

economic costs associated with vehicle use and highway travel.

NHTSA's Strategic Plan was developed with extensive input from the public and the employees of the Agency. Once the Strategic Plan was published, NHTSA distributed copies to numerous individuals and organizations and held roundtable meetings with our partners.

Inspired by reactions to our Strategic Plan and a desire to move in new directions, NHTSA has developed a Draft Strategic Execution Plan (SEP). It provides details on the actions the Agency intends to take to achieve the 11 goals of the Strategic Plan, performance measures for our work, and milestones for accomplishment.

The Agency would like commenters to provide their thoughts and suggestions on the proposed actions to meet the 11 goals as well as the performance measures that would be used to assess progress. We invite comments on issues or approaches to improving traffic and motor vehicle safety that are likely to be effective that are not in this plan. We are particularly interested in comments identifying opportunities for collaborative efforts with our partners to meet the goals and objectives of the Strategic Plan. The Agency is interested in receiving comments regarding how well the Draft SEP implements the Agency's current authorizing statutes. We would also welcome comments suggesting changes to the Draft SEP or any other changes, that would allow the Agency to better accomplish its mission, including those that would require regulatory or statutory revisions. In addition to comments, we request that commenters submit documents, analyses, or reference citations that are germane to the issues.

It is requested, but not required that ten copies of each comment be submitted. We ask that comments not exceed 15 (fifteen) pages in length. (49 CFR 553.21). Necessary attachments may be appended to those submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary comments in a concise manner.

All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket room at the above address both before and after that date. To the extent possible, comments filed after the closing date will be considered. The Agency will continue to file relevant information as it becomes available. It is recommended

that interested persons continue to examine the docket for new material. Those people desiring to be notified upon receipt of their comments by the docket section should include a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of their comments, the docket supervisor will return the postcard by mail.

Issued on October 17, 1995.
Donald C. Bischoff,
Associate Administrator for Plans and Policy.
[FR Doc. 95-26339 Filed 10-23-95; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

[Treasury Order No. 105-12]

Policy on the Use of Force

Dated: October 17, 1995.

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. § 321(b), I hereby establish a Treasury policy on the use of force. The policy set forth herein is intended to set a uniform standard for the use of deadly force and to provide broad guidelines for the Treasury Law Enforcement Bureaus. The provisions of this Order apply to all Treasury Law Enforcement Officers.

2. Definitions.

a. *Treasury Law Enforcement Officer*, for the purposes of this Order, includes any Treasury employee who has authority to make arrests and/or carry, or use, firearms and/or other weapons.

b. *Treasury Law Enforcement Bureau*, for purposes of this Order, includes any bureau or office within the Department which employs Treasury Law Enforcement Officers.

c. *Weaponless Control Techniques* includes officer presence, identification, verbal commands and physical control techniques, such as comealongs, touch pressure points, and empty hand strikes.

d. *Intermediate Weapons* are weapons other than firearms or lethal weapons with non-lethal munitions that are approved by each Treasury Law Enforcement Bureau.

e. *Deadly Force* is the use of any force that is likely to cause death or serious physical injury. Deadly force does not include force that is not likely to cause death or serious physical injury but unexpectedly results in such death or injury.

3. Use of Force Policy.

a. The primary consideration in the use of force is the timely and effective application of the appropriate level of force required to establish and maintain

lawful control. A paramount consideration is the preservation of life and prevention of bodily injury.

b. The respective Treasury Law Enforcement Bureau heads shall set forth guidelines for weaponless control techniques, intermediate weapons and firearms or lethal weapons with non-lethal munitions, in accordance with that bureau's law enforcement mission.

4. Use of Deadly Force Policy.

a. *Deadly Force*. Treasury Law Enforcement Officers may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

b. *Fleeing Felons*. Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe:

(1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death; and

(2) the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person.

5. *Use of Non-Deadly Force*. If force other than deadly force reasonably appears to be sufficient to accomplish an arrest or otherwise accomplish the law enforcement purpose, deadly force is not necessary.

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

7. *Warning Shots*. Warning shots are not permitted, except as follows.

a. Warning shots may be used by Treasury Law Enforcement Officers in exercising the U.S. Secret Service's protective responsibilities, consistent with policy guidelines promulgated by the Director, U.S. Secret Service.

b. Warning shots may be used by the U.S. Customs Service on the open waters, consistent with policy guidelines promulgated by the Commissioner of Customs.

