



CBP Use of Force - Administrative Guidelines and Procedures Handbook

Law Enforcement Safety and Compliance Directorate
Operations Support
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FOREWORD FROM THE COMMISSIONER

U.S. Customs and Border Protection (CBP) 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 *Handbook* 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 safety of the communities we serve, as well as CBP's officers and agents, is paramount and shall guide all employees in the performance of their duties. In all instances, covered in this policy or not, Authorized Officers/Agents shall only use objectively reasonable and necessary force to effectively bring an incident under control, while minimizing the risk of injury for all involved parties.

The use of excessive force by CBP law enforcement personnel is strictly prohibited.

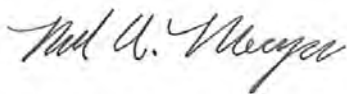
As CBP employees, this *Handbook*, in conjunction with the *CBP Use of Force Policy*, serves as your authoritative reference for firearms procedures and use of force related issues. By conforming to the *CBP Use of Force Policy*, training, certification requirements, and other use of force administrative subjects contained in this document, Authorized Officers/Agents can more effectively protect themselves and the public they serve.

This *Handbook* establishes the minimum CBP policy standards. CBP offices may establish additional guidance where they deem necessary, in accordance with the minimum standards articulated in this *Handbook*.

CBP adheres to the *DHS Policy on the Use of Force* and the *Department of Homeland Security Commitment to Nondiscriminatory Law Enforcement and Screening Activities* policy statement.

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

This *Handbook* sets forth guidance for CBP employees, while meeting the requirements of the *DHS Policy on the Use of Force*, 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).



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Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection

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This *Handbook* is consistent with the *DHS Policy on the Use of Force*, and supersedes the *U.S. Customs and Border Protection Use of Force Policy, Guidelines and Procedures Handbook (HB 4500-01C)* dated May 2014; and any prior CBP policy or directive to the extent that it is inconsistent with the content of this *Handbook*.

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. Customs and Border Protection Officers;
 - b. U.S. Border Patrol Agents;
 - c. Air and Marine Officers and Agents;
 - d. Office of Professional Responsibility (OPR) Special Agents and Investigators; and
 - e. Other qualified CBP personnel as designated by the Commissioner of CBP.

Executive Assistant Commissioners and Chief, United States Border Patrol, (or their Headquarters designees); Assistant Commissioner of the Office of Professional Responsibility; Executive Director of the Law Enforcement Safety and Compliance Directorate (hereinafter referred to as “Designated Officials” or “DOs”), may request an individual or class designation by submitting a written justification requesting this designation to the Commissioner. This justification shall be forwarded to the Executive Director of the LESC for comment prior to submission to the Commissioner.

B. Authority to Carry CBP Firearms

1. The authority for Authorized Officers/Agents to carry a CBP 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 a CBP firearm, 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 a basic federal law enforcement training program as a condition of employment, including basic firearms training, or have successfully completed a substantially equivalent firearms training program approved by the Executive Director of the LESC;
- 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 Firearms

1. Only those firearms listed on the CBP Authorized Equipment List (and specifically approved by the DO) may be carried while on duty.

In threatening, emergent situations¹, Authorized Officers/Agents are authorized to use any available weapon, device or technique in a manner that is reasonable and necessary for self-defense or the defense of another person.

2. Authorized Officers/Agents are required to carry a CBP handgun during duty hours while performing uniformed law enforcement duties, except when operational circumstances preclude the carriage of a firearm.
3. Authorized Officers/Agents may carry their CBP firearms twenty-four hours a day, in accordance with the provisions of this *Handbook* and federal law².
4. Authorized Officers/Agents, when carrying CBP firearm(s), are required to carry their CBP badge and CBP credentials authorizing them to bear firearms. This requirement does not apply to Authorized 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 firearms fully-loaded at all times (unless being utilized for training or for specialized operations with specific ammunition requirements).
 - a. Semi-automatic handguns shall be carried with a round in the chamber and the magazine loaded to capacity. Revolvers shall be carried with all chambers loaded. Carry (of a handgun) refers to any manner of carry that implies the handgun is ready to be drawn and fired if necessary.

¹ An unplanned event or exigent circumstance that occurs with no advanced warning, rapidly evolves, and which requires a reactive response to address an imminent threat.

² 8 U.S.C. § 1357, 8 C.F.R. § 287.8 and § 287.9, and 19 U.S.C. § 1589(a).

- b. Shoulder-fired weapons (SFWs) shall be carried with magazines loaded to capacity. Carry (of a SFW) refers to any manner of carry that implies the firearm is ready to be utilized for law enforcement operations.
6. Only approved ammunition may be used in CBP firearms. Unless being utilized for training purposes, CBP firearms shall only be loaded with CBP-issued ammunition specifically approved for duty use. A list of approved ammunition may be found on the CBP Authorized Equipment List (AEL).
7. Authorized Officers/Agents, when in uniform and on-duty, shall carry a minimum of two, fully-loaded, spare magazines for their handgun, in accordance with component uniform policies.
8. An Authorized Officer/Agent shall only be issued one handgun. Based upon availability, and with the approval of the Responsible Official (RO), an officer/agent may be issued a second handgun.
9. An Authorized Officer/Agent shall not be issued more than two "Service Use" handguns without the approval of their respective Designated Official (DO).
10. Except as provided herein, Authorized Officers/Agents shall carry only one CBP handgun on their person at a time. Written authorization to carry two CBP handguns at the same time must be obtained from the RO with the approval of their respective DO. The DO may not delegate this authority.
11. ROs may require that Authorized Officers/Agents carry SFWs that they have demonstrated proficiency with while performing uniformed law enforcement duties.
12. Authorized Officers/Agents are responsible for the safe use and handling of their CBP firearms.

D. Flying Armed on a Commercial Aircraft

1. Only Authorized Officers/Agents who have successfully completed the CBP-approved Law Enforcement Officers Flying Armed training course (and any required updates and/or recertification) may carry a CBP firearm in the cabin of commercial aircraft in accordance with applicable regulations, policies, and procedures.³

This course will be readily available to all Authorized Officers/Agents and shall be completed on duty time.

³ Carriage of firearms aboard aircraft is governed by 49 C.F.R. § 1544.219: Carriage of accessible weapons.

2. Any Authorized Officer/Agent traveling aboard an aircraft while armed must at all times keep their CBP 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.
3. No officer/agent may place a weapon in an overhead storage bin.
4. Under no circumstances shall an Authorized Officer/Agent relinquish their CBP 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 Transportation Security Administration (TSA) Federal Security Director (FSD).
 - b. Any officer/agent who has been denied boarding shall notify their immediate supervisor as soon as possible. A written report outlining the details of the occurrence shall be forwarded to UFAN-CBP@CBP.DHS.GOV.
5. Any Authorized Officer/Agent who identifies oneself in order to take law enforcement action while on an aircraft shall notify their immediate supervisor as soon as possible. A written memo outlining the details of the occurrence shall be forwarded to UFAN-CBP@CBP.DHS.GOV.

E. Alcohol and Medication

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

In these cases, the consumption of alcoholic beverages shall be limited to an amount that does not impair the officer's/agent's judgment and/or ability to safely carry, control, or use a firearm.

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 Firearms

1. The authority to carry a CBP firearm may be temporarily or permanently revoked by the CBP Commissioner, a DO, an AC, or by the appropriate 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, a DO, an AC, or the appropriate RO.
 - a. The revocation of credentials results in the automatic revocation of the authorization to carry a CBP firearm.
 - b. The revocation of the authorization to carry a firearm does not automatically result in the revocation of credentials.
4. Situations that may warrant the temporary or permanent revocation of the authority to carry CBP 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 unlawful violent behavior, or behavior that indicates that the individual may be a danger to themselves or others;
 - f. Evidence of serious breaches of CBP integrity or security policies;
 - g. Evidence of a credible threat to use a firearm in an unlawful manner; and/or
 - h. Determination by an RO that the revocation is in the best interests of CBP and/or the officer/agent. Such authority will be reasonably exercised.
5. When the authority to carry a CBP firearm is temporarily revoked by a supervisor, the supervisor shall (within 24 hours of such action) provide written notification to the RO of the action taken, identifying the employee involved and documenting the circumstances supporting the revocation determination.
6. When the authority to carry a CBP firearm is revoked, the RO shall provide the employee with a written notification, as soon as possible, explaining:
 - a. The reason(s) for the revocation;

- b. The nexus between his/her conduct (performance or condition) and the threat to the safety of the employee or others (if applicable);
 - c. Any limitations on the performance of duties; and
 - d. The duration (or anticipated duration) of the revocation.
7. When the authority to carry a CBP firearm is temporarily or permanently revoked, the employee shall not perform duties or assignments that normally require the carriage of a firearm.

Permanent revocation of firearms and/or credentials may be grounds for reduction in grade, reassignment, or removal, as determined appropriate by CBP.

8. Revocation of a CBP firearm must be recorded in the Firearms, Armor and Credentials Tracking System (FACTS) within 24 hours.
9. Authorized Officers/Agents whose authority to carry a CBP firearm has been temporarily revoked due to any of the circumstances listed in Chapter 1.F.4 or any employee suspended indefinitely while under investigation shall turn in all CBP-issued firearms, magazines, ammunition and CBP-issued less-lethal devices to the appropriate coordinator.

G. Domestic Violence and the Authority to Carry Firearms

1. *DHS Policy Statement 045-06* (See Appendix III) and CBP Directive 51000-004, CBP Domestic Violence Policy, (See Appendix IV) address off-duty reportable contact with a law enforcement officer/agency or the judiciary, and the mandatory suspension of an employee's authority to carry a firearm or other weapon and to perform law enforcement duties.
2. It is the responsibility of any Authorized Officer/Agent to promptly (within 24 hours or as soon as possible) notify their immediate supervisor of the following:
 - a. An arrest or charge for a crime of domestic violence; or
 - b. The issuance of a protective or temporary restraining order; or
 - c. The issuance of any other court order restricting the Authorized Officer/Agent's contact with another individual or the ability to possess a firearm.
3. During the period pending disposition of the circumstances described above, CBP shall act in accordance with requirements in *DHS Policy Statement 045-06*, and take custody of any CBP firearms, other weapons, and ammunition.

If applicable, CBP shall also rescind, in writing, any previous authorizations to utilize a personally-owned firearm in the performance of the Authorized Officer/Agent's official duties.

H. Carriage of 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. Additional guidance on CBP policy regarding the off-duty carriage of firearms may be found on LESC's CBP.net collaboration page.

Chapter 2: Authorizing and Approving Officials

A. Designated Officials (DOs)

1. The Designated Official for each CBP office is responsible for the overview of their use of force program and for ensuring compliance with the *CBP Use of Force Policy* and the *CBP Use of Force - Administrative Guidelines and Procedures Handbook*.
2. DOs are responsible for component level approval of authorized firearms and less-lethal equipment for field use, ammunition procurement, special weapons requests, and CBP National Use of Force Review Board (NUFRB) participation.
3. DO responsibilities cannot be delegated below the Headquarters level.
4. The DOs are:
 - a. Executive Assistant Commissioners (EAC), and Chief, U.S. Border Patrol (or their Headquarters designees);
 - b. Assistant Commissioner (AC), Office of Professional Responsibility; and
 - c. Executive Director, Law Enforcement Safety and Compliance Directorate (LESC).

B. Responsible Officials (ROs)

1. Each RO is responsible for the implementation of the CBP use of force program and for ensuring compliance with the *CBP Use of Force Policy* and the *CBP Use of Force - Administrative 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) and Less-Lethal Coordinator (LLCO) to manage the respective firearms and less-lethal programs within his or her area of responsibility (see [Chapter 11](#)).
4. The ROs are:
 - a. Executive Assistant Commissioners (EAC), Chief, U.S. Border Patrol (USBP), or Assistant Commissioners (AC);
 - b. Chief Patrol Agents (CPA);

- c. Directors, Field Operations (DFO);
 - d. Director Air and Marine Operations (DAMO), Deputy Director Air Operations (DDAO), and Deputy Director Marine Operations (DDMO);
 - e. Executive Director of the Law Enforcement Safety and Compliance Directorate (LESC);
 - f. Executive Directors, Office of Professional Responsibility (OPR);
 - g. Division Directors, Office of Training and Development (OTD); and
 - h. Other officials designated in writing by the Commissioner.
- C. Executive Director, Law Enforcement Safety and Compliance Directorate (LESC)
1. The Executive Director of the LESC has primary responsibility to:
 - a. Direct all aspects of CBP use of force programs;
 - b. Direct the development and implementation of CBP use of force policies and procedures;
 - c. Direct the technical and evaluation aspects of CBP use of force 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 LESC 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. Provide policy guidance and system oversight for FACTS and E-STAR;
 - i. Establish the standards for the training and certification of armorers, firearms instructors, less-lethal instructors, and other advanced instructors;
 - j. Oversee all CBP armories and direct the maintenance, repair, and alteration of all CBP-issued and authorized firearms;
 - k. Oversee the control and accountability of all firearms, ammunition, ordnance, less-lethal devices, and body armor; and

- I. Authorize and maintain a list of authorized weapons, holsters, ammunition, equipment, and accessories.
2. The Executive Director of the LESC 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 Executive Director of the LESC.

