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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 632

[Docket No. USA-2015-0013]

RIN 0702-AA68

Carrying of Firearms and Use of Force for Law Enforcement, Security, Counterintelligence, and Protective Services

AGENCY: Department of the Army (DA), Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The DA proposes to revise its regulation concerning the carrying of firearms and use of force for law enforcement, security, counterintelligence, and protective services on DoD installations worldwide. It establishes uniform policy for the use of force by law enforcement and security personnel.

DATES: Consideration will be given to all comments received by: [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments, identified by 32 CFR Part 632, Docket No. USA-2015-0013 and or RIN 0702-AA68, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. John Hargitt, (703) 424-3309.

SUPPLEMENTARY INFORMATION:

This rulemaking proposes to revise a current Army regulation which was published in the Federal Register on April 21, 1983 (48 FR 17074). The proposed revisions cover carrying firearms and the use of force by DoD personnel law enforcement, security (DoD and contractor), counterintelligence, and protective services. This proposed rule also fully implements applicable portions of Department of Defense Directive (DoDD) 5210.56, <http://www.dtic.mil/whs/directives/corres/pdf/521056p.pdf>, which authorizes civilian officers and employees of the Department of Defense to carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary of Defense may prescribe, under regulations to be prescribed by the Secretary.

1. Legal Authorities discussed in the rule:

The proposed revisions add to the CFR the following authorities.

10 U.S.C. 807 – Article 7, Apprehension. This article specifically covers the authority for apprehension or taking of a person into custody.

50 U.S.C. Section 797, Penalty for violation of security regulations and orders. This section covers fines and penalties that a person is subject to if they willfully violate a defense property security regulation that has been promulgated or approved by the Secretary of Defense or by a military commander designated by the Secretary of Defense or by a military officer, or a civilian officer or employee of the Department of Defense, holding a senior Department of Defense director position designated by the Secretary of Defense for the protection or security of Department of Defense property.

18 U.S.C. Section 3261, Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States. Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment if the conduct had been engaged in within the territorial jurisdiction of the United States while employed by or accompanying the Armed Forces outside the United States; or while a member of the Armed Forces subject to the Uniform Code of Military Justice.

II. Summary of Changes Since the Last Revisions to this Rule.

These revisions do not propose significant changes to the policy and applicability sections of the current rule. The use of force section has been updated to ensure that the level of force is reasonable in intensity, duration and

magnitude and, based upon the level of effort required to counter a threat. There is no requirement to delay force or sequentially increase the level of force to resolve a situation or threat. DoD personnel will warn persons and give the opportunity to withdraw or cease threatening actions when the situation or circumstances permit. Additionally, this proposed rule updates the levels of force to include less-lethal force and presentation of deadly force.

The revisions to the deadly force section state that personnel will not be permitted to perform law enforcement or security duties requiring the use of weapons until they have received instruction on applicable regulations for the use of deadly force. Additionally, it requires personnel receive annual refresher training to maintain familiarity with restrictions on the use of deadly force. Deadly force is justified only under conditions of extreme necessity and as a last resort when all lesser means have failed or cannot reasonably be employed.

The revisions also propose a new less-lethal force section and updates additional options available to law enforcement and correctional or security guards. The current rule only defines the chemical aerosol irritant projectors and MP clubs. The updated section includes the launched electrode stun device (LESD), oleoresin capsicum spray (M39 Individual Riot Control Agent Dispenser (IRCAD)) and the expandable or straight baton. Department of the Army personnel may employ less-lethal force with the reasonable amount of force necessary to detain or effect a lawful arrest or apprehension of a resisting subject, or to otherwise accomplish the lawful performance of assigned duties.

This section also discusses required training and performance measures to subdue a subject.

III. Cost and Benefits.

This proposed rule will not have a monetary effect upon the public since it only facilitates information sharing between authorized law enforcement agencies to enhance protection of personnel and resources critical to DoD mission assurance. These efforts allow the efficient deployment of police and security forces proactively to deter, prevent and mitigate losses due to criminal behaviors.

B. Retrospective Review

This proposed rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review," DoD's full plan and updates can be accessed at:

<http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036>.

C. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

D. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule does not include a mandate that

may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of \$100 million or more.

E. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the proposed rule does not have an adverse impact on the environment.

F. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act doesn't apply. There is no additional burden for collection of information from the public or the addition of additional government forms associated with this rulemaking. Information collected to support this proposed rule is that information normally collected in the performance of law and order across the United States. Procedures and business processes outlined in this rule provide uniform policy concerning firearms, procedures for use of force, deadly force and less-lethal force, reporting efforts including the reduction of information collection burdens on the public and the improvement of law enforcement service delivery while maintaining privacy, confidentiality and information systems protections.

G. Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

H. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget (OMB).

I. Executive Order 13045 (Protection of Children from Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045. This proposed rule does not apply since it does not implement or require actions impacting environmental health or safety risks to children.

J. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this proposed rule does not apply because it will not have a substantial effect on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among various levels of government.

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Office of the Provost Marshal General

List of Subjects in 32 CFR Part 632

Deadly force, Expandable or straight baton, Firearms policy, Jurisdiction and authority, Launched electrode stun device, Less-lethal force, Oleoresin capsicum (OC) spray, Procedures for use of force.

For reasons stated in the preamble the Department of the Army proposes to revise 32 CFR part 632 to read as follows:

PART 632 – CARRYING OF FIREARMS AND USE OF FORCE FOR LAW ENFORCEMENT, SECURITY, COUNTERINTELLIGENCE, AND PROTECTIVE SERVICES

Subpart A—Introduction

Sec.

632.1 Purpose.

632.2 Applicability.

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632.9 Expandable or straight baton.
632.10 Jurisdiction and authority.

Authority: 10 USC 807; 50 USC 797; 18 USC 3261

Subpart A—Introduction

§ 632.1 Purpose.

This part prescribes policies and procedures for authorizing, carrying, and using firearms in connection with law enforcement, security, counterintelligence, and protective service duties. It establishes uniform policy for the use of force by law enforcement and security personnel.

§ 632.2 Applicability.

This part applies to the active Army, the U.S. Army Reserve, the Department of the Army civilian police and security guard activities, contracted or contractor security force operations and activities, and the Army National Guard only when called or ordered to active duty in a Federal status under the provisions of the title 10, United States Code. It applies to contracted or contractor security force operations and activities when those forces operate under Federal jurisdiction and are not subject to State or host nation law. The provisions of this part do not apply to military personnel engaged in military operations subject to rules of engagement or to Department of Defense personnel in an overseas location not under the authority of, or subject to, the control of a U.S. military commander. Portions of this regulation that proscribe specific conduct are punitive, and violations of these provisions may subject offenders to nonjudicial or judicial action under the Uniform Code of Military Justice.

§ 632.3 Firearms policy.

(a) DA personnel engaged in law enforcement, law and order, security, or counterintelligence investigations, including Army civilian police and security guards, both DA employee and contractor, who are authorized to be armed under this part will be appropriately armed and have the inherent right to self-defense.

(b) Authorization to carry a firearm includes the authority for the firearm to be loaded with ammunition. A firearm will be considered loaded when a magazine containing ammunition is placed in the firearm and a round of ammunition is placed in the chamber of the firearm.

(c) Arming of DA personnel will be limited and controlled. Qualified personnel engaged in the activities described in § 632.3(a) will be armed when required for assigned duties and there is a reasonable expectation that installations, property, or lives will be jeopardized if those personnel are not armed. The decision to arm DA personnel will be made after considering the possible consequences of accidental or indiscriminate use of the arms. The overriding factors to be considered in determining whether to arm DA personnel are the mission and threat. Arming those not regularly engaged in or directly supervising security or law enforcement activities will be limited to missions or threats and the immediate need to protect lives and DA assets.

(d) Screening pursuant to the Gun Control Act, to include the Lautenberg Amendment, will be accomplished without fail prior to authorizing any person to carry a firearm.

(e) DA personnel will only use the amount of force, including less-lethal force and deadly force, reasonably necessary to carry out their duties.

Subpart B—Use of Force

§ 632.4 Procedures for use of force.