8. Vehicles.

a. Weapons may not be fired solely to disable moving vehicles, except as follows: Treasury Law Enforcement Officers, in exercising the U.S. Secret Service's protective responsibilities, may fire weapons solely to disable moving vehicles, consistent with policy guidelines promulgated by the Director, U.S. Secret Service.

b. Weapons may be fired at the driver or other occupant of a moving motor vehicle only when:

(1) the officer has a reasonable belief that the subject poses an imminent danger of death or serious physical injury to the officer or to another person; and

(2) the public safety benefits of using such force outweigh the risks to the safety of the officer or other persons.

9. *Vicious Animals*. Deadly force may be directed against dogs or other vicious animals when necessary in self-defense or defense of others.

10. *Training and Proficiency Standards*. Each Treasury Law Enforcement Bureau shall:

a. require newly-appointed Treasury Law Enforcement Officers to satisfactorily complete either Basic Criminal Investigator Training or Basic Police Training, as administered by the Federal Law Enforcement Training Center, unless otherwise authorized by the bureau head or his/her designee, prior to being authorized to carry or use a firearm;

b. be responsible for establishing training and re-training standards which ensure that Treasury Law Enforcement Officers are proficient in the use of weaponless control techniques and intermediate weapons as authorized by that bureau; and

c. consistent with its mission, establish qualification and firearms familiarization standards and, at least on a semi-annual basis, require Treasury Law Enforcement Officers to establish and maintain their proficiency in the use of authorized firearms. The Secretary or his/her designee may grant an exception to this subsection upon a showing of good cause.

11. Treasury Law Enforcement Bureaus may supplement this policy with policy statements or guidance consistent with this policy. It is the responsibility of the Treasury Law Enforcement Bureaus to review such policy statements or guidance in a timely and comprehensive manner.

12. *Rights of Third Parties*. Nothing in this Order and the attached commentary is intended to create or does create an enforceable legal right or private right of action.

Robert E. Rubin,
Secretary of the Treasury.

Attachment

Commentary Regarding the Use of Deadly Force

I. Introduction

The Department of the Treasury (the "Department") hereby establishes a uniform policy with respect to the use of deadly force. The policy and this commentary provide practical guidance for officers who must make grave

decisions regarding the use of deadly force under the most trying of circumstances. The policy also is intended to maintain uniformity among the various Departmental components and to achieve uniform standards and training with respect to the use of deadly force. Although each component may still develop and conduct its own training on deadly force, the policy governs the use of deadly force under all circumstances.

The policy is the product of discussion among the various law enforcement agencies whose personnel are called upon to make decisions regarding the use of deadly force, of review of the current policies governing the use of force, and of advice of legal counsel from various Treasury and Justice Department components, including those charged with law enforcement, defense of civil actions filed against the government, enforcement of civil rights, and provision of constitutional advice. In developing the policy, it became apparent that decisional law provides only limited guidance regarding the use of deadly force.¹ In addition, as a matter of principle, the Treasury Department deliberately did not formulate this policy to authorize force up to constitutional or other legal limits.²

II. Definitions

Deadly force is the use of any force that is likely to cause death or serious physical injury. When an officer of the Department uses such force it may only be done consistent with this policy. Force that is not likely to cause death or serious physical injury, but unexpectedly results in such harm or death, is not governed by this policy.

Probable cause, reason to believe or a reasonable belief, for purposes of this policy, means facts and circumstances, including the reasonable inferences drawn therefrom, known to the officer at the time of the use of deadly force, that would cause a reasonable officer to

¹ Many issues addressed in the policy and this memorandum have never been addressed in reported decisions or the law remains unresolved. Courts would step outside their proper role if they formulated detailed policies with respect to the procedures governing deadly force; in contrast, the Department has the discretion to determine what the policy *should be* and to provide guidance to its employees with regard to these solemn issues. Cases arise in procedural postures—typically civil tort or civil rights actions, or motions to dismiss or overturn criminal charges or convictions—in which a wrongful act on the part of the government may not lead to recovery or sanctions. As a result, the court often does not reach the question of whether the use of force was wrongful.

² The leading Fourth Amendment cases in this area are *Tennessee v. Garner*, 471 U.S. 1 (1985) and *Graham v. Connor*, 490 U.S. 386 (1989).

conclude that the point at issue is probably true. The reasonableness of a belief or decision must be viewed from the perspective of the officer on the scene, who may often be forced to make split-second decisions in circumstances that are tense, unpredictable, and rapidly-evolving. Reasonableness is not to be viewed from the calm vantage point of hindsight.