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;
 - b. The report shall be made either in person, or via radio or telephone; and
 - c. Shall address employee and public safety concerns and provide the information necessary to preserve pertinent evidence (See Chapter 3.A.5.a)
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 possible.
3. Following the initial reporting of the incident, an employee who learns of additional information concerning the items listed in Chapter 3.A.5.a shall, as soon as possible, make an oral report of such information to a supervisor.
4. Firearms shall not be cleaned if they have been involved in a reportable use of force.
5. CBP Supervisor - Upon notification of a use of deadly force, a supervisor shall:
 - a. Gather an oral report from the involved employee(s) addressing public safety and evidence preservation. It shall therefore be limited to 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 description of any circumstance(s) which might cause additional conflicts or confrontations;
 - (6) The operational activity in which the Authorized Officer/Agent or employee involved in the incident was engaged;
 - (7) When firearms are used: the type of firearm(s), the approximate number of shots fired, and the current location of all firearms used in the incident; and
 - (8) Any other information that is needed to assure that the operational responsibilities of CBP related to public safety and evidence preservation are properly carried out.
- b. Secure the incident scene, and seek medical assistance for any person who appears, or claims to be, injured.
 - c. Ensure that all CBP employees who were involved and/or witnessed 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;
 - d. Make an initial report via established chain(s) 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. The report shall not be delayed when observance of the chain-of-command is impractical.
 - (3) Additionally, if notified of a use of force incident that occurs outside of the CBP supervisor's area of responsibility, the supervisor shall report the incident to the chain of command in the geographic jurisdiction where the incident occurred.
 - e. Report the incident to CBP HQ via the Commissioner's Situation Room in accordance with CBP Directive 3340-025D (or any successor policy);
 - f. Notify the Office of Human Resources of the need to schedule drug and alcohol testing;
 - g. Provide the involved employee(s) with contact information for the CBP Employee Assistance Program (EAP), and assist in making contact (if requested);

- h. Assume on-scene responsibility for media contacts. Supervisors should, as soon as practical, 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;
 - i. 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; and
 - j. Report the use of force in the CBP Enforcement Action Statistical Analysis and Reporting System (E-STAR) on CBPnet. Initial reports should be completed within 72 hours of the time the incident occurs.
6. 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 immediately making a written statement regarding the incident.⁴ Other CBP personnel on scene may be required to immediately 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, consistent with Garrity v. New Jersey, 385 U.S. 493 (1967), an incriminating statement made by an officer/agent is inadmissible against them in a criminal trial if the officer/agent made the statement under threat that they would be terminated from federal employment if they invoked a right to remain silent;
 - 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;

⁴ Absent exigent circumstances, an employee who uses deadly force should not provide a written statement until at least 72 hours after the incident in order to allow the employee to collect their thoughts, gain a full understanding of the difference between a voluntary and compelled statement, and consult with an attorney, or union representative, if they so choose.

- 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, no questioning to the employee should occur until his/her attorney is present (except for the Safety Questions in Chapter 3.A.5.a). 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.
7. 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;
 - d. Notify the local OPR duty agent via 1-800-XSECTOR within one hour;
 - 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 Office of Professional Responsibility; and
 - f. For incidents involving detailed/TDY CBP personnel, the RO shall also notify the detailed personnel's permanent chain of command 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.

8. All use of force incidents involving CBP personnel outside of their permanent duty location (e.g. travel, temporary duty) shall be reported to the chain of command in the geographic jurisdiction where the incident occurred. In instances where the chain of command in the geographic jurisdiction is not clearly established or known, CBP personnel shall report the incident to their supervisor.
9. 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 possible, report such information to the RO and to the Commissioner's Situation Room in accordance with CBP Directive 3340-025E (or any successor policy), as well as the Office of Professional Responsibility.
10. Any CBP employee with knowledge of the improper use of force by law enforcement personnel shall, without unreasonable delay, report it to his or her chain of command and/or the Office of Professional Responsibility via the Joint Intake Center (JIC).

Failure to intervene in and/or report such violations is, itself, misconduct that may result in disciplinary action, with potential consequences including removal from federal service, civil liability, and/or criminal prosecution.

Additional guidance on the duty to intervene can be found in Chapter 1.F of the *CBP Use of Force Policy*.

B. Reporting the Discharge of a Firearm

1. Authorized Officers/Agents must report:
 - a. Any discharge (including an unintentional discharge) of a CBP firearm or any firearm that is, or reasonably appears to be, related to his or her CBP employment. Except for:

Discharges which occur during firearms training, practice, qualification, demonstrations, or lawful participation in firearm sports, which do not cause injury to a person, unintentional injury to animal, or unforeseen damage to private, public, or government property.
 - b. Discharges involving the use of deadly force shall be reported through the procedures outlined in Chapter 3.A.
 - c. Discharges not involving the use of deadly force shall be:
 - (1) Orally reported to a CBP supervisor within one (1) hour of the time the incident occurs, or as soon as feasible; and

- (2) Reported through the CBP Enforcement Action Statistical Analysis and Reporting System (E-STAR) on CBPnet. Reports should be entered into the system within 24 hours of the time the incident occurs and completed within 72 hours.
2. Authorized Officers/Agents must also report the discharge of any firearm that:
- Is in violation of any law or ordinance, or causes an investigation by any law enforcement agency;
 - Is, or reasonably appears to be, discharged in an unsafe or reckless manner due to impairment caused by the consumption of alcohol or drugs; or
 - That occur during multi-agency operations involving CBP personnel (but not by a CBP employee).

Such discharges shall be reported through the chain of command, and may also be reportable to the Commissioner's Situation Room under the standards and procedures articulated in *Reporting Significant Incidents to the Commissioner's Situation Room - CBP Memorandum 3340-025D* (or any successor policy).

3. If a CBP firearm is discharged against an animal presenting an imminent threat or is used to euthanize an injured animal, the employee shall:
- Verbal Report - Employees shall orally report the discharge to a CBP supervisor. The report shall be made within one (1) hour of the time the incident occurs, or as soon as feasible. The report shall be made either in person, or via radio or telephone, and shall be comprised of the following information:
 - The type of animal involved, and the date, the time, and the location of the incident;
 - The firearm used by the officer/agent; and
 - The nature and the extent of any collateral damage or injury to CBP personnel or others and whether medical assistance has been requested (if applicable).
 - Written Report/Memorandum - Officers/agents shall submit a written memorandum through the chain of command articulating the reasons for the discharge. Unless the employee is physically incapacitated or otherwise unable, the memorandum shall be submitted within 24 hours of the time the incident occurs.

- c. E-STAR Report - Officers/agents shall also report the discharge through E-STAR. Officer/agents must attach their signed memorandum to the E-STAR report. Reports should be entered into the system within 24 hours of the time the incident occurs and completed within 72 hours.
 - d. Upon notification of the euthanasia of an animal, the supervisor shall ensure that the appropriate law enforcement authorities have been notified.
4. 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 LESC for examination (unless the firearm is required for an ongoing federal, state or local law enforcement investigation or legal action).
 - a. When sending a firearm to the LESC, ensure that the firearm is unloaded and that it has NOT been cleaned or disassembled prior to shipping. Do NOT unload, clean, or disassemble the magazine.
5. When an employee is required to relinquish his or her CBP 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 holster if necessary; and
 - b. The opportunity to familiarize himself or herself with the replacement firearm under the supervision of a Firearms Instructor (FI). Familiarization includes the ability to safely identify the condition of the firearm through a visual and physical inspection, perform safety clearing procedures, and properly manipulate its operating mechanisms.
 - c. The employee shall qualify with the replacement firearm as soon as possible.
6. An unintentional discharge, for which the employee acknowledges responsibility, does not require the firearm be sent to the LESC facility.
 - a. Post-incident safety and function remedial training shall be provided and documented by the local Firearms Instructor (FI). The documentation shall be included in the incident investigation file.
 - b. If a currently certified FI has an unintentional discharge, the Executive Director of the LESC will make a determination, in consultation with the affected component RO, regarding the instructor certification (e.g. revocation, remediation).

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 a 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, 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 Following the Use of Less-Lethal Force

A. Responsibilities Following a Use of Less-Lethal Force

1. Authorized Officers/Agents - Authorized Officers/Agents shall report any intentional deployment of a CBP less-lethal device; or any use of a vehicle, weapon, physical tactic, or technique that delivers (or is intended to deliver) a kinetic impact to a subject 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.⁵ Unless the employee is physically incapacitated or otherwise unable, the memorandum shall be submitted by the end of the employee's work shift.

The memorandum shall describe in detail the circumstances of the incident, including the actions of the subject necessitating the use of force (e.g. the imminent threat posed to the safety of the officer/agent or others, the severity of the crime at issue, and how the subject was actively resisting seizure or attempting to evade arrest by flight) and the specific force used in response to

⁵ 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.

- the subject's actions. Any injuries or complaint of injuries, and any medical treatment or refusal of medical treatment, shall also be documented.
- c. E-STAR Report - Officers/Agents shall also submit reportable uses of less-lethal force through E-STAR on CBPnet. Reports should be entered into the system within 24 hours of the time the incident occurs and completed within 72 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 their 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.A.1.b.
 - d. E-STAR Report - CBP supervisors shall review the involved officer's/agent's report in E-STAR for completeness, and submit/approve the report in the system (or forward for approval based on local procedure). Reports should be completed within 72 hours of the time the incident occurs.
 - 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) Ensure that supervisory or investigative officers involved in the investigation of a use of force incident are aware that, consistent with Garrity v. New Jersey, 385 U.S. 493 (1967), an incriminating statement made by an officer/agent is inadmissible against them in a criminal trial if the officer/agent made the statement under threat that they would be terminated from federal employment if they invoked a right to remain silent.

- (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. Any CBP employee with knowledge of the improper use of force by an Authorized Officer/Agent shall, without unreasonable delay, report it to his or her chain of command and/or the Office of Professional Responsibility via the Joint Intake Center (JIC).

Failure to intervene in and/or report such violations is, itself, misconduct that may result in disciplinary action, with potential consequences including removal from federal service, civil liability, and/or criminal prosecution.

Additional guidance on the duty to intervene can be found in the *CBP Use of Force Policy*, Chapter 1.E.4.

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

Any use of less-lethal force that results in serious bodily injury or death shall follow the procedures for reporting the use of deadly force outlined in Chapter 3 of this *Handbook*.

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 bodily injury or death) shall follow the procedures for reporting the use of deadly force outlined in Chapter 3 of this *Handbook*.

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 personnel 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.
3. Administrative Review - Any use of force incident involving CBP employees may be subject to an administrative review by the Office of Professional Responsibility (OPR) and/or local CBP management. For more information, refer to *CBP Directive 4510-038* (or any successor policy).

B. 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 be made through the employee's chain of command and 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.

C. 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 DO, permit the employee to take leave with pay, as appropriate, and in accordance with applicable regulations.
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).

D. Drug and Alcohol Testing

1. Drug and alcohol testing may be required after any on-duty use of deadly force against a person.
2. Drug and alcohol testing may also be required after any use of force when there is a reasonable suspicion that the CBP employee was under the influence of drugs or alcohol at the time that force was used.

The decision to require testing must be based on articulable facts, evidence, and circumstances, and be undertaken in accordance with applicable standards and procedures.

3. Drug and alcohol testing shall be undertaken in accordance with applicable standards and procedures.

Chapter 6: Use of Force Proficiency and Training

A. Training Periods

1. Use of force training periods for all Authorized Officers/Agents are:
 - a. October through December (1st Quarter);
 - b. January through March (2nd Quarter);
 - c. April through June (3rd Quarter); and
 - d. July through September (4th Quarter).
2. Firearms and less-lethal training shall take place during each training period⁶.
3. All use of force training, demonstrations of proficiency, and certifications shall be conducted pursuant to guidance established by the Executive Director of the LESC.
4. Each training period, during firearms and less-lethal training, all Authorized Officers/Agents must receive:
 - a. Training on the legal application of force consistent with CBP use of force policy guidance; and
 - b. Training on de-escalation tactics and techniques.
5. 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.
6. No portion or stage of any firearms or less-lethal qualification course may be waived or altered without written authorization from the Executive Director of the LESC.

⁶ If no other alternative is available, delivery of training by an instructor which includes demonstrating the essential elements required for completing an evaluation, constitutes the instructor's successful completion of the required training (i.e. self-certification). Demonstrating the essential elements includes the instructor's completion of any and all qualification courses and proper documentation of completion (i.e. proficiency forms/FACTS).

7. The LESC shall periodically review field training in order to evaluate compliance with policy and curriculum, as well as assess overall program safety and effectiveness.

B. Firearms Proficiency and Training Requirements

1. All Authorized Officers/Agents must maintain and demonstrate an acceptable level of proficiency with CBP firearm(s) that they carry.
2. At least once every fiscal year, all Authorized Officers/Agents must:
 - a. Complete a low-light advanced firearms training exercise (AFTE)⁷.
 - b. Complete a malfunction clearing and immediate action AFTE.
3. At least twice every fiscal year, in two separate training periods, all Authorized Officers/Agents must:
 - a. Demonstrate proficiency with each CBP firearm assigned to them in FACTS as “service use.” Proficiency is accomplished through successful completion of an approved CBP qualification course of fire in no more than two consecutive attempts and achieving at least the minimum numerical score.
4. Each training period, Authorized Officers/Agents must receive training in each of the following areas:
 - a. AFTEs;
 - b. Proper handling techniques to safely draw, fire, holster, load, unload, and operate the firearm; and
 - c. Safe weapon handling skills.
5. ROs may require that Authorized Officers/Agents maintain and demonstrate proficiency with additional firearms (e.g., a rifle, shotgun, etc.).
6. A RO may require that Authorized Officers/Agents train and/or demonstrate proficiency with greater frequency.

C. Less-Lethal Force Proficiency and Training Requirements

1. All Authorized Officers/Agents must maintain and demonstrate an acceptable level of proficiency in the use of less-lethal devices that they carry.

⁷ Sunglasses or similar devices used to simulate night or reduced light conditions may not be used.

2. All Authorized Officers/Agents shall participate in training in less-lethal techniques, tactics, and/or devices during each training period.
3. Appropriate safety equipment shall be worn during any less-lethal training.
4. At least once every fiscal year, all Authorized Officers/Agents must:
 - a. Successfully complete one full spectrum use of force training scenario;
 - b. Demonstrate proficiency in each less-lethal device that they carry; and
 - c. Receive training in each of the following areas:
 - (1) Arrest and Control Techniques;
 - (2) Counter Assault Techniques⁸; and
 - (3) OC Spray and ECW familiarization⁹
5. ROs may require that officers/agents maintain and demonstrate proficiency with additional less-lethal devices (e.g., FN303, 40mm, etc.).
6. A RO may require that Authorized Officers/Agents train and/or demonstrate proficiency with greater frequency.

D. Less-Lethal Device 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 LESC-approved initial course of instruction for such device and have been certified in its use.

⁸ Referenced in prior versions of CBP policy or administrative guidelines as “defensive tactics” and used herein with the same purpose and effect.

⁹ Authorized Officers/Agents who are not certified to carry OC spray or ECW must attend OC and ECW training (in order to understand the effects), but are not required to take the written tests or participate in the skills assessments.

