeling
	When threat edges, <b>Reload</b> and assume a ready position in 5 Seconds
	Fire 6 additional rounds in 10 Seconds
Move to the 25 Yard Line (8) Rounds	
25 Yards	Barricade Shooting Start to the right rear of the barricade.
	Move to cover, draw and fire (2) Rounds standing and (2) Rounds kneeling in 20 Seconds. <b>Exchange</b> magazines before standing.
	Barricade Shooting Start to the left rear of the barricade.
	Move to cover, draw and fire (2) Rounds standing and (2) Rounds kneeling in 20 Seconds. <b>Clear and holster an empty weapon.</b>
Score Targets, Record Scores, and Reface Targets Scoring-Minimum score of 200 out of 250 points possible.	



<b>50 Round / 100 Yard – Rifle Course of Fire (V1)</b>			
Load Magazines: 15, 10, 6, 4, and, 15 rounds ( <i>*optional 21 and 29 rounds</i> ) Face TQ-15 Targets (Reduced or Double-reduced TQ-15 for 50 & 25 Yard Ranges)			
100, 50, or 25 yards, using reduced targets and 15 round magazine ( <i>*or 21 round magazine</i> )			
100 Yards	Freestyle-Shooter’s choice of standing, sitting, kneeling or prone. Shooter must fire five shots from each of three different positions. Two positions may be fired using support (barricade). One position <b>MUST</b> be fired from an unsupported position (prone can count as unsupported) <b>Note:</b> Standing is <b>NOT</b> mandatory. Support-side cover is <b>NOT</b> mandatory. Both are optional (shooter’s choice).		
	Starting condition is vehicle carry mode (bolt forward on an empty chamber, weapon on SAFE, dust cover closed). Two minutes per five-shot string. Total time six minutes. ( <i>* magazine exchange to 29 round magazine</i> )		
Move to the 25 Yard Line 10 round magazine ( <i>*or 29 round magazine</i> )			
25 Yards	Start at High Search with weapon on SAFE. When the targets face...		
	Fire 2 rounds in 4 seconds (weapon back on SAFE)		
	Fire 2 rounds in 4 seconds (weapon back on SAFE)		
	Fire 2 rounds in 4 seconds (weapon back on SAFE)		
	Standing to kneeling then Fire 2 rounds in 5 seconds (weapon back on SAFE)		
	Standing to kneeling then Fire 2 rounds in 5 seconds (weapon back on SAFE) ( <i>* magazine exchange to 5 round magazine</i> )		
Move to the 15 Yard Line 6 & 4 round magazines ( <i>*or 5 round magazine &amp; 19 round magazine available for reload</i> )			
15 Yards	Start at High Search weapon on SAFE. When the targets face...		
	Fire 6 rounds (two round bursts if using AUTO)		15 Seconds to fire all 10 rounds
	Reload with the 4 round magazine ( <i>* or 19 round magazine</i> )		
	Fire 4 rounds (two round bursts if using AUTO)		
Move to the 7 Yard Line (15) Round Magazine			
7 Yards	Start at High Search weapon on FULL AUTO or SEMI AUTO ( <i>Shooter’s Choice</i> ) When the targets face...		
	Fire 3 rounds in 2 seconds (3 round bursts if using AUTO) (weapon back on SAFE between facings) . Repeat for a total of five facings		
	All rounds must be fired within five facings (unless an alibi is required).		
	Clear and double check to confirm an empty weapon		
Scoring-175 Minimum Qualifying Score out of 250 Points Possible			

