

**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

CBP DIRECTIVE NO. 4510-038

DATE: 7/27/15

ORIGINATING OFFICE: IA

SUPERSEDES: N/A

REVIEW DATE: 7/27/18

SUBJECT: RESPONSE TO USE OF FORCE INCIDENTS

1 PURPOSE

1.1 This directive outlines the agency response to Use of Force (UoF) incidents and establishes the Use of Force Incident Team (UFIT) and the Use of Force Review Board (UFRB) which exist at the Headquarters-level as the National Use of Force Review Board (NUFRB) and regionally as Local Use of Force Review Boards (LUFRBs). Detailed procedures related to UFIT response and UFRB procedures are delineated in the Use of Force Incident Guide (UFIG).

2 POLICY

2.1 It is the policy of CBP that UoF incidents involving CBP employees will be promptly investigated by UFIT to gather all available evidence and statements, and reviewed by either a NUFRB or LUFRBs, depending on the severity of the incident within six months of the incident.

3 AUTHORITIES/REFERENCES

3.1 Use of Force Incident Guide (March 2015)

3.2 CBP Use of Force Policy (HB 4500-01C)

4 SCOPE

4.1 The scope of this directive is for the entirety of CBP.

5 RESPONSIBILITIES

5.1 The Assistant Commissioner, Office of Internal Affairs (IA), is the senior executive responsible for the UFIT, NUFRB, and the LUFRBs.

5.2 The Assistant Commissioner, Office of Field Operations will provide qualified employees to be trained and participate as members of the UFIT and allow them to travel and respond, as necessary to use of force incidents in support of the UFIT.

5.3 The Chief, Office of Border Patrol will provide qualified employees, including personnel from Critical Incident Teams or specialized teams, to be trained and participate as members of the UFIT and allow them to travel and respond as necessary, to use of force incidents in support of the UFIT.

5.4 The Assistant Commissioner, Office of Air and Marine will provide qualified employees to be trained and participate as members of the UFIT and allow them to travel and respond, as necessary to use of force incidents in support of the UFIT. The Office of Air and Marine will also provide air and marine assets as necessary in support of the UFIT.

5.5 The Director of the Use of Force Center of Excellence will provide qualified employees to be trained and participate as members of the UFIT and allow them to travel and respond, as necessary.

5.6 The Executive Director of the Laboratory and Scientific Services Directorate will provide qualified employees to provide forensic response and analysis in support of the UFIT.

5.7 The Assistant Commissioner, Office of Information and Technology, will provide the Use of Force Incident Tracking System (UFITS) to be used by the UFIT to enter and track use of force incidents.

6 PROCEDURES

6.1 The components will be responsible for immediately notifying the IA duty agent of UoF incident as well as notifying the Commissioner's Situation Room (SITROOM) through existing directives.

6.2 SITROOM staff will also notify the appropriate IA duty agent through the National Law Enforcement Communications Center (NLECC), commonly known as "Charlie 100" or "Sector" in Orlando, FL.

6.3 Upon notification of a UoF incident, a UFIT inquiry may be initiated by the Office of Internal Affairs (IA), Investigative Operations Division (IOD) Director.

6.4 There are two types of UFIT inquiries, "Non-Delegated" and "Delegated."

A "Non-Delegated" UFIT inquiry is one in which the Use of Force is classified as Significant (a Significant UoF incident is defined as an incident resulting in death or serious bodily injury). For "Non-Delegated" inquiries, the Director IA/IOD designates an Incident Commander (IC) to lead the UFIT, and the remainder of the team is comprised of CBP employees. In this case, the UFIT will provide an on-scene response to the incident. The UFIT response and investigation will be conducted in a manner which conveys objective investigative intent, with no implication of abuse or wrongdoing. The UFIT will conduct a thorough, factual, and objective investigation, consistent with the

Use of Force Incident Guide (UFIG), as well as prepare a comprehensive report memorializing investigative results. Furthermore, utilization of a multi-component investigative team will provide CBP with the unique ability to conduct an objective investigation while capitalizing on operational knowledge, agency insight, and unparalleled situational awareness.

Any CBP assets deployed during a UFIT inquiry will operate as part of the CBP UFIT and coordinate efforts with the UFIT IC. Evidence processing as well as the creation of reports should also be coordinated with the UFIT IC and be included in the final UFIT report. If agencies outside of CBP are involved in the investigation of the incident, coordination will be the sole responsibility of the UFIT IC unless otherwise delegated by the UFIT IC.

“Delegated” inquiries involve less significant UoF incidents. In these cases the Director IA/IOD will delegate the incident to be handled by the local IA office or appropriate component management.

6.5 The NUFRB was created to review, in a timely manner, UoF incidents resulting in death or serious bodily injury, as well as the discharge of firearms with the following exceptions:

- Unintentional discharge
- Animal euthanasia
- Office of Air & Marine disabling fire
- Use of a firearm during authorized training

The NUFRB will review each incident and make observations and recommendations concerning the application of deadly force, training and tactics, policy issues and potential misconduct arising from the incident. The NUFRB shall be comprised of representatives from the following components:

Voting members (subject to change)

- Office of Internal Affairs, Assistant Commissioner (Chairperson) or Deputy Assistant Commissioner (Non-voting member, unless tie break necessary) (SES).
- Office of Border Patrol, Chief of Operations (SES).
- Office of Air and Marine, Executive Director (SES).
- Office of Field Operations, Executive Director (SES).
- DOJ/Civil Rights Division (GS-14 or equivalent).
- Office of Air and Marine, Management Official (GS-14 or above).
- Office of Border Patrol, Management Official (GS-14 or above).
- Office of Field Operations, Management Official (GS-14 or above).
- Laboratory and Scientific Services, Executive Director (SES).
- ICE/Office of Professional Responsibility (GS-14 or above).