- b. Only CBP Less-Lethal Instructors shall certify Authorized Officers/Agents as less-lethal device end-users/operators or instructors.
 - c. Only less-lethal devices, systems, and associated equipment authorized by LESC shall be used for training.
 - d. The LESC shall be responsible for development and approval of less-lethal device training materials and certification standards.
2. Oleoresin Capsicum Spray (OC) and Collapsible Straight Baton (CSB)
 - a. Successful completion/certification in the use of both OC 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.
 - d. One exposure to CBP-issued OC shall be required as part of the basic certification course for Authorized Officers/Agents to carry OC.
 - e. As part of the basic training at the CBP academies, officers/agents shall be exposed as part of the course of instruction.
 - f. 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.
3. Electronic Control Weapon (ECW)
 - a. Successful completion/certification in the use of the ECW is required at the basic training academies.
 - b. Exposure to an ECW is encouraged to help enhance understanding of the device (effects, limitations, capabilities, post-application care, etc.); however, is not required for end-user certification.
 - c. End-user exposures must be conducted under the close supervision of CBP-certified ECW instructors and in a controlled manner with appropriate safety equipment.

- d. The instructor must obtain a participant's voluntarily-signed waiver/consent in order to:
 - (1) Conduct a voluntary exposure;
 - (2) Video record the exposure; and/or
 - (3) Use the video recording for future training events or training materials.
4. Compressed Air Launchers (e.g., PLS and/or FN303)
 - a. Only Authorized Officers/Agents who have been trained and certified in the use of OC may be trained and certified to use compressed air launchers.
 - b. Exposure to FN303 projectiles during training is not permitted.
 - c. Exposure to PLS projectiles is not required for end user certification.
 - d. End users may opt to participate in PLS exposure training; the training must be conducted under the close supervision of CBP-certified instructors and in a controlled manner with appropriate safety equipment.
5. Munition Launchers (e.g., 40mm) and Less-Lethal Specialty Impact-Chemical Munitions (LLSI-CM)
 - a. Only Authorized Officers/Agents who have been trained and certified in the use of OC 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 certification.
 - d. End users may opt to participate in LLCM exposure training; the training must be conducted under the close supervision of CBP certified LLSI-CM instructors and in a controlled manner with appropriate safety equipment.
- E. Failure to Demonstrate Proficiency and Remedial Training
 1. Authorized Officers/Agents who are unable to demonstrate an acceptable level of proficiency or fail to attend required training for any firearm or less-lethal device shall have their authorization to carry that firearm or less-lethal device suspended.

- a. The Authorized Officer/Agent shall relinquish the firearm or less-lethal device to the instructor or to a supervisor as soon as safely practicable, but no later than the end of shift.
 - b. The officer/agent will be provided with a record of the transfer via FACTS.
2. Following a failure to demonstrate proficiency, 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 possible after failure to demonstrate proficiency.
 - 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 firearm recorded in FACTS; and
 - b. Not be assigned to perform duties that require the carrying of a firearm or less-lethal device; and
 - c. May be subject to reassignment or removal.
4. 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.

5. 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.
6. 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).

F. Unable to Participate

1. Authorized Absences - Authorized Officers/Agents who are unable to participate in use of force training and/or demonstrations of proficiency 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. ROs may, on a case-by-case basis, grant an extension of up to 30 days beyond the last day of the current training period. All extensions must be entered into FACTS as a waiver.
2. Officer/Agent on Detail - If an Authorized Officer/Agent is detailed to another duty location, he/she shall notify supervisory or management officials at the temporary duty location of the need to demonstrate proficiency and/or participate in use of force training during that training period.

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 demonstrate proficiency and/or participate in use of force training during that training period.

G. Waivers

1. General
 - a. On a case-by-case basis, an RO may grant Authorized Officer/Agent(s) a general waiver, in writing, from firearms and/or less-lethal proficiency and training requirements:
 - (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 participate in use of force training; or
 - (2) Due to circumstances beyond the officer's/agent's control (e.g., natural disasters).
 - b. The time period for a general waiver begins from the day it is granted and may not exceed 270 days.
 - c. The decision to grant a general waiver, and the duration thereof, shall be based on all available relevant information.

- d. Such information may include the medical documentation submitted by the officer/agent, records of the Authorized Officer/Agent's prior firearms and/or less-lethal device proficiency demonstrations, and the recommendations of the Firearms Instructor(s) and/or Less-Lethal Instructor(s) and supervisory personnel.
- e. Authorized Officers/Agents requesting a general waiver for medical reasons 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.
- f. Authorized Officers/Agents granted a general waiver from training and/or demonstration of proficiency shall receive a written authorization to continue carrying firearm(s) and/or less-lethal device(s).
 - (1) The written authorization shall include a specific expiration date of the waiver, and a description of the firearm(s) and/or less-lethal device(s) the officer/agent is authorized to carry.
- g. All waivers must be entered into FACTS.
- h. A waiver 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.

2. Deployments Outside the Continental United States (OCONUS)

- a. On a case-by-case basis, an RO in the Authorized Officer/Agent's appropriate chain of command may grant an OCONUS waiver, in writing, from firearms and/or less-lethal proficiency and training requirements.
 - (1) Due to circumstances beyond the officer's/agent's control while deployed OCONUS (e.g., host country restrictions, venue availability, etc.).
- b. OCONUS waivers may be issued up to the full duration of the OCONUS deployment.
- c. OCONUS waivers only apply to the *CBP Use of Force - Administrative Guidelines and Procedures Handbook* requirements for demonstration of proficiency and training.

- d. The Chief of Mission (COM) has the ultimate authority and responsibility for determining who is authorized to carry a weapon and the training and proficiency requirements in the country where they are the COM. If the OCONUS duty location requires firearms and/or less-lethal training, the Authorized Officer/Agent shall comply with the mission's firearms policies and other applicable use of force policies. OCONUS waivers do not apply to COM firearms and/or less-lethal training requirements.
- e. Prior to being authorized to carry a CBP firearm or less-lethal device within the continental United States, regardless of duty status, Authorized Officers/Agents must be in full compliance with CBP use of force training and proficiency requirements.
- f. All OCONUS waivers must be entered into FACTS.

Chapter 7: CBP Body Armor

A. General Guidelines and Responsibilities

1. Authorized Officers/Agents (and other employees as approved) shall be issued soft and/or hard personal protective body armor.
 - a. Body armor issued for uniformed law enforcement duties shall be a minimum of ballistic threat protection Level IIIA, as certified by and in accordance with the standards of, the National Institute of Justice (NIJ).
 - b. Body armor issued for plain clothes or non-uniformed law enforcement duties shall be a minimum of ballistic threat protection Level II, as certified by and in accordance with the standards of, the NIJ. Approval for issue of Level II armor is at the discretion of the RO.
 - c. Body armor that has exceeded its expiration date (as listed in FACTS) or become unserviceable shall be replaced (as funds are available).
 - d. Body armor carriers 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, the manufacturer's recommendations and ballistic panel labeling.
3. 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.
4. 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.

CBP employees transferring to a law enforcement position within DHS (and whose agency utilizes FACTS to track body armor) may retain their assigned body armor. All CBP identification panels (including agency and badge patches) shall be turned in to their BAC.

5. BACs (or other designated personnel who have received training in the characteristics, care, and maintenance of 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.

6. 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.
7. All CBP body armor that is no longer required/authorized at the field location shall be transferred in FACTS and shipped to the LESC on a monthly basis (e.g., excess, expired, unserviceable, etc.).

B. Policy on the Wearing of Body Armor

1. The wearing of body armor during normal operations is at the discretion of the employee; however, CBP strongly encourages the use of body armor at all times while performing law enforcement duties.
2. The wearing of body armor by CBP employees is mandatory during live-fire CBP mandated firearms training and demonstration of proficiency.

An RO or their designee, or the Executive Director-LESC, may grant exemptions, in writing, from the mandatory wear of body armor for specific AFTEs (e.g. plain clothes concealment), or courses of fire (e.g. Precision Marksman/Observer).

3. The RO may mandate the wearing of CBP-issued body armor by CBP employees during the following planned activities:
 - a. Special Operations deployments, when officers/agents are part of an arrest, entry, or perimeter element;
 - b. Execution of high-risk search or arrest warrants, terrorism related or other high-risk operations, and specialty unit operations;
 - c. Air and marine operations;
 - d. 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
 - e. 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 possible.
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. Personally-Owned Body Armor

1. CBP employees may purchase and wear personally-owned body armor.
2. Personally-owned armor must be worn concealed (e.g., under the uniform shirt) or in a CBP-authorized outer carrier, while on-duty.
3. To substitute personally-owned armor for circumstances when CBP-issued body armor is mandated, the personally-owned armor:
 - a. Must be listed by make/model on the NIJ's Body Armor Compliant Product List (CPL);
 - b. Must be approved by the Executive Director of the LESC prior to use¹⁰; and
 - c. Must be maintained and replaced according to the manufacturer's recommendations.

D. 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 who have been issued body armor shall, as soon as possible, notify their supervisor of the need to replace lost, stolen, worn, damaged, or incorrectly sized 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 CBP office and forwarded to the LESC 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 the LESC for processing and destruction.

¹⁰ Requests for approval are submitted via CBP Form 1514.

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.

E. 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.

F. Testing, Acquisition, and Disposal

1. The Executive Director of the LESC is responsible for overseeing all testing and evaluation of CBP body armor. No testing or evaluation of body armor or associated carriers may be undertaken without the prior consent of the Executive Director of the LESC.
2. The Executive Director of the LESC 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 Executive Director of the LESC.
3. All CBP body armor that is no longer required/authorized at the field location shall be transferred in FACTS and shipped to the LESC on a monthly basis (e.g., excess, expired, unserviceable, etc.).
4. Field entities are not authorized to dispose of or otherwise remove body armor from CBP inventory.

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 FACTS accountable 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. FACTS provides oversight and lifecycle accountability for specified law enforcement assets and equipment.
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. Firearms Coordinators (FCOs) must notify the LESC 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 Executive Director of the LESC 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 inspect 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 in FACTS as required.
4. Supervisors shall physically verify an employee's inventoried property and record such action in FACTS as required.
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 may be found in the LESC FACTS Quick Reference section in the LESC/Asset Management page on CBPnet or by accessing the "*Personal Property and Asset Management Handbook*" (HB 5200-13C) available on CBPnet.

2. CBP employees must comply with applicable local law enforcement reporting requirements.
3. When a CBP firearm has been lost or stolen, the employee shall (so long as the authorization 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. Familiarization includes the ability to safely identify the condition of the firearm through a visual and physical inspection, perform safety clearing procedures, and properly manipulate its operating mechanisms.

- c. The employee shall qualify with the replacement firearm as soon as possible.
 4. Lost or stolen CBP body armor will be replaced as soon as possible.
- E. Personal Property Management Oversight Board (PPMOB)
1. The PPMOB should meet within thirty days of receipt of a Report of Survey.
 2. The LESC is responsible for documenting the PPMOB findings in FACTS in order to terminate the asset record.
 3. Additional information regarding the PPMOB and personal property and asset management may be found by accessing the "*Personal Property and Asset Management Handbook*" (HB 5200-13C) available on CBPnet.
- 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 the LESC, with the concurrence/approval of the RO or Co-Authority (COA).
 - b. Requests for firearms and/or munition launchers require review/approval by headquarters personnel from the respective CBP office and the concurrence of the Executive Director of the LESC.
- 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 FACTS Accountable Assets
1. A safety-locking device (e.g. cable lock, trigger lock and/or lock box) shall be issued to all Authorized Officers/Agents and other CBP armed personnel.

2. On-Duty Storage

- a. Physical Locations - A location that restricts the physical control or access to the firearm (e.g., courthouse, training environment).

Firearms - Shall be secured by a safety-locking device (e.g., a cable lock, trigger lock, lock box, or gun safe) unless the weapon is within the immediate control 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.

Body Armor - Shall be placed out of plain view in a location that affords reasonable protection against theft or unauthorized use.

Less-Lethal Devices/Other Use of Force Equipment - Shall be placed out of plain view and in a location that affords reasonable protection against theft or unauthorized use.

- b. Vehicles, Vessels, or Aircraft

Firearms - When left unattended for short periods of time, firearms shall be placed in a locked firearms rack, firearm storage drawer, or other secured storage approved for use in a CBP vehicle. Due to the possibility of loss or theft, the employee must, at a minimum, lock the storage device and the vehicle.

Body Armor - Shall be locked in a service vehicle, vessel, or aircraft and stored the out of plain view.

Less-Lethal Devices/Other Use of Force Equipment - When left unattended for short periods of time, shall be placed in a locked service vehicle, trunk, or other limited access location or in a secure CBP-issued container. 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.

3. Off-Duty Storage

- a. Physical Locations - A location that restricts the physical control or access to the firearm (e.g., residence, temporary residence, lodging).

Firearms - Shall be secured by a safety-locking device (e.g., a cable lock, trigger lock, lock box, or gun safe) unless the weapon is within the immediate control 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.

Body Armor - Shall be placed out of plain view and in a location that affords reasonable protection against theft or unauthorized use.

Less-Lethal Devices/Other Use of Force Equipment - shall be placed out of plain view and in a location that affords reasonable protection against theft or unauthorized use.

b. Vehicles, Vessels, or Aircraft

Firearms, Body Armor, Less-Lethal Devices and Other Use of Force Equipment 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.

(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) 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 a CBP employee is on extended absence that is expected to exceed ninety days and will be unable to physically inventory their firearm(s), body armor, less-lethal device(s) and/or other use of force equipment, the equipment shall be returned to the appropriate coordinator, for storage, until the employee returns to duty.
5. CBP firearms, body armor, less-lethal devices or other use of force equipment may not be stored in storage units with commercial storage vendors. (e.g., U-Haul, Public Storage)
6. Local Stations, Branches, and Ports of Entry shall be responsible for the storage, proper care, and maintenance of firearms, body armor, less-lethal devices and/or other use of force equipment at that location.
 - a. 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* (HB 1400-02C) (or any successor policy).
 - b. All unissued CBP less-lethal devices and other use of force equipment shall be stored in a limited access location and in a manner consistent with the manufacturer's suggestions for storage and applicable CBP storage policies.

I. Storage of Less-Lethal Devices - Device-Specific Guidelines

1. 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 and in accordance with the policies and procedures cited in the *CBP Security Policy and Procedures Handbook (HB 1400-02C)* (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) (or any successor policy).
- b. A Department of Transportation (DOT) 1.4D explosive placard will be posted on the door of CBP LLSI-CM storage site (contact the LESC if further guidance is needed).

2. 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 (HB 1400-02C)*, (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) (or any successor policy).
- b. 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.
- c. 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.
- d. 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.
- e. Annual inventories of CNLDDs will be conducted, and any lost, stolen or missing CNLDDs will be noted and forwarded to appropriate supervisory personnel.

f. CNLDDs shall not be stored in residences, vehicle, 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.

