



## United States Marshals Service – POLICY DIRECTIVES

2.10

USE OF FORCE

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**PROPONENT:** Office of Professional Responsibility (OPR) and Training Division (TD)

**PURPOSE:** This policy directive provides United States Marshals Service (USMS) guidance and procedures for use of force training, reporting, and investigations, to include shooting incidents.

**AUTHORITY:** 28 U.S.C. § 561(g); 28 C.F.R. § 0.111; Department of Justice (DOJ) Memorandum, Department's Updated Use-of-Force Policy, dated May 20, 2022; and DOJ Policy Statement, *Policy Statement on the Use of Less-than-Lethal Devices*.

**CANCELLATION:** This policy directive cancels USMS Policy Directive 2.10, *Use of Force*, dated February 5, 2021. This policy directive will remain in effect until updated, superseded, or cancelled.

**ADMINISTRATION AND LOGISTICS:**

1. Records Management: This administrative policy directive document is maintained in accordance with the approved Specific Records Schedule, DAA-0527-2013-0018-0002.
2. This USMS program shall be implemented in accordance with this directive and procedures contained in the corresponding OPR-Force Review Branch (FRB) Standard Operating Procedure (SOP) 2.10.01, *Shooting Response*.

**APPROVED BY:**

                  /s/                    
Ronald L. Davis  
Director  
U.S. Marshals Service

                  12/16/2022                    
Effective Date

- A. Policy Statements:** The use of force by USMS operational employees must be objectively reasonable to effectively gain control of an incident, while protecting the safety of the officer and others. USMS operational employees may use force only when no reasonably effective, safe, and feasible alternative appears to exist. Operational personnel may only use force that a reasonable officer on the scene would use under the same or similar circumstance. The use of force may range from verbal commands to the use of deadly force. Once a subject or prisoner has been effectively restrained, all use of force must cease.

**1. Use of Less-than-Lethal Force:**

- a. USMS operational employees are authorized to use only those less-than-lethal devices that are approved for use by the USMS and in accordance with USMS policies.
- b. USMS operational employees may use less-than-lethal force only in situations where objectively reasonable force, based upon the totality of the circumstances at the time of the incident, is necessary to:
  - 1) Protect themselves or others from physical harm;
  - 2) Restrain or subdue a resistant subject;
  - 3) Make an arrest;
  - 4) Prevent a prisoner from escaping; or
  - 5) Obtain lawful compliance from a subject.
- c. USMS operational employees are authorized to use less-than-lethal devices when the use of verbal commands or physical control techniques have not, or reasonably will not, work to achieve the law enforcement objective.
- d. USMS operational employees will be trained in alternative methods and tactics for handling resisting subjects, which must be used when the use of deadly force is not authorized by this policy.
- e. **Prohibited Techniques:** The following acts or techniques associated with the use of less-than-lethal force are prohibited unless deadly force is necessary and justified:
  - 1) Choke holds, carotid-control holds, or other neck restraints;
  - 2) Use of a baton to apply choke or "come-along" holds to the neck area; and
  - 3) Use of a baton to intentionally strike the head, face, groin, solar plexus, neck, kidneys, or spinal column.

- 2. Deadly Force:** USMS operational employees may use deadly force only when necessary; that is, when there is an objectively reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to USMS operational employees or to another person.

- a. If feasible, and if doing so would not increase the danger to USMS operational employees or others, a verbal warning to submit to the authority of USMS operational employees shall be given prior to the use of deadly force.

- b. Deadly force may not be used solely to prevent the escape of a fleeing subject or prisoner.
- c. Firearms may not be fired solely to disable moving vehicles. Specifically, firearms may not be discharged at a moving vehicle unless: (1) a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or (2) the vehicle is operated in a manner that threatens to cause death or serious physical injury to the officer or others, and no other objectively reasonable means of defense appear to exist, which includes moving out of the path of the vehicle.
- d. Firearms may not be discharged from a moving vehicle except in exigent circumstances.
- e. Warning shots are not authorized.
- f. Deadly force should not be used against persons whose actions are a threat solely to themselves or property unless an individual poses an imminent danger of death or serious physical injury to the officer or others in close proximity.