Non – voting members (subject to change)

- Use of Force Center of Excellence, Director or Deputy Director (GS-14 or above).
- Headquarters, Office of Chief Counsel (GS-14 or above).
- Labor and Employee Relations, HQ Director (GS-15).
- Office of Public Affairs, Management Official (GS-14 or above).
- DHS/Office for Civil Rights and Civil Liberties (GS-14 or above).
- DHS/Office of Inspector General, Management Official (GS-15 or above).
- Any subject matter expert(s) deemed necessary by the UFRB Chairperson or Office of Internal Affairs Assistant Commissioner (internal and/or external).

6.6 LUFBRs were created to review less-than-lethal force incidents that do not result in death or serious injury, as well as the discharge of a firearm in the following circumstances:

- Unintentional discharges
- Animal euthanasia
- Use of breaching rounds and/or less-lethal rounds
- Office of Air & Marine disabling fire

Twenty-one LUFBRs will be established; 20 will be aligned with the current Border Patrol Sectors, and an additional LUFBR will be established to cover the majority of California and Oregon.

LUFBR membership will consist of the following:

Voting members (subject to change)

- Office of Internal Affairs, Management Official (Chairperson).
- Office of Border Patrol, (Designated by senior management official responsible for AOR).
- Office of Air and Marine, (Designated by senior management official responsible for AOR).
- Office of Field Operations, (Designated by senior management official responsible for AOR).

Non – voting members (subject to change)

- Use of Force Center of Excellence, (Designated by Director, Use of Force Center of Excellence).
- Office of Chief Counsel (Designated by senior management official responsible for AOR).
- Any subject matter expert(s) deemed necessary by the LUFBR Chairperson.

6.7 The UFRB will review all documents, photos, and other pertinent evidence contained in the UFIT report. The UFRB will hear the IC presentation of the incident, ask questions and convey concerns to the IC.

6.8 The UFRB will then conduct a vote as to whether the application of force was consistent with the CBP Use of Force Policy and provide the decision to the IC or if a referral to IA is warranted for further investigation of potential misconduct or administrative violations. The UFRB will provide any necessary observations, recommendations/instructions concerning tactics, training and equipment, and/or safety issues, operational deficiencies, and administrative compliance matters.

6.9 Should the UFRB find some form of potential misconduct associated with the UoF incident, the UFRB will refer the potential misconduct and/or administrative violations to IA for appropriate action. The UFRB does not make a determination of misconduct. The UFRB only identifies potential misconduct and refers the matter to IA.

6.10 If the UFRB determines the UoF incident was within the scope of the CBP Use of Force Policy, the involved Officer/Agent will receive a letter from his/her Component Head or his or her designee after the administrative inquiry is closed.

6.11 If the UFRB determines a referral to IA is warranted because of potential misconduct or administrative violations in a UoF incident, a letter will be sent to the respective component head, and/or other relevant entity, notifying him/her of the referral to IA for further investigation.

6.12 The results of the UFRB will be sent to the UFCE within the Office of Training and Development, to track compliance with the observations and accompanying instructions and recommendations.

6.13 As defined in the CBP Use of Force Policy (HB 4500-01C), when an 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 3.1.A of the CBP Use of Force Policy) be placed on Administrative Leave with pay and/or regularly scheduled days off for three consecutive calendar days immediately following the incident.

6.14 In cases of a UFIT response to an incident, UFIT will assume responsibility for specific steps previously required of local management as defined by the Use of Force Policy. These steps are specifically delineated in the UFIG or at the discretion of the UFIT IC.

6.15 A CBP employee involved in a use of force incident should only relinquish his/her weapon to a UFIT team member or delegated supervisor. A component supervisor will be responsible for providing a replacement weapon as outlined in the CBP Use of Force Policy (HB 4500-01C). The involved CBP employee will not relinquish the CBP weapon to an outside law enforcement agency unless absolutely necessary and in consultation with the assigned IC. An exception would be if there was a police response creating a blue-on-blue situation and surrender of the weapon was necessary to ensure the Officer/Agent's safety or the safety of others.

7 REPORTING

7.1 Initial Use of Force incident reporting is the responsibility of the component in coordination with the SITROOM. All subsequent UFIT reporting is the responsibility of the UFIT IC. The UFIT IC will ensure the SITROOM and senior-level field and headquarters management are included in appropriate updates.

7.2 The SITROOM will ensure all Use of Force matters are referred to the Special Agent in Charge, UFIT, CBP/HQ.

7.3 The Special Agent in Charge, UFIT, CBP/HQ, will ensure all Use of Force incidents are entered into the UFITS.

A handwritten signature in black ink, appearing to read "R. Gil Kerlikowske". The signature is fluid and cursive, with a prominent initial "R" and "G".

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