J. Unissued Firearms¹¹

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 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.
3. Firearms held on behalf of officers/agents on leave or detail, for repair, for destruction, for historical purposes, or for use in training or ceremonial duties shall not count against the limits outlined in this subsection. All firearms held for historical purposes must be approved by the Executive Director of the LESC.
4. 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 DO of the respective CBP office.

K. Non-Standard Firearms

1. The DO of the respective CBP component may, with concurrence of the Executive Director of the LESC, approve requests from a RO for a non-standard firearm.
2. Requests for authorization to carry non-standard firearms must be submitted via memorandum for approval by the RO and the Executive Director of the LESC. Specific mission needs must be addressed in the form.

¹¹ The LESC, as the CBP National Firearms Reserve, may maintain firearms in reserve as unissued.

3. Authorizations are valid for the time period specified, or until revoked by the RO or the Executive Director of the LESC.
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 demonstrated proficiency with the firearm(s) in accordance with this policy.

L. Seized, Forfeited, or Abandoned Firearms

1. Immediately after final adjudication, all seized, forfeited, or abandoned firearms, ammunition, and related equipment shall be processed in accordance with applicable procedures found in the *Seized Asset Management and Enforcement Procedures Handbook* (HB 4400-01A).
2. All firearms shall be checked to ensure that they are unloaded prior to shipment to the LESC.
3. Seized, forfeited or abandoned firearms, ammunition, and related equipment shall be handled in accordance with the current *Seized Asset Management and Enforcement Procedures Handbook* (HB 4400-01A) (available on CBPnet).
4. The shipment of any CBP firearm or other use of force equipment shall be done in accordance with LESC Standard Operating Procedures (available in the LESC section of CBPnet) and sent by a carrier that can control and track secure packages. Copies of all related documents should be included in the shipment.

M. Acquisition, External Transfer or Destruction of FACTS Assets

1. The LESC 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 the LESC 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 Executive Director of the LESC.

Chapter 9: Inspection, Maintenance, and Repair of FACTS Accountable Use of Force Equipment

A. Inspection

1. The LESC shall receive and inspect ALL newly acquired use of force equipment to ensure proper functioning and compliance with CBP specifications and standards.
2. Use of force equipment shall be inspected by the respective Firearms Instructor (FI), Less-Lethal Instructor (LLI), or CBP Field Armorer (FA) during proficiency demonstrations to ensure safe and proper functioning.
3. Only authorized items¹² may be affixed to a CBP firearm or less-lethal device.
4. The LESC has the authority to recall and/or inspect any use of force equipment, as necessary.

B. Maintenance

1. Authorized Officers/Agents are responsible for normal cleaning and preventive maintenance of their use of force equipment. Failure to perform normal cleaning and preventative maintenance may result in disciplinary action.
2. Firearms and Less-Lethal Instructors shall provide Authorized Officers/Agents with training regarding proper care, maintenance, and inspection procedures.
3. Authorized Officers/Agents shall be provided with sufficient materials and sufficient duty time (consistent with operational needs) to clean their use of force equipment.
4. Maintenance should only be done in accordance with the reference materials/instructions provided by the LESC or as described in the operator manual. Operator manuals for use of force equipment shall be made available to all employees.
5. FIs/LLIs shall ensure that all unissued or pool use of force equipment used in training, practice, or proficiency demonstrations is cleaned, and preventive maintenance performed, prior to storage.

¹² Authorized items are located on the Authorized Equipment List (AEL) on CBPnet.

C. Repair

1. CBP employees are prohibited from making any repairs, adjustments, and/or modifications to use of force equipment unless expressly authorized by the Executive Director of the LESC.
2. CBP-certified FAs are authorized to make certain repairs and/or modifications, as provided in FA training, and subsequent LESC-directed repairs and/or modifications.
3. CBP use of force equipment requiring repair beyond field level authorization shall be transferred and shipped to the LESC in accordance with the procedures outlined in the LESC Standard Operating Procedures (available on CBPnet).

D. Shipping

1. The appropriate field coordinator is responsible for shipping and receiving all use of force equipment assigned within their area of responsibility.
2. The shipment of any use of force equipment shall be done in accordance with LESC Standard Operating Procedures (available on CBPnet) and sent by a carrier that can control and track secure packages.
3. All handguns shall be shipped next day air. All other use of force equipment may be shipped by ground. Contents shall not be identified on the outside of the box.

E. Replacement

1. CBP employees shall immediately notify a FI, LLI, or appropriate coordinator when 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. Coordinators shall return any inoperable or unsafe use of force equipment to the LESC via the procedures outlined in the LESC Standard Operating Procedures (available on CBPnet).

Chapter 10: Ammunition

A. Ammunition Procurement and Use

1. Only approved ammunition may be used in CBP firearms. Unless being utilized for training purposes, CBP firearms shall only be loaded with CBP-issued ammunition specifically approved for duty-use. A list of approved ammunition may be found on the CBP Authorized Equipment List (AEL).
2. All CBP-issued ammunition shall be new, commercially manufactured, and procured through authorized procurement channels.
3. The LESC is responsible for the research, development, testing, and evaluation of all ammunition within CBP.
4. Purchase Card acquisition of ammunition must be approved in writing by the Executive Director of the LESC.

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 Executive Director of the LESC for approval.

C. Ammunition Issue

1. Replacement ammunition for duty carry shall be issued (as needed) after each CBP-approved live fire firearms training.
2. In addition to the handgun ammunition necessary for duty carry and official qualifications, DOs may authorize the issue of handgun proficiency ammunition to each Authorized Officer/Agent upon request, contingent upon availability.
 - 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* (HB 1400-02C) (or any successor policy).

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 duty locations must maintain sufficient amounts of ammunition to meet their operational and anticipated training requirements. (e.g., scenario-based and live fire skills training per training period, competition and community programs, qualifications, proficiency and duty issue rounds per officer/agent). Requests must be vetted before the anticipated fiscal year through the component Headquarters point of contact.
2. As ammunition inventory changes, it shall be accounted for and recorded in FACTS.
3. Responsible supervisory personnel shall ensure that ammunition inventory is, at a minimum, recorded in 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.

Chapter 11: Use of Force Instructors and Range Training Operations

A. Firearms Coordinator (FCO)

1. Each RO shall designate an FCO. The FCO shall perform the following functions (as required):
 - a. Manage the overall firearms and use of force program within the ROs area of responsibility;
 - b. Schedule and direct the FIs and Range Safety Officers (RSOs);
 - c. Ensure that all proficiency and required firearms training 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 FACTS and conduct periodic physical inventories of weapons, ammunition and related equipment and verify the results in the system;
 - f. Coordinate/oversee the scheduling of officers/agents to participate in the required firearms proficiency demonstrations and all applicable firearms training; and
 - g. Make final determinations regarding proficiency, consistent with the provisions and requirements of this policy.

B. Firearms Instructors (FIs)

1. All Firearms Instructors shall be Authorized Officers/Agents.
2. Each RO shall designate Authorized Officers/Agents to perform full-time or collateral duties as an FI.
3. The Executive Director of the LESC shall establish the standards for the certification and re-certification of FIs. The Executive Director of the LESC shall maintain a record of all certified FIs.
4. All FIs must have successfully completed a LESC-approved Firearms Instructor Training Program (FITP).

5. FIs are required to remain current through continued completion of a *Certification Program* approved by the Executive Director of the LESC. If currency as an FI lapses, a re-certification program must be successfully completed prior to performing the duties of an FI.

Authorized Officers/Agents who are assigned, with a current certification, to instructional duties as a FI at a CBP academy (including extended detail assignments) will remain in a current status and may continue to perform the duties of a FI through the duration of the assignment, regardless of their last certification date.

6. All FIs shall be provided updates for implementation, addressing curriculum, policy or directives as appropriate.
7. During firearms training, practice or proficiency demonstration, 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. RSOs should be utilized to augment safety requirements during firearms training and proficiency demonstrations.
2. RSOs are trained locally using a program authorized by the Executive Director of the LESC and administered by an FI.
3. RSOs do not carry any FI 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. Less-Lethal Coordinator (LLCO)

1. Each RO shall designate a LLCO. The LLCO shall perform the following functions as required:
 - a. Manage the overall less-lethal training and use of force 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 proficiency 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 devices, projectiles, munitions, and related equipment and verify the results in the system;
- f. Coordinate/oversee the scheduling of officers/agents to participate in the required less-lethal proficiency demonstrations and all applicable less-lethal training; and
- g. Make final determinations regarding proficiency, consistent with the provisions and requirements of this policy.

E. Less-Lethal Instructors (LLIs)

1. All Less-Lethal Instructors shall be Authorized Officers/Agents.
2. Each RO shall designate Authorized Officers/Agents to perform full-time or collateral duties as a LLI.
3. The Executive Director of the LESC shall establish the standards for the certification and re-certification of LLIs. The Executive Director of the LESC shall maintain a record of all certified LLIs.
4. All LLIs must have successfully completed a LESC-approved Less-Lethal Instructor Training Program (LLITP). LLIs must be able to cross-train other CBP personnel.
5. LLIs are required to remain current through continued completion of a *Certification Program* approved by the Executive Director of the LESC. If currency as an LLI lapses, a re-certification program must be successfully completed prior to performing the duties of an LLI.

Authorized Officers/Agents who are assigned, with a current certification, to instructional duties as a LLI at a CBP academy (including extended detail assignments) will remain in a current status and may continue to perform the duties of a LLI through the duration of the assignment, regardless of their last certification date.

6. All LLIs shall be provided updates, for implementation, addressing curriculum, policy or directives as appropriate.
7. During less-lethal training, or proficiency demonstrations, 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. LLTSOs should be utilized to augment safety requirements during less-lethal training and proficiency demonstrations.
2. LLTSOs are trained locally using a program authorized by the Executive Director of the LESC and administered by an LLI.
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 training and/or demonstrations of proficiency 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, Fls have the absolute and final authority on matters of range operation and safety.
3. Fls shall remove any person from the range who fails to comply with safety practices, procedures, or instructions.
4. Prior to commencing range activities, Fls 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. Fls 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 demonstrating proficiency, Authorized Officers/Agents shall wear their normal duty uniform and equipment (as determined by the RO).
7. During demonstrations of proficiency and training, CBP employees shall only use CBP firearms.
8. CBP employees shall demonstrate proficiency with their CBP firearms.
 - a. If a firearm malfunctions and cannot be repaired on-site, the employee may demonstrate proficiency with a different weapon of identical make and model (if available).
 - b. If the employee is not in possession of their CBP firearm due to circumstances beyond their control, the employee may demonstrate proficiency with an alternate CBP firearm of identical make and model (if available), with the approval of the RO (or their designee)
9. FIs shall manually inventory CBP firearms to ensure Authorized Officers/Agents demonstrate proficiency with their approved weapons, unless pool weapons are used. The FI shall ensure that the inventory and qualification scores are properly entered in FACTS within three days.
10. For safety purposes, the minimum ratios of FIs/RSOs to shooters on the firing line are:
 - a. For firearms proficiency demonstrations and static firearms training, one FI/RSO per every six shooters (1:6); and
 - b. For tactical firearms training incorporating movement, one FI/RSO per every two shooters (1:2).

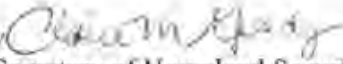
Appendix I: DHS Policy on the Use of Force



Issue Date: September 7, 2018

Policy Statement 044-05

MEMORANDUM FOR: Component Heads

FROM: Claire M. Grady 
Acting Deputy Secretary of Homeland Security and
Under Secretary for Management

SUBJECT: **Department Policy on the Use of Force**

I. Purpose

Pursuant to the Secretary's authority under Title 6, United States Code (U.S.C.) § 112, this policy articulates Department-wide standards and guidelines related to the use of force by Department of Homeland Security (DHS) law enforcement officers and agents (LEOs) and affirms the duty of all DHS employees to report improper uses of force. All DHS Components employing LEOs are directed to implement this guidance, including investigation and documentation practices, through Component-specific policy, procedure, and training.

This memorandum supersedes the Memorandum from Secretary Tom Ridge, "Department of Homeland Security Policy on the Use of Deadly Force" (June 25, 2004).

II. Use of Force Standard

A. Introduction

In determining the appropriateness of a particular use of force, the Department is guided by constitutional law, as interpreted by the U.S. Supreme Court.¹ The Fourth Amendment supplies a constitutional baseline for permissible use of force by LEOs in the course of their official duties; law enforcement agencies may adopt policies that further constrain the use of force. This policy describes the governing legal framework and articulates additional principles to which the Department will adhere.

B. General Statement

Unless further restricted by DHS Component policy, DHS LEOs are permitted to use force to control subjects in the course of their official duties as authorized by law, and in defense of themselves and others. In doing so, a LEO shall use only the force that is **objectively reasonable** in light of the facts and circumstances confronting him or her at the time force is applied.

¹ See, e.g., *Graham v. Connor*, 490 U.S. 386 (1989), and *Tennessee v. Garner*, 471 U.S. 1 (1985).

C. Discussion: The Fourth Amendment “Reasonableness” Standard

1. The Supreme Court has ruled that “all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard.”² This standard is an objective one that, in the context of use of force policy and practice, is often referred to as “objective reasonableness.”

2. Because this standard is “not capable of precise definition or mechanical application,” its “proper application requires careful attention to the facts and circumstances of each particular case.”³ The reasonableness of a LEO’s use of force must be judged “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”⁴ In determining whether the force a LEO used to effect a seizure was reasonable, courts allow for the fact that LEOs are often forced to make split-second judgments, in circumstances that are tense, uncertain, and rapidly evolving.

3. Consequently, there may be a range of responses that are reasonable and appropriate under a particular set of circumstances.

4. Once used, physical force⁵ must be discontinued when resistance ceases or when the incident is under control.

III. General Principles

A. Respect for Human Life

All DHS personnel have been entrusted with a critical mission: safeguarding the American people, our homeland, and our values. In keeping with this mission, respect for human life and the communities we serve shall continue to guide DHS LEOs in the performance of their duties.

² *Graham*, 490 U.S. at 396. The Court has further determined that a Fourth Amendment “seizure” of a person occurs when an officer, “by means of physical force or show of authority, terminates or restrains his freedom of movement *through means intentionally applied* (emphasis in original).” *Brendlin v. California*, 551 U.S. 249, 254 (2007) (citations omitted).