III. Principles on Use of Deadly Force

The Department of the Treasury recognizes and respects the integrity and paramount value of all human life. Consistent with that primary value, but beyond the scope of the principles articulated here, is the Department's full commitment to take all reasonable steps to prevent the need to use deadly force, as reflected in Departmental training and procedures. Yet even the best prevention policies are on occasion insufficient, as when an officer serving a warrant or conducting surveillance is confronted with a threat to his or her life. With respect to these situations and in keeping with the value of protecting all human life, the touchstone of the Department's policy regarding the use of deadly force is *necessity*. Use of deadly force must be objectively reasonable under all the circumstances known to the officer at the time.

The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to officers or other persons have failed or would be likely to fail. Thus, employing deadly force is permissible when there is no safe alternative to using such force, and without it the officer or others would face imminent and grave danger. An officer is not required to place him or herself, another officer, a suspect, or the public in unreasonable danger of death or serious physical injury before using deadly force.

Determining whether deadly force is necessary may involve instantaneous decisions that encompass many factors, such as the likelihood that the subject will use deadly force on the officer or others if such force is not used by the officer; the officer's knowledge that the subject will likely acquiesce in arrest or capture if the officer uses lesser force or no force at all; the capabilities of the subject; the subject's access to cover and weapons; the presence of other persons who may be at risk if force is or is not used; and the nature and the severity of the subject's criminal conduct or the danger posed.

Deadly force should never be used upon mere suspicion that a crime, no matter how serious, was committed, or simply upon the officer's determination

that probable cause would support the arrest of the person being pursued or arrested for the commission of a crime. Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe: (1) The subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death; and (2) the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person.

As used in this policy, "imminent" has a broader meaning than "immediate" or "instantaneous." The concept of "imminent" should be understood to be elastic, that is, involving a period of time dependent on the circumstances, rather than the fixed point of time implicit in the concept of "immediate" or "instantaneous." Thus, a subject may pose an imminent danger even if he or she is not at that very moment pointing a weapon at the officer.

IV. Lesser Means

Intermediate force. If force lesser than deadly force could reasonably be expected to accomplish the same end, such as the arrest of a dangerous fleeing subject, without unreasonably increasing the danger to the officer or to others, then it must be used. Deadly force is not permissible in such circumstances, although the reasonableness of the officer's

understanding at the time deadly force was used shall be the benchmark for assessing applications of this policy.

Verbal warnings. Before using deadly force, if feasible, officers will audibly command the subject to submit to their authority. Implicit in this requirement is the concept that officers will give the subject an opportunity to submit to such command unless danger is increased thereby. However, if giving such a command would itself pose a risk of death or serious bodily harm to the officer or others, it need not be given.

Warning shots and shooting to disable. Warning shots are not authorized, except (1) in furtherance of the Secret Service's protective mission, or (2) by the Customs Service on the open waters. Other than these two exceptions, discharge of a firearm is usually considered to be permissible only under the same circumstances when deadly force may be used—that is, only when necessary to prevent loss of life or serious physical injury. Warning shots themselves may pose dangers to the officer or others.

Attempts to shoot to wound or to injure are unrealistic and, because of high miss rates and poor stopping effectiveness, can prove dangerous for the officer and others. Therefore, shooting merely to disable is strongly discouraged.

Motor vehicles and their occupants. Experience has demonstrated that the use of firearms to disable moving

vehicles is either unsuccessful or results in an uncontrolled risk to the safety of officers or others. Shooting to disable a moving motor vehicle is forbidden except in furtherance of the Secret Service's protective mission.

An officer who has reason to believe that a driver or occupant poses an imminent danger of death or serious physical injury to the officer or others may fire at the driver or an occupant only when such shots are necessary to avoid death or serious physical injury to the officer or another, and only if the public safety benefits of using such force reasonably appear to outweigh any risks to the officer or the public, such as from a crash, ricocheting bullets, or return fire from the subject or another person in the vehicle.

Except in rare circumstances, the danger permitting the officer to use deadly force must be by means other than the vehicle.

V. Miscellaneous

Deadly force may be directed against dogs or other vicious animals when necessary in self-defense or defense of others.

Nothing in this policy and the attached commentary is intended to create or does create an enforceable legal right or private right of action.

[FR Doc. 95-26288 Filed 10-23-95; 8:45 am]

BILLING CODE 4810-25-P-M