<b>50 Round / 100 Yard – Rifle Course of Fire (V2)</b>	
Load Magazines: 10 rounds, 15 rounds, 5 rounds, 5 Rounds, 6 rounds, 9 Rounds Face ICE-QT Targets (If 100 Yard range is not available, use ICE QT-R for 50 Yard Range)	
Stage #1 - 100 or 50 yards, using reduced targets (10 round magazine)	
100 Yards	Semi-automatic, standing to kneeling & prone position. When the targets face Fire...
	(5) rounds from the kneeling position and (5) rounds from the prone position.
	Time Limit: Sixty (60) seconds.
Stage #2 - Move to the 50 Yard Line (15) Round magazine. Reface with Full Size Targets if Necessary.	
50 Yards	Start at High Search. When the targets face Fire...
	(5) rounds from the standing position (5) rounds from the kneeling position and (5) rounds from the prone position.
	Time Limit: Forty (40) seconds.
Stage #3 - Move to the 25 Yard Line (5) & (5) Round Magazines	
25 Yards	Start at High Search. When the targets face...
	Fire (5) Rounds Standing
	<b>Reload</b> and transition to kneeling
	Fire (5) Rounds kneeling
Time Limit: 15 seconds.	
Stage #4 - Move to the 7 Yard Line (6) Round Magazine	
7 Yards	Start at High Search. When the targets face...
	Fire two shots in 2 seconds
	Fire two shots in 2 seconds
	Fire two shots in 2 seconds
Stage #5 - 7 Yard Line (9) Round Magazine	
7 Yards	Start at High Search weapon on FULL AUTO When the targets face...
	Fire 9 rounds burst-fire in 6 seconds.
	Clear and double check to confirm an empty weapon
Score Targets and Record Scores Scoring-200 Minimum Qualifying Score out of 250 Points Possible	

<b>5 Slug / 25 Yard – Shotgun Course of Fire (V1)</b>	
Face TQ-15 Targets and Load "Hot Standby" Safety <b>Off</b> , Empty Chamber, 4 Slugs in the magazine tube, one available for combat reload	
Start at the 25 Yard Line (5) Rounds	
25 Yards	Standing aimed in, "hot standby"
	On facing, charge the shotgun and fire 4 shells, combat load and fire the fifth shell
Score Targets Scoring- 4 of 5 rounds must fall within a 12 inch circle (group)	

(25) Round Familiarization (Unscored)	
Face Targets and Load "Hot Standby" Safety Off, Empty Chamber, 4 Shells in tube, one available for reload	
Start at the 7 Yard Line (10) Rounds	
7 Yards 00 Buck	Strong and Support Side Under Arm Assault position
	Fire 5 shells in 6 Seconds (combat load fifth shell)
	Reload "Hot Standby"
	Repeat stage using support side Under Arm Assault position
Move to the 10 Yard Line (10) Rounds	
Load and top off shotgun (Shell in chamber, 4 Shells in tube) safety on	
10 Yards 00 Buck	Standing aimed in (SAFETY ON) firing position
	Fire five rounds in 4 Seconds
	Reload hot standby
	Standing high search
	Fire 1 round in 2 Seconds (repeat for 5 Facings)
15 Yard Line (5) Rounds	
Load and top off shotgun (Shell in chamber, 4 Shells in tube) safety on	
15 Yards 00 Buck	Standing low search (SAFETY ON) firing position
	Fire 1 round in 3 seconds (5 Facings)
Familiarization Only (Unscored)	

<b>5 Slug / 25 Yard – Shotgun Course of Fire (V2)</b>	
Face CAT 1 Targets and Load "Hot Standby" Safety <b>Off</b> , Empty Chamber, 4 Slugs in the magazine tube, one available for combat reload	
Start at the 25 Yard Line (5) Rounds	
25 Yards	Standing aimed in, "hot standby"
	On facing, charge the shotgun and fire 4 shells, combat load and fire the fifth shell in 20 seconds
	Exceeding 20 seconds to fire all 5 rounds = failure
Score Targets and Record Scores Scoring- 4 of 5 must fall within a 12 inch circle (group)	

(25) Round <b>Familiarization</b> (Unscored)	
Face Targets and Load "Hot Standby" Safety <b>Off</b> , Empty Chamber, 4 Shells in tube, one available for reload	
Start at the 7 Yard Line (10) Rounds	
7 Yards	Strong and Support Side Under Arm Assault position
	Fire 5 shells in 6 Seconds (combat load fifth shell)
	Reload "Hot Standby"
	Repeat stage using support side Under Arm Assault position
Move to the 10 Yard Line (10) Rounds	
Load and <b>top off</b> shotgun (Shell in chamber, 4 Shells in tube) safety on	
10 Yards	Standing aimed in (SAFETY ON) firing position
	Fire five rounds in 4 Seconds
	Reload hot standby
	Standing high search
	Fire 1 round in 2 Seconds (repeat for 5 Facings)
15 Yard Line (5) Rounds	
Load and <b>top off</b> shotgun (Shell in chamber, 4 Shells in tube) safety on	
15 Yards	Standing low search (SAFETY ON) firing position
	Fire 1 round in 3 seconds (5 Facings)
Familiarization Only (Unscored)	