³ *Graham*, (citing *Garner*, 471 U.S. at 8-9: “[T]he question is ‘whether the totality of the circumstances justify[es] a particular sort of . . . seizure’”). The “totality of the circumstances” refers to all factors surrounding a particular use of force. In *Graham*, the Court lists three factors, often referred to as the “*Graham* factors,” that may be considered in assessing reasonableness: the severity of the crime/offense at issue, whether the subject poses an immediate threat to the safety of the LEO or others, and whether the subject is actively resisting arrest or attempting to evade arrest by flight. Other factors include, but are not limited to: the presence and number of other LEOs, subjects, and bystanders; the size, strength, physical condition, and level of training of the LEO(s); the apparent size, strength, physical condition, and level of training of the subject(s); whether an individual is forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with a LEO while the LEO is engaged in, or on account of the performance of, official duties; proximity and type of weapon(s) present; criminal or mental health history of the subject(s) known to the LEO at the time of the use of force; and the perceived mental/emotional state of the subject.

⁴ *Id.*

⁵ Other than the force reasonably required to properly restrain a subject and safely move him or her from point to point. That is, once the subject is secured with restraints, a LEO may maintain physical control of the subject via the use of “come-along or other control techniques” to safely and securely conclude the incident.

B. De-escalation

To ensure that DHS LEOs are proficient in a variety of techniques that could aid them in appropriately resolving an encounter, DHS Components shall provide use of force training that includes de-escalation tactics and techniques.

C. Use of Safe Tactics

DHS LEOs should seek to employ tactics and techniques that effectively bring an incident under control while promoting the safety of LEOs and the public, and that minimize the risk of unintended injury or serious property damage. DHS LEOs should also avoid intentionally and unreasonably placing themselves in positions in which they have no alternative to using deadly force.

D. Additional Considerations

1. DHS LEOs are permitted to use force that is reasonable in light of the totality of the circumstances. This standard does not require LEOs to meet force with equal or lesser force.

2. DHS LEOs do not have a duty to retreat to avoid the reasonable use of force, nor are they required to wait for an attack before using reasonable force to stop a threat.

E. Warnings

1. When feasible, prior to the application of force, a DHS LEO must attempt to identify him- or herself and issue a verbal warning to comply with the LEO's instructions. In determining whether a warning is feasible under the circumstances, a LEO may be guided by a variety of considerations including, but not limited to, whether the resulting delay is likely to:

- a. Increase the danger to the LEO or others, including any victims and/or bystanders;
- b. Result in the destruction of evidence;
- c. Allow for a subject's escape; or
- d. Result in the commission of a crime.

2. In the event that a LEO issues such a warning, where feasible, the LEO should afford the subject a reasonable opportunity to voluntarily comply before applying force.

F. Exigent Circumstances

In an exigent situation, for self-defense or the defense of another, DHS LEOs are authorized to use any available object or technique in a manner that is reasonable in light of the circumstances.

G. Medical Care

As soon as practicable following a use of force and the end of any perceived public safety threat, DHS LEOs shall obtain appropriate medical assistance for any subject who has visible or apparent injuries, complains of being injured, or requests medical attention. This may include rendering first aid if properly trained and equipped to do so, requesting emergency medical services, and/or arranging transportation to an appropriate medical facility.

H. Duty to Intervene In and Report Improper Use of Force

1. The Department is committed to carrying out its mission with honor and integrity, and to fostering a culture of transparency and accountability. As such, DHS law enforcement Components will ensure that their policies and procedures unambiguously underscore the following:

The use of excessive force is unlawful and will not be tolerated. Those who engage in such misconduct, and those who fail to report such misconduct, will be subject to all applicable administrative and criminal penalties.

2. DHS LEOs have a duty to intervene to prevent or stop a perceived use of excessive force by another LEO—except when doing so would place the observing/responding LEO in articulable, reasonable fear of death or serious bodily injury.

3. Any DHS employee with knowledge of a DHS LEO's improper use of force shall, without unreasonable delay, report it to his or her chain of command, the internal affairs division, the DHS Office of Inspector General, and/or other reporting mechanism identified by Component policy or procedure.

4. Failure to intervene in and/or report such violations is, itself, misconduct that may result in disciplinary action, with potential consequences including removal from federal service, civil liability, and/or criminal prosecution. DHS Components shall ensure that all personnel are aware of these obligations, as well as the appropriate mechanism(s) by which such reports should be made.

IV. Less-Lethal Force and Less-Lethal Devices

A. All DHS Components employing LEOs shall have appropriate written policies and procedures regarding the use of authorized control tactics or techniques; authorized less-lethal devices; and necessary training and certifications—both initial and recurring.

B. DHS Components shall conduct less-lethal use of force training no less than every two years and incorporate decision-making and scenario-based situations in these training programs.

C. DHS LEOs are prohibited from carrying any unauthorized less-lethal device for duty use.

D. LEOs shall demonstrate proficiency, in accordance with established Component standards, for each less-lethal device that they are authorized and certified to carry. If a certification or valid waiver expires, a LEO is prohibited from carrying that device for duty use until he or she meets the requirements for recertification on that device.

V. Warning Shots and Disabling Fire

A. General Prohibition

Except in the limited circumstances described in Section V.B., “Exceptions,” DHS LEOs are prohibited from discharging firearms solely:

1. As a warning or signal (“warning shots”) or
2. To disable moving vehicles, vessels, aircraft, or other conveyances (“disabling fire”).

B. Exceptions

1. Warning Shots
 - a. Maritime Law Enforcement Operations: Authorized U.S. Coast Guard (USCG), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE) personnel conducting maritime law enforcement operations may use warning shots only as a signal to a vessel to stop, and only after all other available means of signaling have failed. Such warning shots are classified as less-lethal force.

b. Aviation Law Enforcement Operations: Authorized USCG, CBP, and ICE personnel conducting aviation law enforcement operations may use warning shots only as a signal to an aircraft to change course and follow direction to leave the airspace, and only after all other available means of signaling have failed. Such warning shots are classified as less-lethal force.

2. Disabling Fire

a. Maritime Law Enforcement Operations: Authorized USCG, CBP, and ICE personnel, when conducting maritime law enforcement operations, may discharge firearms to disable moving vessels or other maritime conveyances. Such disabling fire is classified as less-lethal force.

b. Physical Protection: Authorized United States Secret Service (USSS) personnel exercising USSS's protective responsibilities, and other authorized and appropriately trained DHS LEOs assigned to assist USSS in exercising these responsibilities, may discharge firearms to disable moving vehicles, vessels, and other conveyances, and such disabling fire is classified as less-lethal force—EXCEPT: Aircraft in Flight: Disabling fire against an aircraft in flight is permitted only if the use of deadly force against the occupants of the aircraft, or in response to the threat posed by the aircraft, itself, is otherwise authorized under this policy. This is classified as a use of deadly force.⁶

C. Safety Considerations

1. Warning shots and disabling fire are inherently dangerous and, when authorized under this policy, should be used with all due care. DHS LEOs must exercise good judgment at all times and ensure that safety is always the primary consideration.

2. When authorized LEOs deem warning shots or disabling fire warranted, each shot must have a defined target.

VI. Deadly Force

A. General Guidelines

1. As with any use of force, a LEO's use of deadly force must be reasonable in light of the facts and circumstances confronting him or her at the time force is applied.

⁶As a use of deadly force, this is not mere "disabling fire," which by definition is not intended to cause bodily injury.

2.A DHS LEO may use deadly force only when the LEO has a reasonable belief that the subject of such force poses an imminent threat of death or serious bodily injury to the LEO or to another person.⁷

a.Fleeing Subjects: Deadly force shall not be used solely to prevent the escape of a fleeing subject. However, deadly force is authorized to prevent the escape of a fleeing subject where the LEO has a reasonable belief that the subject poses a significant threat of death or serious physical harm to the LEO or others and such force is necessary to prevent escape.⁸

B. Discharge of Firearms

1. General Guidelines

a.Discharging a firearm against a person constitutes the use of deadly force and shall be done only with the intent of preventing or stopping the threatening behavior that justifies the use of deadly force.

b.The act of establishing a grip, unholstering, or pointing a firearm does not constitute a use of deadly force.

2. Moving Vehicles, Vessels, Aircraft, or other Conveyances

a.DHS LEOs are prohibited from discharging firearms at the operator of a moving vehicle, vessel, aircraft, or other conveyance unless the use of deadly force against the operator is justified under the standards articulated elsewhere in this policy.⁹ Before using deadly force under these circumstances, the LEO must take into consideration the hazards that may be posed to law enforcement and innocent bystanders by an out-of-control conveyance.

b.Firearms shall not be discharged solely as a warning or signal or solely to disable moving vehicles, vessels, aircraft, or other conveyances, except under the limited circumstances described in Section V., Warning Shots and Disabling Fire.

⁷ For more detailed discussion of the use of force standard and the “reasonableness” determination, see Section II., Use of Force Standard.

⁸ See *Garner*, 471 U.S. at 11-12. To further illustrate a “threat of serious physical harm,” the *Garner* Court explained: “...if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” *Id.* The Supreme Court has further explained that this “necessity” refers not to preventing the flight, itself, but rather the larger context: the need to prevent the suspect’s potential or further serious physical harm to the LEO or other persons.

⁹ Here, a distinction is drawn between firing at the operator, i.e., targeting the operator with the intent to cause serious physical injury or death, and firing at a moving vehicle or other conveyance solely as a warning or signal or to disable the vehicle, and with no intent to injure (see section V., Warning Shots and Disabling Fire).

VII. Reporting Requirements and Incident Tracking

A. Uses of force shall be documented and investigated pursuant to Component policies.

B. It is a Department priority to ensure more consistent Department-wide reporting and tracking of use of force incidents. More consistent data will enable both the Department and Components to more effectively assess use of force activities, conduct meaningful trend analysis, revise policies, and take appropriate corrective actions.

C. DHS Components employing LEOs shall establish internal processes to collect and report accurate data on Component use of force activities. At a minimum, Components shall report the following as a "use of force incident" when resulting from a use of force:

1. A less-lethal device is utilized against a person (except when the device is deployed in a non-striking control technique);
2. Serious bodily injury occurs;
3. Deadly force is used against a person, to include when a firearm is discharged at a person; or
4. Death occurs.

D. Components shall report this data to the Deputy Secretary, through the Deputy Assistant Secretary for Law Enforcement Policy, on no less than an annual basis (in accordance with a process and timeline to be determined) and to others as required for official purposes.

VIII. Departmental Review and Oversight

A. Each DHS Component employing LEOs will establish and maintain a use of force review council or committee to perform internal analysis of use of force incidents from the perspective of training, tactics, policy, and equipment; to identify trends and lessons learned; and to propose any necessary improvements to policies and procedures.

B. The Office of Strategy, Policy, and Plans, working in consultation with DHS Components employing LEOs, shall establish the DHS Use of Force Council to provide a forum by which Components can share lessons learned regarding use of force policies, training, and oversight. The DHS Use of Force Council will be chaired by the Office of Strategy, Policy, and Plans and comprised of one executive-level representative from each of the following DHS Components:

1. Office of the Under Secretary for Management
2. National Protection and Programs Directorate

3. United States Customs and Border Protection
4. United States Coast Guard
5. United States Secret Service
6. Federal Emergency Management Agency
7. Transportation Security Administration
8. United States Immigration and Customs Enforcement
9. Office of the General Counsel
10. Federal Law Enforcement Training Centers
11. Office for Civil Rights and Civil Liberties
12. Privacy Office

C. Representatives of affected DHS Components will be responsible for reporting on use of force-related trends, developments, and lessons learned within their respective Components.

IX. Military Activities

This policy shall not apply to the United States Coast Guard when operating under the Standing Rules of Engagement, or to other DHS personnel when they fall under Department of Defense control as civilians accompanying the force.

X. No Right of Action

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.

XI. Definitions

A. Deadly Force: Any use of force that carries a substantial risk of causing death or serious bodily injury (see “Use of Force” and “Serious Bodily Injury”). Deadly force does not include force that is not likely to cause death or serious bodily injury, but unexpectedly results in such death or injury. In general, examples of deadly force include, but are not limited to, intentional discharges of firearms against persons, uses of impact weapons to strike the neck or head, any strangulation technique, strikes to the throat, and the use of any edged weapon.

B. De-Escalation: The use of communication or other techniques during an encounter to stabilize, slow, or reduce the intensity of a potentially violent situation without using physical force, or with a reduction in force.

C. Disabling Fire: Discharge of a firearm for the purpose of preventing a non-compliant moving vehicle, vessel, aircraft, or other conveyance from operating under its own power, but not intended to cause bodily injury.

D. Less-Lethal Device: An instrument or weapon that is designed or intended to be used in a manner that is not likely to cause death or serious bodily injury (see “Serious Bodily Injury”). Examples include, but are not limited to, conducted electrical weapons/electronic control weapons, impact weapons, and certain chemical agents. These are also commonly referred to as “intermediate force” or “less-than-lethal” weapons or devices.

E. Less-Lethal Force: Any use of force that is neither likely nor intended to cause death or serious bodily injury (see “Use of Force” and “Serious Bodily Injury”). Also known as “non-deadly,” “intermediate,” or “less-than-lethal” force.

F. Lessons Learned: Information gleaned through internal review and analysis of use of force incidents that is sufficiently significant or critical to consider a change to policies, procedures, or training standards. Lessons learned may include, for example, information that can enhance law enforcement personnel skills; identify gaps in current training; identify current unique criminal trends being experienced in the field; provide information on new equipment recommendations or gaps; identify concerns with standard less lethal equipment/tactics; or any information that can prevent harm to the community, law enforcement, or arrestees.

G. Serious Bodily Injury: Physical injury that involves protracted and obvious disfigurement; protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or a substantial risk of death.

H. Use of Force: The intentional application by law enforcement of any weapon, instrument, device, or physical power in order to control, restrain, or overcome the resistance, or gain compliance or custody, of another.

I. ***Warning Shot:*** Discharge of a firearm as a warning or signal, for the purpose of compelling compliance from an individual, but not intended to cause bodily injury.

Distribution:

Under Secretary for Science and Technology
Under Secretary for Management
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Director, Operations Coordination
Officer for Civil Rights & Civil Liberties
Chief Privacy Officer
Citizenship and Immigration Services Ombudsman
Military Advisor to the Secretary
Director, Community Partnerships
Executive Secretary

Appendix II: 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 III: DHS Policy Statement #045-06

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

**Homeland
Security**

January 10, 2017

MEMORANDUM FOR DEPARTMENT COMPONENT HEADS

FROM:

Russell C. Deyo
Acting Deputy Secretary

A handwritten signature in black ink that reads "R. Deyo".