3. **Shooting Incidents:**

- a. All USMS operational employees; all contract personnel; all Task Force Officers (TFO) on a USMS-sponsored Task Force; and any other personnel authorized by the USMS to carry a firearm as a duty requirement, who are involved in shooting incidents occurring on or off duty must immediately report the incident to their supervisor for review. All shooting incidents must follow reporting requirements outlined below in Reporting – Shooting Incident.

**Exceptions:**

- 1) Firearms properly discharged in connection with authorized training; and
- 2) Firearms appropriately discharged in a recreational activity in an authorized area with proper authority/licenses and in accordance with all applicable laws, rules, and regulations without injury to any person or damage to property.

- b. All shooting incidents involving USMS operational employees may be investigated by an appropriate local, state, or federal law enforcement agency. The OPR-FRB may conduct an administrative investigation if all necessary elements were not covered in the criminal investigation of the incident. OPR-FRB will respond and may deploy to all intentional firearm discharges. Exceptions to this deployment may be authorized by the Chief, OPR-FRB. OPR-FRB is authorized to utilize subject matter experts from other Headquarters divisions to assist with investigations.
- c. All shooting incident responses must be conducted in accordance with OPR SOP 2.10.01, *Shooting Response*.

4. **De-escalation:** All USMS operational employees will be trained in de-escalation tactics and techniques designed to gain voluntary compliance from a subject.

- a. De-escalation tactics and techniques should be employed if objectively feasible and they would not increase the danger to the officer or others.
- b. When feasible, reducing the need for force allows officers to secure their own safety as well as the safety of the public.

5. **Affirmative Duty to Intervene:** USMS operational employees will be trained to recognize and act on the affirmative duty to intervene to prevent or stop, as appropriate, any officer from engaging in excessive force or any other use of force that violates the Constitution, other federal laws, or USMS and/or DOJ policies on the reasonable use of force.
6. **Affirmative Duty to Render Medical Aid:** USMS operational employees will be trained in, and must recognize and act upon, the affirmative duty to request and/or render medical aid, as appropriate, where needed. In all use of force incidents, USMS operational employees must make necessary medical assistance available to subjects as soon as practicable. Any injury to USMS operational employees or another party must be documented and reported with the submission of a "Use of Force Incident" report utilizing the USMS Mission System.
7. **Operational Plans:** This policy will be referenced in all written USMS operational plans.
8. **Foreign Use of Force Incidents:** USMS operational employees operating in a foreign country shall carry out their duties with the utmost respect for the sovereignty of, and in compliance with the laws of, the host foreign country at all times. As a general rule, USMS operational employees traveling abroad on official business are not automatically afforded the privileges and immunities extended by the host country to U.S. diplomatic personnel. No USMS employee may carry, transport, ship, or otherwise transmit firearms or other weapons outside of the United States without the prior approval from the Assistant Director of the operational division overseeing the mission being undertaken. This approval may not be delegated below the GS-1811-15 level. Additionally, approval must be obtained from the U.S. Chief of Mission, or their designee, in the destination country or countries. All investigations occurring in a foreign country, to include those arising from use of force incidents occurring in a foreign country, will adhere to the State Department guidelines under the U.S. Chief of Mission authority, and the host country government. Once the situation and/or incident is secure, USMS operational employees should immediately notify their USMS chain of command for guidance and instruction. Use of force incidents should be reported to the USMS Communications Center (COMM CNTR) and documented in the USMS Mission System. Further, USMS operational employees should contact the country Regional Security Officer at the nearest U.S. Embassy or U.S. Consulate.
4. This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officer or employees, or any other person.
5. The adoption of this policy supersedes any prior use of force policy provisions to the extent those provisions are contrary to and inconsistent with the applicable policy provisions contained herein.

**B. Roles and Responsibilities:**

1. **District and Division Management:**
  - a. Ensures that all USMS operational employees authorized to utilize use of force demonstrate proficiency with approved devices and firearms and comply with training and reporting requirements.
  - b. Makes immediate notification via the USMS Mission System or notifies the USMS COMM CNTR of any shooting incident occurring within its area of responsibility. The district or division must follow reporting requirements outlined below in *District and Division Reporting and Response*.