<b>5 Slug / 25 Yard – Shotgun Course of Fire (V3)</b>	
Face ICE-QT Targets and Load "Hot Standby" Safety Off, Empty Chamber, 4 Slugs in the magazine tube, one available for combat reload	
Stage #1 - Start at the 25 Yard Line (5) Rounds	
25 Yards Slug	Start from hip position weapon in "hot standby"
	On facing, charge & shoulder the shotgun. Fire 4 shells and combat load and fire the fifth shell in 20 seconds
The OAM shotgun qualification course scoring consists of a total of five (5) slugs with a maximum possible score of 25 points. The minimum qualification score is 20 points. Score Targets and Record Scores Scoring- 4 of 5 must fall within the four or five rings of the target to achieve 20 points	

(10) Round 00 Buckshot	
Face Targets and Load as instructed for each stage.	
Stage #2 - Start at the 15 Yard Line (5) Rounds	
Load <b>3 Shells in magazine tube, 2 available for reload</b> , Safety Off, Empty Chamber,	
15 Yards 00 Buck	Standing weapon shouldered in low ready firing position.
	On facing, charge & shoulder the shotgun. Fire 2 shells then tactically reload two shells into the magazine tube. Fire the remaining three shells.
	Exceeding 20 seconds to fire all 5 rounds = failure
Stage #3 - 7 Yard Line (5) Rounds	
Load <b>4 Shells in magazine tube, 1 available for reload</b> , Safety Off, Empty Chamber,	
7 Yards 00 Buck	Standing weapon shouldered in low ready firing position.
	On facing, charge the shotgun. Aim and fire 4 shells and combat load and fire the fifth shell.
	Exceeding 10 seconds to fire all 5 rounds = failure
For stages two (2) and three (3), proficiency is measured by the ability to accomplish the stated task in the allotted time. If an officer fails to accomplish these tasks as required by the course of fire, he/she will not have met the minimum proficiency requirement.	

50 Round / 50 Yard – Submachine Gun Course of Fire			
Load Magazines: 15 rounds, 10 rounds, 6 rounds, 4 Rounds, 15 rounds Face TQ-15 Targets			
50, or 25 yards, using reduced targets (15 round magazine)			
50 Yards	Freestyle-Shooters choice of standing, sitting, kneeling or prone. Shooter must fire five shots from each of three different positions. Two positions may be fired using support (barricade). One position <b>MUST</b> be fired from an unsupported position (prone can count as unsupported) <b>Note:</b> One position <b>must</b> be fired from a support-side cover position. The weapon may be fired from either shoulder in the support-side position.		
	Two minutes per five-shot string. Total time six minutes.		
Move to the 25 Yard Line (10) Round magazine			
25 Yards	Start at High Search. When the targets face...		
	Fire 2 rounds in 4 seconds		
	Fire 2 rounds in 4 seconds		
	Fire 2 rounds in 4 seconds		
	Standing to kneeling 2 rounds in 4 seconds		
	Standing to kneeling 2 rounds in 4 seconds		
Move to the 15 Yard Line (6) & (4) Round Magazines			
15 Yards	Start at High Search weapon on FULL AUTO When the targets face...		
	Fire a 2 round burst	15 Seconds to fire all 10 rounds	
	Fire a 2 round burst		
	Fire a 2 round burst		
	Reload		
	Fire a 2 round burst		
	Fire a 2 round burst		
Fire a 2 round burst			
Move to the 7 Yard Line (15) Round Magazine			
7 Yards	Start at High Search weapon on FULL AUTO When the targets face...		
	Fire a 3 round burst in 2 seconds. Repeat for a total of five two second facings		
	All rounds must be fired within five facings (unless an alibi is required).		
	Clear and double check to confirm an empty weapon		
Score Targets and Record Scores Scoring-175 Minimum Qualifying Score out of 250 Points Possible			