SUBJECT:

**Required Reporting of Off-Duty Contact with Law
Enforcement by DHS Law Enforcement Personnel and
the Suspension and/or Revocation of Authority to Carry a
Firearm or other Weapon and Perform Law Enforcement
Duties**

Secretary Johnson and I greatly appreciate that every day, Department of Homeland Security (DHS or the Department) law enforcement personnel put their lives on the line in protection of our homeland. We recognize that law enforcement is a challenging occupation, characterized by high risks and inherent dangers. At the same time, DHS maintains an expectation that its law enforcement personnel will uphold the highest standards of conduct in both their personal and professional lives. To account for those occasions when a DHS law enforcement officer is involved in a situation where their conduct brings them into contact with, and places them under the scrutiny of law enforcement or the judiciary, this memorandum outlines the Department's policy for reporting such contact, and the potential implications on the law enforcement officer's authority to carry a firearm or other weapon and perform law enforcement duties.

Policy

This policy requires that DHS Components shall, at a minimum:

*Expand or Ensure DHS Law Enforcement Officers' Notification Requirements
Include All Off-Duty Reportable Law Enforcement Officer/Agency or Judicial
Contact*

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To ensure officer behavior is consistent with the Department's law enforcement mission, responsibilities, and values, the Department requires all law enforcement officers report to their supervisor all off-duty reportable contact with a law enforcement officer/agency as defined in Appendix A. DHS law enforcement officers must immediately report their arrest to their supervisor. DHS law enforcement officers must report all other off-duty reportable contact to their supervisor within 48 hours of the incident.

Require Quarterly Advisement to DHS Law Enforcement Officers of their Duty Regarding Notification of Reportable Contact, the Lautenberg Amendment's Prohibitions on Carriage of Firearms, and Annual Lautenberg Certification

As part of the Department's strong stand against crimes of domestic violence, DHS requires that all law enforcement officers receive a quarterly verbal advisement, during quarterly firearms qualifications, of their duty to notify management of any off-duty reportable contact with a law enforcement officer/agency, to include convictions for misdemeanor crimes of domestic violence and issuance of protective or temporary restraining orders, as well as notification of the Lautenberg Amendment's prohibitions on carriage of firearms. DHS also requires all law enforcement officers complete, on an annual basis, Lautenberg Amendment certifications regarding no conviction of a misdemeanor crime of domestic violence, as defined in Appendix A.

Notification of Lautenberg Amendment Convictions Shall Result in the Immediate Suspension and Subsequent Revocation of Authority to Carry a Firearm or Perform Law Enforcement Duties

The Lautenberg Amendment requires that a law enforcement officer convicted of a misdemeanor crime of domestic violence may not possess a firearm or ammunition. DHS law enforcement officers convicted of such crimes, including pleas of no contest or sentences of probation before judgment, will no longer be authorized to carry a firearm or perform law enforcement functions. When a Component is initially notified of a potentially qualifying conviction, the Component is required to suspend the law enforcement officer's authority to carry a weapon and perform law enforcement duties within 24 hours of such notification. Once the Component is able to confirm the existence of a qualifying conviction, in consultation with the Component's legal counsel as appropriate, the authority to carry a weapon and perform law enforcement duties must be revoked. Subsequently, Components will pursue reassignment from a law enforcement position, an adverse action for failure to meet a condition of employment, or an adverse action based on the underlying misconduct.

DHS Law Enforcement Officer's Mandatory Notification of the Issuance of Protective Orders, Temporary Restraining Orders or any Other Court Order

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Restricting a DHS Law Enforcement Officer's Contact with Another Individual or Ability to Possess a Firearm

Consistent with DHS's law enforcement mission, the Department requires all law enforcement officers report to their supervisor all protective and temporary restraining orders restricting their contact with another individual or their ability to possess a firearm, about which they are aware. Notification is required to be made within 48 hours of the law enforcement officer becoming aware of the protective order, temporary restraining order, or any other court order restricting the employee's contact with another individual or ability to possess a firearm. Upon notification of the issuance of protective or restraining orders, DHS Components must implement a process by which supervisors make an initial determination of the appropriate course of action, in consultation with Component leadership, Component counsel, the Component's Office of Professional Responsibility (or equivalent) and the Component's Office of Employee and Labor Relations (or equivalent) as appropriate.

Mandatory Suspension of Authority to Carry a Firearm or other Weapon and to Perform Law Enforcement Duties Following Notification of Law Enforcement Officer/Agency Contact Involving an Allegation of Off-Duty Violence by a DHS Law Enforcement Officer and/or Issuance of a Protective or Temporary Restraining Order Related to an Allegation of Domestic Violence or Other Alleged Violent Behavior

To best protect the interests of the public, the Department, the officer involved, and the alleged victim(s), this policy mandates the immediate suspension of an officer's authority to carry government-issued or otherwise authorized weapon(s) and to perform law enforcement duties upon notification of (1) an off-duty DHS law enforcement officer's contact with a law enforcement officer/agency where the allegation contains a component of unlawful or unjustified violence by the law enforcement officer; or (2) the issuance of a protective or temporary restraining order against a DHS law enforcement officer related to an allegation of domestic violence or based on some other form of alleged violent behavior, or the officer's ability to possess a firearm.

This policy requires that Components provide verbal notice to the officer at the time of suspension, with formal written documentation of the suspension of these authorities within five (5) business days after the date of verbal notification. This policy coincides with Component obligations to report all allegations of criminal misconduct and all allegations of serious, noncriminal conduct in accordance with DHS Management Directive 0810.1, dated June 10, 2004.

- For all circumstances requiring the formal reporting of misconduct in accordance with DHS Management Directive 0810.1, further assessments pertaining to the suspension of an officer's authority to carry government-issued or otherwise

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authorized weapon(s) and to perform law enforcement duties will be coordinated with the appropriate DHS internal investigative entity (Office of Inspector General and/or the Component Office of Professional Responsibility, or equivalent).

- For all circumstances that do not require the formal reporting of misconduct in accordance with DHS Management Directive 0810.1, Components will develop procedures to determine if continued suspension of an officer's authority to carry government-issued or otherwise authorized weapon(s) and to perform law enforcement duties is warranted. This will include an assessment into the facts and circumstances conducted by Component leadership (not less than a second-line supervisor) to determine whether continued suspension is warranted. In conducting such assessments, Component managers will consider both the law enforcement contact, action or order issued and the conduct of the officer involved. Even if a state or local court or law enforcement agency declines to take action, a review by Component managers may reveal that the officer's conduct is inconsistent with the continued authority to carry a firearm or other weapon or perform federal law enforcement duties.

In all situations where a Component suspends or revokes an officer's law enforcement authority to carry a firearm, DHS requires that Components immediately take custody of any government-issued firearms or other weapons, and where applicable, rescind, in writing, any previous authorizations to utilize a personally-owned firearm in the performance of the officer's duties.

Take Prompt Remedial Action for Failure to Report Law Enforcement and Judicial Contact

In accordance with this directive, upon awareness of an off-duty reportable contact that was not reported by a DHS law enforcement officer as required by this policy, DHS Components will review the situation, the factors underlying the failure to report, and take appropriate actions based on the information received, including discipline for misconduct as appropriate and in a manner consistent with law and regulation. DHS Components' policies will include penalties for a failure to report off-duty reportable contact.

Mandatory Biannual Reporting of All Suspensions or Revocations of DHS Law Enforcement Officer's Authority to Carry a Firearm and Perform Law Enforcement Duties

To promote greater transparency and accountability, DHS mandates that Department Components track and report to the Deputy Assistant Secretary for Law Enforcement Policy the number of law enforcement officers who have had their authorities suspended or revoked following off-duty contact with a law enforcement

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officer/agency or the issuance of a protective or temporary restraining order, and those who have subsequently had their authorities reinstated following internal agency review and assessment.

Require Annual Training for all Department Supervisors of Law Enforcement Officers on Federal Law, Regulations, and Department Policy Regarding the Suspension or Revocation of an Officer's Law Enforcement Authorities

As part of the Department's effort to establish sound policy and consistent practice regarding the suspension or revocation of a law enforcement officer's authorities, annual training will be provided to managers regarding the decision-making process associated with this policy.

Require Annual Domestic Violence Awareness Training for all Department Law Enforcement Officers

As part of the Department's strong stand against crimes of domestic violence, annual training will be provided to all Department law enforcement officers regarding these crimes to reinforce Department values and assist in preventing domestic violence.

Within 60 days from the date of this policy, each DHS Component shall designate an executive-level point of contact at the Component's headquarters office who will be responsible for the implementation of this policy, and for promoting compliance with its provisions, within his or her area of responsibility and who will consult with their Component privacy office to ensure appropriate Privacy Act coverage for the collection of this information. Upon designating a POC for this policy, DHS Components will provide DHS Law Enforcement Policy with their designee's contact information. In addition, within 60 days from the date of this policy, each DHS Component shall provide to DHS Law Enforcement Policy their plan to implement the policy, ensuring that responsibilities under labor relations statutes and union agreements are fulfilled, as applicable.

All questions regarding the scope and implementation of this policy should be directed to the Deputy Assistant Secretary for Law Enforcement Policy, Office of Policy.

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APPENDIX A

Required Reporting of Off-Duty Contact with Law Enforcement by DHS Law Enforcement Personnel and the Suspension and/or Revocation of Authority to Carry a Firearm or other Weapon and Perform Law Enforcement Duties

For the purposes of this policy, the following terms have the definitions set forth below:

Convicted of a Misdemeanor Crime of Domestic Violence: a law enforcement officer who has been found guilty under federal, state or tribal law of a crime defined by 18 U.S.C. § 921(a)(33)(A), provided that the law enforcement officer “was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case,” and, if the law enforcement officer was entitled to a trial by jury, the case was, in fact, tried by jury or the law enforcement officer “knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise,” 18 U.S.C. § 921(a)(33)(B). Convictions include no contest pleas and sentences of probation.

Government-Authorized Personally Owned Weapon: A firearm or other weapon that is not government-owned, but is authorized by the government for use by a law enforcement officer in performance of their official duties.¹

Government-Owned Weapon: A firearm or other weapon owned by the government and assigned to a law enforcement officer for use in performance of their official duties.

DHS Law Enforcement Officer: For the purpose of this policy, a law enforcement officer is any employee within the Department who is duly sworn and authorized by law to carry a weapon, make arrests, or execute search and arrest warrants.

Lautenberg Amendment: Specifically refers to 18 U.S.C. § 922(g)(9), which prohibits anyone who has been convicted in any court of a misdemeanor crime of domestic violence from possessing any firearm or ammunition.

Off-Duty Reportable Contact: All instances where a DHS law enforcement officer is off-duty and not acting in an official capacity and is questioned, interviewed, detained, or arrested as a subject of an enforcement action or investigation by a law enforcement agency (either internal to DHS or external) during the course of said agency’s official duties to determine if the DHS law enforcement officer was a party to an alleged violation of law. Reportable contact also includes the known

¹ Nothing in this policy shall be construed as interfering with the right of law enforcement officers to carry privately owned firearms for personal use as private citizens. Law enforcement officers are expected to comply with all applicable federal, state, and local laws when exercising this right.

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issuance of any protective order, temporary restraining order, or other court order restricting a DHS law enforcement officer's contact with another individual. Reportable contact excludes instances when a DHS law enforcement officer is contacted for civil violations or traffic violations where there was no allegation of violence, threat of violence, or where the civil or traffic violation did not include the possession or use of alcohol or drugs.

Suspend Law Enforcement Authorities: an affirmative management action, in writing and pursuant to any procedures which have been or may be established, which temporarily removes a law enforcement officer's authority to perform law enforcement duties and carry a government-issued firearm or other weapon, as well as the authority granted through their law enforcement position to carry a personally-owned or off-duty weapon as a result of alleged misconduct (including self-reported misconduct) or disciplinary action. The action results in the law enforcement officer's surrender of all DHS-issued firearms or other weapons, badges and credentials, and temporary removal of the authorization to carry a firearm in the performance of the officer's official duties and perform law enforcement duties, to include the authorization of home-to-work privileges.

Revoke Law Enforcement Authorities: an affirmative management action, in writing and pursuant to any procedures which have been or may be established, which permanently terminates a law enforcement officer's authority to perform law enforcement duties and carry a government-issued firearm or other weapon, as well as any authority previously granted through their law enforcement position to carry a personally-owned firearm while on duty. This action results in the law enforcement officer's surrender of all DHS-issued firearms or other weapons, badges and credentials, and termination of the authorization to carry a firearm in the performance of the officer's official duties, to include the authorization of home-to-work privileges. In accordance with law, regulation, and policy, a permanent revocation of firearms credentials may be grounds for reduction in grade, reassignment, or removal.

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Appendix IV: CBP Domestic Violence Policy



DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION
CBP DIRECTIVE

DIRECTIVE NUMBER: 51000-004

EFFECTIVE DATE: December 9, 2020

SUPERSEDES: N/A

OFFICE: Enterprise Services

SUBJECT CODE:

SUB OFFICE: Human Resources Management

DISTRIBUTION:

PROGRAM OFFICE: Human Resources Policy and Programs Directorate/Human Resources Policy and Regulatory Affairs Division

U.S. CUSTOMS AND BORDER PROTECTION DOMESTIC VIOLENCE POLICY

1 PURPOSE

1.1 U.S. Customs and Border Protection (CBP) strives to promote a safe and healthy work environment for all employees, and to sustain a workforce that is free from the harmful effects of domestic violence.

2 POLICY

2.1 It is the policy of CBP to provide assistance to employees who are victims of domestic violence. It is also the policy of CBP to prohibit employees from committing domestic violence, and to ensure domestic violence offenders are held accountable for their actions.

3 AUTHORITIES / REFERENCES

3.1 Presidential Memorandum, Establishing Policies for Addressing Domestic Violence in the Federal Workforce (April 18, 2012);

3.2 Office of Personnel Management, Guidance for Agency-Specific Domestic Violence, Sexual Assault, and Stalking Policies (February 2013);

3.3 Title 5, Code of Federal Regulations, Part 735, Employee Responsibilities and Conduct;

3.4 Title 18, United States Code § 922(g)(9);

3.5 Department of Homeland Security Policy Directive 045-06, Required Reporting of Off-Duty Contact with Law Enforcement by DHS Law Enforcement Personnel and the Suspension and/or Revocation of Authority to Carry a Firearm or Other Weapon and Perform Law Enforcement Duties (January 10, 2017);

3.6 CBP Standards of Conduct, Directive 51735-013B (December 9, 2020);



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- 3.7 CBP Table of Offenses and Penalties (December 9, 2020);
- 3.8 Arrest of CBP Employees, Directive 51735-014A (December 9, 2020);
- 3.9 CBP Use of Force Policy, Guidelines and Procedures Handbook, HB 4500-01C (May 2014);
- 3.10 Delegation of Authority for Disciplinary and Adverse Actions, Delegation Order Number 20-017 (October 6, 2020).