- c. Responds to shooting incidents and instructs those USMS operational employees who discharged their firearms to **MAKE NO IMMEDIATE STATEMENTS** to any law enforcement authorities, media, or other persons. Management may seek advice from the Office of General Counsel (OGC) for further guidance on statements or for procedures on obtaining legal representation as outlined in *Legal Representation*.

**Exception to the "MAKE NO IMMEDIATE STATEMENTS"** may occur when an operational necessity requires USMS operational employees to make immediate statements addressing ongoing law enforcement urgent circumstances; for example, description of subject who has escaped, direction of subject's flight, type of weapon used by subject, etc. when the information is not readily available from another source.

- d. Notifies relevant law enforcement agencies, such as local or state police, if property damage, serious injury, or death has occurred.
- e. Obtains the name of the law enforcement agency conducting the shooting investigation and the name of the agency official who is designated as the point of contact (POC).
- f. Takes custody of any USMS firearm discharged during the incident. For any primary-duty firearm taken into custody, provides a replacement primary-duty firearm immediately, or as soon as feasible.
- g. When a USMS body worn camera has been deployed, ensures physical devices, uploads, and footage are managed in accordance with USMS Policy Directive 2.11, *Body Worn Cameras*, and corresponding SOP.
- h. Ensures that all USMS operational employees who utilized deadly force with or without serious injuries or death, or have an unintentional discharge with injuries or death, are given 24 hours (3 working days) of administrative leave with pay. Administrative leave begins the following workday.

**Exception:** In incidents involving the unintentional discharge of a weapon and/or the shooting of an animal for self-protection, administrative leave may be authorized based on district or division discretion.

- i. District and division leadership may authorize up to 24 hours (3 working days) of administrative leave with pay for USMS operational employees involved in a deadly force incident but who did not utilize deadly force.
  - j. Prior to requalification and duty carry of any seized firearm, the weapon must be inspected by the USMS Armory (Refer to USMS Policy Directive Policy 14.11, *Firearms*).
2. **OPR:**
- a. Acts as a liaison between the investigating agency and the district or division;
  - b. Contacts the investigative agency's POC to discuss USMS policy and procedures related to shooting incidents;
  - c. Cooperates with investigative agencies and ensures witnesses and evidence are available at a mutually agreeable time, manner, and place;
  - d. If necessary, completes the OPR administrative investigation and summary in the USMS Mission System;

qualifying incidents, as identified by that Data Collection, will be reported by the appropriate Headquarters Program Office.

2. **Tactical Operations Division, Critical Incident Response Team (CIRT):** The Chief Inspector for the CIRT will be notified by the USMS COMM CNTR through the USMS Significant Incident notification procedures of any USMS-involved shooting. After involved USMS operational employees have given their statements to appropriate authorities, district and division management will coordinate with CIRT to determine an appropriate date and time to make their personnel available to CIRT. Other personnel, such as TFOs, Incident Management Team members, Technical Operations Group personnel, Special Operations Group members, etc., shall have the opportunity to receive peer support services via CIRT before returning to their permanent offices. Refer to USMS Policy Directives 17.2, *Line of Duty Death and Death in Service*; 17.4, *Critical Incident Response Team and Peer Support Program*; and 17.25, *Employee Assistance Program*.
3. District and division personnel must refrain from contacting the investigating agency or the prosecutor's office. OPR may notify district and division management through regular updates of any change in the status of the investigation.
4. **Prohibition on Releasing Names or USMS Body Worn Camera Footage of USMS Employees, TFOs, and Contract Personnel Who Are Involved:** The names or identifying images of USMS employees, TFOs, and contract personnel involved in a shooting are never to be released to the news media at the district or field office level. The names or images of USMS employees, TFOs, and contract personnel involved in a shooting will only be released to the investigating authority with the understanding that they cannot release the names to the news media. Any release of USMS employee, TFO, or contract personnel names or identifying images to the media will be made by the USMS Office of Public Affairs, in consultation with the Office of General Counsel, or by the DOJ.
5. **Legal Representation:** In the aftermath of a line of duty shooting or other critical incident involving death or serious physical injury, the USMS supervisor should contact the OGC Enforcement Team if it appears likely that the involved personnel will be the subject of a state or local criminal investigation related to the incident. USMS operational employees, TFOs, and contract personnel may request emergency interim legal representation by a private attorney at the expense of the DOJ in connection with the criminal investigation. The supervisor should provide OGC with facts that demonstrate those involved were acting within the scope of their federal duties, general facts regarding the critical incident, and the request for emergency representation. Personnel may also seek representation through a professional liability insurer, a professional law enforcement organization, or other sources.
5. **District and Division Reporting and Response:**
  - a. If the incident occurs after duty hours, the USMS COMM CNTR will verify receipt of the message by OPR. Refer to USMS Policy Directive 17.17, *Significant Incident Reporting*; and
  - b. At a minimum, the following information will be entered into the USMS Mission System for creation of a significant incident shell and significant incident notification email. If the USMS Mission System cannot be accessed, the following information will be provided to the USMS COMM CNTR.
    - 1) The type of qualifying significant incident;
    - 2) If there were injuries to law enforcement;