<b>50 Round / 25 Yard – Submachine Gun Course of Fire</b>	
Magazines: 10 rounds, 10 rounds, 30 rounds, & Face ICE-QT Targets	
Stage #1 – 25 Yards (10 round magazine)	
25 Yards	Semi-automatic, standing & kneeling barricade position. When the targets face...
	Move to support side cover using the barricade and fire (2) rounds
	Switch to the strong side side of the barricade and fire (2) rounds
	Transition to kneeling strong side barricade and fire (2) rounds
	Time Limit: 15 seconds. (4) rounds remain in weapon. Safety on.
Stage #2 - 25 Yard Line (10) Round Magazine available for reload	
25 Yards	Start at Low Ready Carry weapon on Semi Auto. When the targets face...
	Fire (4) Rounds Standing
	Reload with a (10) round magazine and transition to kneeling
	Fire (4) Rounds kneeling
	Time Limit: 20 seconds. (6) rounds remain in weapon. Safety on,
Stage #3 - Move to the 15 Yard Line (30) Round Magazine available for reload	
15 Yards	Start at High Search weapon on Semi Auto. When the targets face...
	Fire (6) Rounds Standing
	Reload with the (30) round magazine and transition to kneeling
	Fire (3) Rounds kneeling
	Time Limit: 15 seconds. (27) rounds remain in weapon. Safety on.
Stage #4 - Move to the 10 Yard Line	
10 Yards	Start at High Search weapon on FULL AUTO When the targets face...
	Fire 3 (3) Round Bursts
	Time limit 6 seconds (18) rounds remain in weapon. Safety on.
Stage #5- Move to the 7 Yard Line	
7 Yards	Start at High Search weapon on FULL AUTO When the targets face...
	Fire 3 (3) Round Bursts
	Time limit 6 seconds(9) rounds remain in weapon. Safety on.
Stage #6 – Move to the 5 Yard Line	
5 Yards	Start at High Search weapon on FULL AUTO When the targets face...
	Fire 2 (3) Round Bursts to the Body and 1 (3) Round Burst to the head
	Time limit 6 seconds Clear and double check to confirm an empty weapon
Score Targets and Record Scores Scoring-200 Minimum Qualifying Score out of 250 Points Possible	

<b>FITP (60) Round Handgun Qualification</b>	
Load (6) Magazines & Start with weapon <b>Topped-off</b> (Full Magazine and Chambered Round)	
Start at the 1.5 Yard Line (5) Rounds	
1.5 Yards	Strong Hand Only, Bent Elbow Shooting Position
	Draw & Fire 1 round in 2 Seconds then scan & holster
	Draw & Fire 2 rounds in 2 Seconds then scan & holster
	Draw & Fire 2 rounds in 2 Seconds then scan & holster
Move to the 3 Yard Line (6) Rounds	
3 Yards	Two Handed Point Shoulder Shooting Referencing Front Sights
	Draw & Fire 1 round in 3 Seconds then scan & holster
	Draw & Fire 2 rounds in 3 Seconds then scan & holster
	Draw & Fire 3 rounds in 3 Seconds then scan & holster
Move to the 7 Yard Line (8) Rounds	
7 Yards	Two-handed Shooting, Reload & Transfer to One-handed Shooting
	Draw & Fire two rounds two-handed <b>Reload</b> and transfer to strong-hand only Fire 2 additional rounds then scan and holster (10 Second Facing)
	Draw & Fire two rounds two-handed Transfer to lsupport-hand only Fire 2 additional rounds then scan and holster (7 Second Facing)
7 Yard Line Part II (8) Rounds	
7 Yards	Two-handed Shooting High Search Drills
	Draw and Fire 1 round in three seconds & remain at high search
	Fire 1 additional round in three seconds then scan & holster
	Draw and Fire 2 rounds in three seconds & remain at high search
	Fire 2 rounds, <b>Reload</b> and fire 2 additional rounds in nine seconds
7 Yard Line Part III (6) Rounds	
7 Yards	Two-handed Shooting Failure (Body Armor) Drills
	Draw and Fire 2 rounds to the body and 1 to the head in 4 seconds then scan & holster
	Draw and Fire 2 rounds to the body and 1 to the pelvis in 4 seconds then scan & holster
Continued Next Page	