4 SCOPE

4.1 This Directive applies to all CBP employees. Where there are differences in this Directive and a negotiated union agreement, the negotiated union agreement shall govern over those matters concerning bargaining unit employees.

5 RESPONSIBILITIES

5.1 Executive Assistant Commissioners; Chief, U.S. Border Patrol; Assistant Commissioners; and headquarters office executive leadership are responsible for ensuring compliance with the provisions of this Directive within their respective program offices, and for ensuring the necessary support and resources are available to supervisors and managers in their efforts to address employee and workplace issues caused by domestic violence.

5.2 The Assistant Commissioner, Office of Human Resources Management, is responsible for ensuring the provisions of this Directive are compliant with Federal regulations and OPM guidance, for providing administrative advice and support to supervisors and managers on domestic violence matters affecting the workplace, and promoting employee awareness of CBP's domestic violence policies.

5.3 The Office of Professional Responsibility (OPR) is responsible for investigating allegations of domestic violence and any workplace incidents related to acts of domestic violence, whether an employee is a victim or offender, and for serving as a CBP liaison with outside law enforcement entities.

5.4 Supervisors and managers are responsible for ensuring employees are aware of the provisions of this Directive, for maintaining a safe and non-threatening work environment, for offering assistance through the Employee Assistance Program (EAP) to employees who either commit or are affected by domestic violence, for following Agency policies and procedures, and for promptly initiating administrative action against employees who are domestic violence offenders.

5.5 Employees at all levels of CBP are responsible for upholding CBP's integrity and professionalism standards. With exception of employee victims, who are urged, all CBP



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employees are responsible for reporting any acts, suspected acts, or threats of domestic violence through their supervisory chain of command and OPR, and for considering use of the EAP and other resources that are available to improve personal health, wellness and safety.

6 DEFINITIONS

6.1 Domestic Violence – Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

6.2 Domestic Violence Offender – An individual who commits or threatens to commit an act of domestic violence.

6.3 Protection or Restraining Order – A protection order, also called a restraining order or stay-away order, is an order issued by a court to protect a victim from a perpetrator. Protection orders may be issued in criminal cases as a condition of probation or condition of release, particularly in a domestic violence, sexual assault, or stalking related crime.

6.4 Workplace – An employee's official duty station or alternative work location that is associated with the employee's established tour of duty (working hours). The employee is considered to be in the workplace while in or using the resources of CBP, or anywhere that he or she is conducting CBP business, or while on work-related travel.

6.5 Workplace-related incidents – Refers to incidents of domestic violence affecting the employee outside the workplace, including acts, attempted acts, or threatened acts by or against the employee and/or against the employee's family or property that are brought into the workplace, or that occur outside the workplace but have an impact on the workplace, or that occur inside the workplace.

7 STATEMENT OF CONFIDENTIALITY

7.1 CBP recognizes an employee's right to privacy and the need for confidentiality of all incidents of domestic violence. CBP will maintain the confidentiality of employee disclosures of domestic violence, both orally and in writing, received from both victims and perpetrators, to the extent permitted by law. In the event information must be disclosed to protect the safety of the disclosing employee or for the protection of others, CBP will limit such disclosure to that which is minimally necessary for protection and safety. CBP will attempt to provide advance notice to the disclosing employee that the information minimally necessary will be disclosed, to whom it will be disclosed, the reasons for the disclosure and the information being disclosed. Written disclosures must be kept in a confidential and separate file from employee personnel records.



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8 PROCEDURES

8.1 General Awareness

8.1.1 Supervisors must ensure their employees are aware of the policies and provisions of this Directive, and the Agency's prohibition against domestic violence.

8.1.2 Supervisors and managers are required to complete agency-sponsored training on how to manage and respond to employee victims or employee offenders of domestic violence, and any workplace-related incidents stemming from domestic violence.

8.1.3 CBP employees who exercise law enforcement authority,

8.1.3.1 CBP employees are required to receive a quarterly verbal advisement, during quarterly firearms qualifications (normally), of their duty to notify management of any off-duty reportable contact, as outlined in 8.3.4, with a law enforcement officer/agency, to include convictions for misdemeanor crimes of domestic violence and issuance of protective or temporary restraining orders, as well as notification of the Lautenberg Amendment's prohibitions on carriage of firearms. These employees are also required to complete an annual Lautenberg Amendment certification which certifies they have no convictions of a misdemeanor crime of domestic violence.

8.1.4 CBP employees are required to complete annual domestic violence awareness training.

8.2 Employee Victims of Domestic Violence

8.2.1 Reporting Requirements – Employees who are victims of domestic violence are urged, but are not required to immediately report the incident to their first-line supervisor, and/or to the Office of Professional Responsibility through the toll-free Joint Intake Center Hotline at 1-877-2INTAKE (1-877-246-8253) or Joint.Intake@dhs.gov.

8.2.1.1 Supervisors and managers are to act promptly and in accordance with applicable Agency procedures upon receiving a report of an employee victim of domestic violence. Relevant facts must be assessed to properly address any immediate effects on the employee and the workplace. Supervisors should consult with their senior management officials and contact the EAP for guidance.

8.2.2 Workplace Flexibilities – Various workplace flexibilities may be extended to employee victims of domestic violence, to the greatest extent permissible by law, and in accordance with CBP policies. Workplace flexibilities may include: various forms of paid, unpaid, and advanced leave, telework arrangements, and flexible work schedules. All possible leave options should be considered for employee victims of domestic violence. Employees must be sure to comply with procedural requirements of workplace



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flexibilities programs. The employee must disclose sufficient details about a domestic violence incident to enable the supervisor to make workplace flexibilities approval decisions. When the need for time off is foreseeable, an employee must provide reasonable advance notice to the agency.

8.2.3 Proof/Evidence – In making workplace flexibilities considerations, a supervisor may use an employee’s credible statements as proof of a domestic violence incident. Supervisors may request additional proof or verification, such as police or court reports, a service provider’s statement, a protection order, medical verification, or other forms of credible evidence, but employee-victims shall not be required to provide this information. If a supervisor believes that more information is needed before making a workplace flexibility decision, but more information is not provided by the employee-victim, then the agency will make a decision based on evidence already in the agency’s possession from the employee-victim.

8.2.4 Employee Autonomy – Supervisors must not request or require an employee victim of domestic violence to report the domestic violence incident to law enforcement authorities. To do so could ultimately place victims of domestic violence in greater danger. Furthermore, filing a report with law enforcement authorities should not be a condition for approving requests for leave or other workplace flexibilities.

8.2.5 Work Status – An employee can be charged absent without leave (AWOL) if the employee is absent from work without supervisory approval. Employee victims of domestic violence may later request to have charges of AWOL substituted by another form of leave, as permitted by Agency leave policies. AWOL substitutions are subject to supervisory approval, and based on the circumstances of each individual case.

8.2.6 Employee Referrals – Employees who are victims of domestic violence are encouraged to seek assistance through professional services (see Appendix A). In all instances, supervisors must refer employees to the EAP. Employee victims of domestic violence are advised to utilize EAP support services, although use of the EAP is not mandatory.

8.3 Employee Offenders of Domestic Violence

8.3.1 Workplace Incidents – Employees who commit acts of domestic violence in the workplace will be removed from the premises, reported to OPR, subject to arrest and/or prosecution, and subject to disciplinary/adverse action, up to and including removal from Federal service.

8.3.2 Employee Reporting Requirements – An employee who (whether on or off-duty) is arrested, receives a summons or citation to appear in court on criminal charges, is indicted or convicted of domestic violence, or is the subject of a protection or restraining order must report the incident to their first line supervisor (or other manager within their chain of command) and to OPR (1-877-2INTAKE) as soon as possible. If arrested, an



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employee must report the arrest immediately, or as soon as possible, but not more than 24 hours after the arrest. If reporting the arrest within the prescribed timeframe is precluded by circumstances of the arrest, then it must be reported as soon as circumstances allow, along with a full explanation of the reason the arrest was not reported immediately.

8.3.3 Arrest Notification – Upon receiving notification of an employee arrest/incarceration for domestic violence, supervisors must promptly follow Agency procedures as outlined in the Arrest of CBP Employees Directive (#51735-014A).

8.3.4 Law Enforcement and Judicial Contact Notification – CBP employees who exercise law enforcement authority who are off-duty and not acting in an official capacity and are questioned, interviewed, or detained as a subject of an enforcement action or investigation by a law enforcement agency during the course of the agency's official duties to determine if the CBP employee was a party to an alleged violation of law, must report this contact with law enforcement within 48 hours to their first-line supervisor. These CBP employees must also report the known issuance of any protective order, temporary restraining order, or other court order restricting contact with another individual or ability to carry a firearm. This reporting excludes civil violations or traffic violations where there is no allegation of violence, threat of violence, or where the civil violations or traffic violations did not include the possession or use of alcohol or drugs.

8.3.5 Work Status (Arrest/Incarceration) – Leave requests will be handled consistent with negotiated agreements, Directives, and Federal regulations.

8.3.6 Administrative Action – In accordance with the CBP Standards of Conduct and Table of Offenses and Penalties, employees who commit or threaten to commit acts of domestic violence will have administrative action taken against them. Both on and off duty acts of domestic violence can result in administrative action, i.e., disciplinary action ranging up to removal from Federal service, even for a first offense. Supervisors should contact their servicing LER Specialist early in the process for advice, and initiate swift and immediate administrative action for domestic violence offenses.

8.3.6.1 Indefinite Suspension – Where a nexus exists, an employee will be placed on indefinite suspension when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. Indefinite suspension places an employee in a temporary non-duty/non-pay status pending investigation, inquiry, or further Agency action, in accordance with Agency procedures and consistent with Federal regulations. Supervisors should immediately consult with their LER Specialist to ensure employees are placed on indefinite suspension expeditiously, as circumstances warrant.

8.4 CBP Firearms/Defensive Equipment – Employees with authority to carry a firearm, ammunition, and other CBP defensive equipment in the performance of their duties will normally have their authority revoked following an arrest or charge of domestic violence for thirty days following the arrest or charge. After 30 days, CBP will follow the procedures set



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forth in the Collective Bargaining Agreement (if applicable), and decide whether under all of the circumstances the Officer's firearm carriage authority should be reinstated. In rare circumstances, if no nexus exists, management will reinstate the officer's authority to carry a firearm and return the service-issued firearm as soon as practicable, within the initial 30 days. The revocation of authority to carry a firearm will continue throughout the disposition or proceedings of a domestic violence case. An employee who commits domestic violence will have all law enforcement authority revoked during the pendency of the matter, in accordance with Agency procedures.

8.5 Conviction of Domestic Violence (Lautenberg Amendment) – Under certain provisions of the Federal Gun Control Act, employees who are subject to a protective order related to domestic violence or convicted of a qualifying misdemeanor crime of domestic violence are prohibited from possessing or carrying firearms or ammunition (18 U.S.C. 922(g)). The provision regarding misdemeanor crimes of domestic violence is known as the "Lautenberg Amendment," which does not afford an exemption for those who carry firearms in the performance of their official duties. Within 24 hours of receiving notification of a potentially qualifying conviction, CBP will temporarily rescind and may subsequently revoke the employee's authority to carry a firearm and perform law enforcement duties. Therefore, any employee who must carry a firearm or ammunition in the performance of their duties as a condition of employment may face disciplinary action, up to and including removal from Federal service, if impacted by the Lautenberg Amendment. In the cases where the conviction has been expunged, consult the collective bargaining agreement. Absent other outstanding misconduct issues, an authorized officer who has had a domestic violence conviction (i.e., Lautenberg Amendment) expunged will be treated as if the conviction had never occurred, e.g. the authorized officer will be permitted to carry a firearm in accordance with the provisions of the CBP Use of Force Policy, Guidelines and Procedures Handbook, HB 4500-01C.

8.6 Self-Help Referrals – Employees who commit domestic violence are encouraged to seek self-help through professional services, to include services offered by the EAP. However, appropriate disciplinary action may still be imposed for committing an act of domestic violence even if an employee seeks self-help. The employee's supervisor should remind the employee of the availability of EAP services, although use of the EAP is not mandatory.

9 WORKPLACE SAFETY AND PRECAUTIONS

9.1 Office Security – Supervisors should be prepared to follow their local safety procedures with regards to threats or emergencies related to acts of domestic violence. Workplace safety plans should be properly executed. Supervisors and security personnel should ensure office safety precautions are administered to protect employees against impermissible entry into a work environment by unauthorized individuals.

9.2 Workplace-Related Incidents - Supervisors should appropriately address any employee circumstances that may lead to domestic disturbances in the workplace. In some instances, both a domestic violence victim and offender may be assigned to the same work unit or locale, and may need to be separated during work hours. If an employee has a protective order against



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another employee, and the order allows the alleged offender to report to a nearby or same work location, consideration should be given to changing the alleged offender's duty location or the employee-victim's duty location (if more feasible and the employee-victim requests/or agrees to the change), granting telework options, or changing tours of duty as preventive and protective measures. Impacted employees should be directed to avoid contact while on duty.

10 NON-DISCRIMINATION

10.1 CBP is committed to treating all individuals in a non-discriminatory manner, without regard to their protective status under Federal law, Executive Order, regulation, or policy in all employment programs and management decisions, to include those involved in or affected by domestic violence. CBP policy strictly prohibits any form of unlawful discrimination. Any employee, applicant for employment, or former employee who believes he or she has been discriminated against because of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age, physical or mental disability, status as a parent, genetic information, or experienced retaliation for prior EEO involvement, and wishes to file an EEO complaint, must seek informal EEO counseling within 45 calendar days of the alleged discriminatory event by: emailing the CBP EEO Complaint Filing Mailbox at cbpeocomplaintfiling@dhs.gov; calling 1-877-MY-EEO-HELP (1-877-693-3643); or contacting the servicing EEO Specialist.

10.2 CBP is committed to ensuring domestic violence communications, resources, assistance, and workplace flexibilities are afforded to all employees, including those with limitations or disabilities.