(a) DA military and civilian personnel engaged in law enforcement or security duties will be highly trained and proficient in both the understanding and the application of the use of force. In such cases where the use of force is warranted, DA personnel will use the necessary and reasonable amount of force needed to reach their objective. Only as a last resort will deadly force be used and only as described in this part.

(b) When the use of force is required, less-lethal force may be used to control a situation, provide defense of DoD forces, provide defense of non-DoD persons in the vicinity if directly related to the assigned mission, or in defense of the protected property, when doing so is reasonable under the circumstances. The use of force must be reasonable in intensity, duration, and magnitude, based upon the totality of the circumstances to counter a threat. There is no requirement to delay force or sequentially increase force to resolve a situation or threat. DoD personnel will warn persons and give the opportunity to withdraw or cease threatening actions when the situation or circumstances permit. After consultation with the servicing judge advocate or legal advisor, conduct the appropriate level of inquiry in accordance with AR 15-6 for all incidents involving law enforcement personnel's application of physical force in the line of duty. The

completed inquiry will be filed as an enclosure within the Law Enforcement Report (LER).

(c) Commanders are mandated to augment firearms with DoD- or DA-approved nonlethal weapons and devices for performing law enforcement and security duties. For the purpose of this part (in accordance with DoDD 5210.56), and in the context of use of force, the term less-lethal force is used as there is no guarantee that non-lethal weapons (NLWs) will not cause severe injury or death. Less-lethal force can cause severe injury or death. DA personnel using NLW, as well as the party against which the tactic is used, will receive appropriate medical care if injured as a result of the use of less-lethal force.

(d) In evaluating the degree of force required for a specific situation, the following options will be considered. There is no need to proceed sequentially to increase force to resolve a situation or threat. Suggested methods of de-escalation of force to try should the circumstances permit (subject to host nation or local restrictions) are:

- (1) Verbal persuasion.
- (2) Unarmed defense techniques.
- (3) Less-lethal weapons and/or devices (for example, oleoresin capsicum spray, launched electrode stun device, and baton).
- (4) Military working dog (if available).
- (5) Presentation of deadly force capability.
- (6) Deadly force.

§ 632.5 Deadly force.

(a) Principles defined in this part on the use of deadly force with firearms will be applied equally to personnel using a weapon or equipment which, when properly employed in their intended use, would produce deadly force.

(b) The Secretary of the Army, Army commanders, or their designees may impose further restrictions on the use of deadly force if deemed necessary in their judgment and if such restrictions would not unduly compromise the national security interests of the United States.

(c) Personnel will not be permitted to perform law enforcement or security duties requiring the use of weapons until they have received instruction on applicable regulations for the use of deadly force in the performance of such duties. Additionally, annual refresher training will be given to all personnel assigned to those duties to ensure that they continue to be thoroughly familiar with all restrictions on the use of deadly force.

(d) Personnel carrying weapons for personal protection will have the necessary training on deadly force commensurate with that prescribed by this part.

(e) For contract security forces, the applicable contract will specify that the use of deadly force criteria will be established consistent with this part and local law.

(f) Deadly force is justified only under conditions of extreme necessity and as a last resort when all lesser means have failed or cannot reasonably be employed. Deadly force is justified under one or more of the following circumstances:

(1) *Self-defense and defense of others.* When deadly force reasonably appears to be necessary to protect any person who is reasonably believed to be in imminent danger of death or serious bodily harm.

(2) *Assets involving national security.* When deadly force reasonably appears necessary to prevent the actual theft or sabotage of assets vital to national security. DoD assets will be specifically designated as “vital to national security” only when their loss, damage, or compromise would seriously jeopardize the fulfillment of a national defense mission. Examples include nuclear weapons; nuclear command, control, and communications facilities; and designated restricted areas containing strategic operational assets, sensitive codes, or special access programs.

(3) *Assets not involving national security but inherently dangerous to others.* When deadly force reasonably appears to be necessary to prevent the actual theft or sabotage of resources, such as operable weapons or ammunition, that are inherently dangerous to others; such as assets that, in the hands of an unauthorized individual, present a substantial potential danger of death or serious bodily harm to others. Examples include high risk portable and lethal missiles, rockets, arms, ammunition, explosives, chemical agents, and special nuclear material.