15 Yard Line	
15 Yards	Two-handed Shooting From Standing & Kneeling
	Draw and Fire 2 rounds in four seconds & remain at high search Fire 2 additional rounds in four seconds then scan & holster
	Draw and Fire 3 rounds in five seconds then transition to kneeling Fire 3 additional rounds in five seconds then scan & holster before standing
	Draw and Fire 3 rounds then Reload while transitioning to kneeling Fire 2 additional rounds in twelve seconds then scan & holster before standing
Move to the 25 Yard Line (8) Rounds Administratively configure magazines as needed.	
25 Yards	Barricade Shooting Start to the right rear of the barricade.
	Move to cover, draw and fire 3 Rounds standing and 3 Rounds kneeling in 24 Seconds. <b>Exchange</b> magazines before standing.
	Barricade Shooting Start to the left rear of the barricade.
	Move to cover, draw and fire (2) Rounds standing and (2) Rounds kneeling in 20 Seconds. <b>Clear and holster an empty weapon.</b>
Scoring-Minimum score of 255 out of 300 points possible.	

<b>FITP Rifle (50) Round Qualification</b>			
Load Magazines: 15, 10, 6, 4, and, 15 rounds ( <i>*optional 21 and 29 rounds</i> ) Face TQ-15 Targets (Reduced or Double-reduced TQ-15 for 50 & 25 Yard Ranges)			
100, 50, or 25 yards, using reduced targets and 15 round magazine ( <i>*or 21 round magazine</i> )			
100 Yards	Freestyle-Shooter's choice of standing, sitting, kneeling or prone. Shooter must fire five shots from each of three different positions. Two positions may be fired using support (barricade). One position <b>MUST</b> be fired from an unsupported position (prone can count as unsupported) <b>Note:</b> Standing is <b>NOT</b> mandatory. Support-side cover is <b>NOT</b> mandatory. Both are optional (shooter's choice).		
	Starting condition is vehicle carry mode (bolt forward on an empty chamber, weapon on SAFE, dust cover closed). Two minutes per five-shot string. Total time six minutes. ( <i>* magazine exchange to 29 round magazine</i> )		
Move to the 25 Yard Line 10 round magazine ( <i>*or 29 round magazine</i> )			
25 Yards	Start at High Search with weapon on SAFE. When the targets face...		
	Fire 2 rounds in 4 seconds (weapon back on SAFE)		
	Fire 2 rounds in 4 seconds (weapon back on SAFE)		
	Fire 2 rounds in 4 seconds (weapon back on SAFE)		
	Standing to kneeling then Fire 2 rounds in 5 seconds (weapon back on SAFE)		
	Standing to kneeling then Fire 2 rounds in 5 seconds (weapon back on SAFE) ( <i>* magazine exchange to 5 round magazine</i> )		
Move to the 15 Yard Line 6 & 4 round magazines ( <i>*or 5 round magazine &amp; 19 round magazine available for reload</i> )			
15 Yards	Start at High Search weapon on SAFE. When the targets face...		
	Fire 6 rounds (two round bursts if using AUTO)		15 Seconds to fire all 10 rounds
	Reload with the 4 round magazine ( <i>* or 19 round magazine</i> )		
	Fire 4 rounds (two round bursts if using AUTO)		
Move to the 7 Yard Line (15) Round Magazine			
7 Yards	Start at High Search weapon on FULL AUTO or SEMI AUTO ( <i>Shooter's Choice</i> ) When the targets face...		
	Fire 3 rounds in 2 seconds (3 round bursts if using AUTO) (weapon back on SAFE between facings) . Repeat for a total of five facings		
	All rounds must be fired within five facings (unless an alibi is required).		
	Clear and double check to confirm an empty weapon		
Scoring-200 Minimum Qualifying Score out of 250 Points Possible			

<b>FITP Shotgun (5 Slug) Qualification</b>	
Face TQ-15 Targets and Load "Hot Standby" Safety Off, Empty Chamber, 4 Slugs in the magazine tube, one available for combat reload	
Start at the 25 Yard Line (5) Rounds	
25 Yards	Standing aimed in, "hot standby"
	On facing, charge the shotgun and fire 4 shells, combat load and fire the fifth shell
Score Targets Scoring- 20 minimum out of 25 points possible	