DEC 11 2020

Mark A. Morgan
Chief Operating Officer and
Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection

Date



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APPENDIX

DOMESTIC VIOLENCE ASSISTANCE AND RESOURCES

Local law enforcement – Dial 911 in case of an emergency

CBP Office of Professional Responsibility – Joint Intake Center
877-246-8253

CBP Employee Assistance Program
800-755-7002

National Coalition Against Domestic Violence
www.ncadv.org

National Domestic Violence Hotline
1-800-799-SAFE
www.thehotline.org


U.S. Office of Personnel Management
www.opm.gov

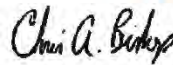
U.S. Department of Justice
www.doj.gov

Appendix V: Use of Force Policy Clarification - Emergency Situations440 Koonce Road
Harpers Ferry, WV 25425**U.S. Customs and
Border Protection**

AUG 12 2019

MEMORANDUM FOR: See Distribution

THROUGH: William A. Ferrara
Executive Assistant Commissioner
Operations Support 

FROM: Christopher A. Bishop 
Acting Director
Law Enforcement Safety and Compliance Directorate

SUBJECT: Use of Force Policy Clarification – Emergency Situations

Generally, prior to being issued any U.S. Customs and Border Protection (CBP) authorized use of force device or firearm, the CBP Use of Force Policy mandates that all CBP law enforcement personnel receive training and demonstrate an acceptable level of proficiency on each of the devices or firearms they are issued. Failure to ensure the proper training of its personnel and/or require its personnel to demonstrate proficiency exposes the agency to allegations of negligent or inadequate training, judgment or supervision. Furthermore, officers and agents that carry or deploy use of force devices or firearms on which they have not received the appropriate training or demonstrated the required level of proficiency may also be found negligent. In either of the above cases, the agency may be liable under relevant tort law statutes. However, understanding the often unpredictable nature of law enforcement encounters, the CBP Use of Force Policy contains specific exceptions for emergency situations. The purpose of this memorandum is to clarify what constitutes an emergency situation.

An emergency situation can be defined as an unplanned event or exigent circumstance that occurs with no advanced warning, rapidly evolves, and which requires a reactive response to address an imminent threat. In such threatening and emergent situations, authorized officers and agents may use any available weapon in a manner that is reasonable, and necessary for self-defense or the defense of another person.¹ In these situations officers and agents must remember that the manner in which any less-lethal device or firearm is used must still comply with the objectively reasonableness analysis to which all law enforcement uses of force are subjected. For instance, deadly force must not be used unless there is a reasonable belief that the subject of such force poses an imminent threat of death or serious physical injury.

¹ CBP Use of Force Policy, Guidelines and Procedures Handbook, Office of Training and Development, HB 4500-01C, Chapter 4: *Guidelines and Procedures on the Use of Less Lethal Force*, at 37.

Use of Force Policy Clarification – Emergency Situations

Page 2

In contrast, an emergency situation does not exist when the agency has advance notice, with time to plan operations and prepare for incidents that may occur in the near future. As a proactive measure to address potential threats, officers or agents must not be issued, carry, or use a less-lethal device or firearm for which they have not met the minimum training and proficiency standards.

In addition to the training and proficiency requirements listed above, CBP law enforcement personnel may only be issued and carry use of force devices or firearms that are listed on the Authorized Equipment List.

Please feel free to contact me if you have any questions. If members of your staff have any questions, they may contact Christopher A. Bishop, Acting Director, LESC, at (304) 724-5922 or email Christopher A. Bishop@cbp.dhs.gov.

Distribution: Commissioner
Deputy Commissioner
Executive Assistant Commissioners
Chief, U.S. Border Patrol
Assistant Commissioners

Appendix VI: Glossary

Active Resistance - A type of resistance where physical attributes are being used to resist an officer/agent's control efforts. The efforts are not directed toward the officer/agent but rather appear intended to thwart an officer's/agent's control efforts.

Authorized Officers/Agents - CBP Officers, Border Patrol Agents, Air and Marine Officers and Agents, OPR Special Agents and Investigators, and other qualified CBP personnel as designated by the Commissioner of CBP.

Assault

Reportable Assault (Reportable in E-STAR) - Any action which meets the definition of Assault, Assaultive Resistance (Physical Injury, Serious bodily injury), or Transferred Intent regardless of whether or not the subject was apprehended, identified, or the prosecutorial disposition.

Assault - A physically manifested attempt or threat to inflict injury on CBP personnel, whether successful or not, which causes a reasonable apprehension of imminent bodily harm.

Assaultive Resistance (Physical Injury) - Resistance characterized by a level of aggression or violence that 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.

Assaultive Resistance (Serious Bodily Injury/Death) - Resistance characterized by a level of aggression or violence that causes or has the potential to cause serious bodily injury or death to the officer/agent, others, or self.

Transferred Intent - When an intent to cause harm to one person results in harm or damage to another person or a thing instead of the intended human target. (e.g., when a launched or thrown projectile strikes an officer or agent's vehicle, but misses the area in which an officer/agent is sitting).

Authorized Equipment List (AEL) - A list of equipment that the LESC has tested, evaluated, and authorized for use within CBP. All equipment must be approved for field use by the DO. The AEL can be found on the LESC section of CBPnet.

Body Armor Coordinator (BAC) - A designated employee who is responsible for ordering and issuing body armor as required.

Carry - Carry (of a handgun) refers to any manner of carry that implies the handgun is ready to be drawn and fired if necessary. Carry (of a shoulder-fired weapon) refers to any manner of carry that implies the firearm is ready to be utilized for law enforcement operations.

CBP Firearm (as referenced in this Handbook) - A firearm that has been authorized by the Executive Director of the LESC, and approved for use by a Designated Official.

Co-Authority (COA) - An individual designated by the Responsible Official to act in his/her stead in all functions in the Firearms, Armor and Credentials Tracking System (FACTS).

Collapsible Straight Baton (CSB) - A less-lethal device composed of cylindrical shafts that lock into each other when expanded. The shafts are usually made of steel, but lightweight baton models may have shafts made from aluminum alloy.

Compliance Techniques - Actions taken by an Authorized Officer/Agent on a subject 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).

Compressed Air Launcher - A less-lethal impact/chemical irritant delivery system that is powered by compressed air. The launcher can deliver a variety of less-lethal projectiles including, PAVA pepper powder, non-toxic marking rounds, and those designed for kinetic impact.

Contact Controls - Actions taken by an Authorized Officer/Agent on a subject to establish and maintain control. Contact controls may include measures such as strategic positioning, escort holds, joint manipulation or immobilization, or touch pressure point stimulation.

Controlled Noise and Light Distraction Device (CNLDD) - A pyrotechnic less-lethal device designed to emit a bright light and loud noise to momentarily disorient and confuse subjects.

Cooperative Controls - Actions taken by an Authorized Officer/Agent on a subject to establish and maintain control. Cooperative controls may include verbal commands.

Counter Assault Techniques - Actions taken when a subject has either assaulted the officer/agent or is displaying a willingness and intent to do so. Examples of counter assault techniques are concentrated strikes involving the use of empty-hand techniques (e.g., the use of body parts as weapons), the CSB and the ECW.

Deadly Force - Any use of force that carries a substantial risk of causing death or serious bodily injury (see “Use of Force” and “Serious Bodily Injury”). Deadly force does not include force that is not likely to cause death or serious bodily injury, but unexpectedly results in such death or injury. In general, examples of deadly force include, but are not limited to, intentional discharges of firearms against persons, uses of impact weapons to strike the neck or head, any strangulation technique, strikes to the throat, and the use of any edged weapon.

Designated Official - Executive Assistant Commissioners and Chief, United States Border Patrol (or their Headquarters designees); Assistant Commissioner, Office of Professional Responsibility; and the Executive Director, Law Enforcement Safety and Compliance Directorate.

Disabling Fire - Discharge of a firearm for the purpose of preventing a non-compliant moving vehicle, vessel, aircraft, or other conveyance from operating under its own power, but not intended to cause bodily injury.

Electronic Control Weapon (ECW) - A less-lethal device which is designed to use short-duration electronic pulses to cause Neuro-Muscular Incapacitation (NMI) and/or pain, with minimal risk of serious bodily injury or death.

Emergency Situation - An unplanned event or exigent circumstance that occurs with no advanced warning, rapidly evolves, and which requires a reactive response to address an imminent threat.

Employee Assistance Program (EAP) - A CBP program established to provide assistance and guidance to employees.

Empty Hand Strikes - Strikes delivered by a body part (e.g. palm heel strike, jab, cross, elbow strike, snap kick, or knee strike).

Enforcement Action Statistical Analysis and Reporting System (E-STAR) - A CBP computer system for recording assaults, reportable uses of force, pursuits, reportable firearms discharges, and other related data.

Field Armorer (FA) - A CBP-certified firearms instructor who has been LESC trained and certified to conduct limited maintenance and repair of CBP firearms.

Firearms Coordinator (FCO) - A designated employee who is responsible for receiving, controlling and issuing CBP firearms and associated equipment to CBP personnel within their duty area.

Firearms Instructor (FI) - An Authorized Officer/Agent who has been LESC trained and certified to conduct firearms training, tactics, and proficiency evaluations for CBP Authorized Officers/Agents.

Firearms, Armor, and Credential Tracking System (FACTS) - A CBP computer system that provides oversight and lifecycle accountability for specified law enforcement assets and equipment (including firearms, body armor, ECWs, and munition launchers).

FN303 - A less-lethal launcher, powered by compressed air, that delivers frangible, plastic projectiles filled with capsaicin powder. The projectiles are designed to burst upon impact and disperse the capsaicin powder either into the environment (area saturation) or onto the subject(s) (kinetic impact).

International Boundary Barrier (IBB) - A physical barrier at or between Ports of Entry and placed along the international boundary, which has been designed, manufactured and/or constructed with the capability of controlling the flow of people and goods crossing the border.

The Law Enforcement Safety and Compliance Directorate (LESC) - A division of CBP Operations Support responsible for development of CBP use of force policy, procurement of CBP firearms and tactical equipment, and the development and oversight of use of force training for CBP.

Less-Lethal Coordinator (LLCO) - A designated employee who is responsible for receiving, controlling, and issuing CBP less-lethal use of force equipment to CBP personnel within their duty area.

Less-Lethal Force: Any use of force that is neither likely nor intended to cause death or serious bodily injury (see "Use of Force" and "Serious Bodily Injury"). Also known as "non-deadly," "intermediate," or "less-than-lethal" force.

Less-Lethal Instructor (LLI) - An Authorized Officer/Agent who has been LESC trained and certified to conduct less-lethal training, tactics, and proficiency evaluations for CBP Authorized Officers/Agents.

Less-Lethal Training Safety Officer (LLTSO) - An officer/agent trained in less-lethal safety procedures to augment safety requirements during authorized less-lethal training.

Less-Lethal Specialty Impact and Chemical Munition (LLSI-CM) - Less-lethal munitions that are designed to deliver impact, chemical irritant, or both. LLSI-CM can be delivered by means of designated hand thrown munitions or by a munitions launcher.

Mechanical Resistance - A type of active resistance where an object external to physical attributes is used to increase the effectiveness of resistance to an officer/agent's control efforts. The 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 another object.

Munition Launcher - A less-lethal specialty impact/chemical munition (LLSI-CM) delivery system that is 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.

Non-Standard Firearm - A firearm that is not on the CBP Authorized Equipment List.

O-Chlorobenzylidenemalononitrile (CS) - The active ingredient in CS gas or spray.

Offensive Driving Techniques (ODT) - ODTs are any driving technique that is consistent with CBP training and is intended to end a pursuit through intentional vehicle-to-vehicle impact.

Oleoresin Capsicum (OC) - The active ingredient in OC spray, derived from cayenne pepper.

OC Spray - A hand held aerosol less-lethal device that disperses the inflammatory agent capsaicin in a conical mist, stream, gel or foam.

Passive Resistance - A type of resistance that is not believed to represent an immediate threat or flight risk, and which is not physical resistance to an Authorized Officer's/Agent's control efforts, but is not cooperative.

Pepperball Launching System (PLS) - A less-lethal launcher, powered by compressed air, that typically delivers frangible, plastic projectiles filled with capsaicin powder. The projectiles are designed to burst upon impact and disperse the capsaicin powder either into the environment (area saturation) or onto the subject(s) (kinetic impact).

Personal Property Management Oversight Board (PPMOB) - A board composed of representatives from all CBP offices that determines the disposition of lost or stolen CBP assets.

Range Safety Officer (RSO) - An officer/agent trained in range safety procedures and utilized as a safety officer.

Reportable Use of Force (Reportable in E-STAR) - Any use of deadly force; any intentional deployment of a CBP less-lethal device; or any use of a vehicle, weapon, physical tactic or technique that delivers (or is intended to deliver) a kinetic impact to a subject.

Responsible Officials (RO) - Executive Assistant Commissioners (EACs), Chief, U.S. Border Patrol (USBP); Assistant Commissioners (ACs); Chief Patrol Agents (CPA); Directors, Field Operations (DFO); Directors, Air Operations and Marine Operations (DAO, DMO); Executive Director of the Law Enforcement Safety and Compliance Directorate (LESC); Executive Directors, Office of Professional Responsibility (OPR);

Division Directors, Office of Training and Development (OTD); and other officials designated in writing by the Commissioner.

Serious Bodily Injury - Physical injury that involves long-term and obvious disfigurement; long-term loss or impairment of the function of a bodily member, organ, or mental faculty; or a substantial risk of death.

Shoulder-Fired Weapon (SFW) - A CBP rifle, shotgun, or other long arm.

Totality of Circumstances - The consideration of all facts and circumstances applicable in a particular law enforcement encounter.

Uniformed Law Enforcement Officer/Agent - Authorized Officers/Agent wearing the official uniform of the three uniformed components of CBP: Air and Marine Operations, Office of Field Operations, or United States Border Patrol.

Use of Force - When a law enforcement tactic, technique, less-lethal device or weapon is used to arrest a subject, address a potential threat, or ensure compliance with a lawful order.

Use of Force Device - Any item designed or marketed as a device which is intended to cause pain or discomfort to modify the behavior of an individual or group. This includes, but is not limited to, devices that may modify an individual's behavior through:

1. Acoustics;
2. Focused or Directed Light;
3. Electrical Current;
4. Directed Energy;
5. Kinetic Impact; or
6. Chemicals.

Vehicle Immobilization Device (VID) - A specialized device whose deployment is intended to result in the controlled deflation of a vehicle tire or otherwise cause a vehicle to stop.