- 3) Incident date, time, and location;
- 4) The incident POC phone number and email; and
- 5) A brief description of the incident(s).

**NOTE:** A divisional duty officer and/or Agency leadership may request additional incident information from the incident point of contact via telephone and/or email.

**D. Definitions:**

1. **Body Worn Camera:** Cameras which can be attached to a person and used to record video and/or audio of law enforcement encounters with the public.
2. **Contract Personnel:** Personnel contractually authorized by the USMS to carry a firearm or use force as a duty requirement.
3. **Deadly Force:** Any force likely to cause death or serious physical injury, excludes force not likely to cause death or serious physical injury from which death unexpectedly results.
4. **De-escalation:** The strategic slowing down of an incident in a manner that allows officers more time, distance, space, and tactical flexibility during dynamic situations.
5. **Less-Than-Lethal Devices** include, but are not limited to:
  - a. Conducted Energy Devices (e.g., electronic immobilization, control, and restraint devices);
  - b. Impact Devices (e.g., batons, 40mm impact munitions); and
  - c. Chemical Agents (e.g., pepper spray).
6. **Less-Than-Lethal Force:** Force that is neither likely nor intended to cause death.
7. **OGC Enforcement Team:** Attorneys with subject matter expertise on criminal procedure and general law enforcement issues.
8. **Reportable Use of Force:** Any physical force other than minor restraint.
9. **Serious Physical Injury:** Bodily injury that is likely to cause death or serious/permanent disfigurement or loss of function of a body part or organ.
10. **USMS Task Force Officer:** A federal, state, or local law enforcement officer working as a federally-deputized member of a USMS-sponsored Task Force.
11. **Use of Force:** Any physical force or show of authority applied that is used to compel compliance by a subject.
12. **USMS Operational Employee or Officer:** Employees assigned to the 1811, 0082, 1801, or 1802 job series, or who serve as a USM.

**E. References:**

1. 28 U.S.C. § 561(g), *United States Marshals Service*
2. 28 C.F.R. § 0.111, *United States Marshals Service, General Functions*
3. DOJ Policy Memorandum, dated May 20, 2022, *Department's Updated Use-of-Force Policy*

4. DOJ Policy Statement, dated May 16, 2011, "Policy on the Use of Less-than-Lethal Devices"
5. CAPTURE Incident Module
6. OPR SOP 2.10.01, Shooting Response
7. USMS Policy Directive 2.11, Body Worn Cameras
8. USMS Policy Directive 8.23, International Fugitive Investigations
9. USMS Policy Directive 14.11, Firearms
10. USMS Policy Directive 14.16, Less-than-Lethal Devices
11. USMS Policy Directive 17.2, Line of Duty Death and Death in Service
12. USMS Policy Directive 17.4, Critical Incident Response Team and Peer Support Program
13. USMS Policy Directive 17.17, Significant Incident Reporting
14. USMS Policy Directive 17.25, Employee Assistance Program