## Appendix VII: Glossary

AC	<u>Assistant Commissioner</u> – The director of an operational component of U.S. Customs and Border Protection.
CBP	<u>Customs and Border Protection</u> – An agency within the Department of Homeland Security.
COA	<u>Co-Authority</u> – An individual designated by the Responsible Official to act in his/her stead in all functions in FACTS.
CPA	<u>Chief Patrol Agent</u> – The agent in charge of a Border Patrol Sector.
CS	<u>O-Chlorobenzylidenemalononitrile</u> – The active ingredient in CS gas or spray.
CSB	<u>Collapsible Straight Baton</u> – A less-lethal force device.
DFO	<u>Director of Field Operations</u> – The director in charge of a specific number of Ports of Entry under the Office of Field Operations.
DHS	<u>Department of Homeland Security</u> – A cabinet level agency of the United States Government.
EAP	<u>Employee Assistance Program</u> – A CBP program established to provide assistance and guidance to employees.
EMS	<u>Emergency Medical Services</u> – Ambulance or paramedic services.
FA	<u>Field Armorer</u> – A firearms instructor who has been trained and certified through formal instruction to conduct limited maintenance and repair of CBP weapons.
FCO	<u>Firearms Coordinator (FCO)</u> – The lead firearms instructor responsible for receiving, controlling and issuing CBP use of force equipment to CBP personnel within their duty area.
FI	<u>Firearms Instructor</u> – An officer/agent who has been trained and certified through formal instruction as a CBP firearms instructor.
IA	<u>Internal Affairs</u> – A division of CBP that is responsible for internal investigation of all operational components.
LLI	<u>Less-Lethal Instructor</u> – An officer/agent who has been trained and certified through formal instruction to teach less-lethal tactics, techniques and devices.

OAM	<u>Office of Air and Marine</u> – One of the three operational components of CBP; composed of all CBP air and marine assets.
OBP	<u>Office of Border Patrol</u> – One of the three operational components of CBP.
OC	<u>Oleoresin Capsicum</u> – The active ingredient in OC spray, derived from cayenne pepper.
OFO	<u>Office of Field Operations</u> – One of the three operational components of CBP.
OTD	<u>Office of Training and Development</u> – A division of CBP at headquarters level with the responsibility to create, develop and implement basic and advanced training for all operational components of CBP.
PLLI	<u>Primary Less-Lethal Instructor</u> – The lead less-lethal force instructor responsible for receiving, controlling, and issuing CBP less-lethal use of force equipment to CBP personnel within their duty area.
PPMOB	<u>Personal Property Management Oversight Board (PPMOB)</u> – A Headquarters board composed of representatives from all operational components to determine disposition of lost or destroyed CBP assets.
RO	<u>Responsible Officials</u> – Chief, Office of Border Patrol (OBP); Assistant Commissioner, Office of Field Operations (OFO); Assistant Commissioner, Office of Internal Affairs (IA); Assistant Commissioner, Office of Air and Marine (OAM); Assistant Commissioner, Office of Training and Development (OTD); Chief Patrol Agent (CPA); Director, Field Operations (DFO); Directors, Air Operations and Marine Operations (DAO, DMO); Division Directors, Internal Affairs (IA); Director of UFCE; and other officials designated in writing by the Commissioner.
RSO	<u>Range Safety Officer</u> – An officer/agent trained in range safety procedures utilized as a line safety officer on the firing line.  <u>Serious Physical Injury</u> – Injury which creates a substantial risk of death or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ or structure or involves serious concussive impact to the head
SFW	<u>Shoulder-Fired Weapon</u> – A CBP-issued rifle or long arm.
UFCE	<u>Use of Force Center of Excellence</u> – A division of the Office of Training and Development responsible for development of CBP use of force policy, procurement of CBP firearms and tactical equipment and oversight of use of force training for all CBP operational components.

# **EXHIBIT D**

ORDER FORM  
40-102-110-4-A  
FUNERAL HOME



ACCT. NO.

5521

Received from: Red Rider Ramos  
Six hundred fifty-seven <sup>50/100</sup>  
 Funeral Services Antonio Ramos  
 Member 5061 NAME IN DECEASED  
 Fouché's Hudson Funeral Home  
 Dated: 10/9/15 By: DRHAW  
*Thank You*

LAST BALANCE \$ 5657.5  
 INTEREST  
 LATE PAYMENT CHARGE  
 SUB TOTAL 5657.5  
 CREDITS  
 LESS PAYMENT 6057.5  
 NEW BALANCE 5000  
 to be paid 04841 VOC