(4) *Serious offenses against persons.* When deadly force reasonably appears necessary to prevent the commission of kidnapping, sexual assault, or any offense involving or threatening death or serious bodily harm.

(5) *Arrest or apprehension.* When deadly force reasonably appears to be necessary to arrest, apprehend, or prevent the escape of a person who, there is probable cause to believe, has committed an offense of the nature specified in paragraphs § 632.5(f)(2) through (4).

(6) *Escapes.* When deadly force has been specifically authorized by the Secretary of the Army and reasonably appears to be necessary to prevent the escape of a prisoner, provided law enforcement or security personnel have probable cause to believe that the escaping prisoner poses a threat of serious bodily harm either to security personnel or others.

(g) Additional requirements for the use of firearms.

(1) When the situation permits, an order of "halt" will be given.

(2) Warning shots are prohibited.

(3) When a firearm is discharged, it will be fired with the intent of rendering the person(s) at whom it is discharged incapable of continuing the activity or course of behavior prompting the individual to shoot.

(4) Shots will be fired only with due regard for the safety of innocent bystanders.

(5) In case of holstered weapons, a weapon should only be removed from the holster when a potential need to use deadly force is reasonably anticipated or display of the weapon may avoid the need to use deadly force.

(h) Commanders of ACOMs, ASCCs, and DRUs may establish additional considerations in implementing procedures over the use of firearms.

Subpart C—Less-Lethal Force

§ 632.6 Less-lethal force.

(a) DoDD 3000.03E establishes DoD policy for the development and employment of NLWs. DA personnel (Army Law Enforcement Officer (ALEO), correctional or security guards) may employ less-lethal force with the reasonable amount of force necessary under the circumstances to detain or effect a lawful arrest or apprehension of a resisting subject, or to otherwise accomplish the lawful performance of assigned duties as described in § 632.6(c)(1) through (9). In the context of use of force, this part uses the term “less-lethal” force in lieu of “nonlethal” because there is no guarantee that properly employed “less-lethal” force will not inadvertently cause severe injury or death. Employment of less-lethal force may include the use of NLW.

(b) DA personnel using NLW during the employment of less-lethal force, as well as the party against which the tactic is used, will receive appropriate medical care if injured as a result of the NLW.

(c) Less-lethal force may be used under the following circumstances:

(1) Against persons assaulting other persons or themselves in order to prevent injury and/or continuation of the assault when lesser means of force have failed or are not considered a viable option by the ALEO.

(2) Against persons offering physical resistance to lawful arrest or apprehension when alternatives to the use of force have failed or are not considered a viable option by the ALEO.

(3) Against persons passively resisting a lawful, full-custody arrest or apprehension when alternatives to the use of force have failed or are not considered a viable option by the ALEO.

(4) To prevent the escape of a prisoner.

(5) To prevent the destruction of DoD property.

(6) Against animals menacing or attacking a person or themselves.

(7) To quell a major or minor disturbance within a correctional facility.

(8) To quell a riot or civil disobedience.

(9) To move or incapacitate an unruly prisoner.

§ 632.7 Launched electrode stun device.

(a) A launched electrode stun device (LESD) is an Electronic Control Device (ECD) that is used to temporarily incapacitate a non-compliant subject with an electrical stimulus delivered by direct contact or propelled probes. This electrical stimulus affects the sensory and motor functions of the central nervous system interrupting voluntary control of skeletal muscles and causing immediate, involuntary muscle contractions. The intended effect is neuromuscular incapacitation to ensure compliance by the non-compliant subject. An LESD is intended to minimize injury to law enforcement or security personnel, non-compliant subjects, and innocent bystanders. The timely and appropriate use of an LESD can de-escalate situations quickly and before conditions lead to increased escalation of force. Special Text (ST) 19-LESM, task 191-389-0057, outlines performance measures to subdue a subject using an LESD.

(b) An LESD is employed as a NLW capability and is not intended to replace firearms or lesser means of force. An LESD may be used when all of the following conditions are met:

(1) When one of the circumstances in § 632.6(c)(1) through (9) is present; and

(2) When lesser means of force options have been, or likely will be, ineffective; and

(3) When there is a reasonable expectation that it will be unsafe for law enforcement personnel to approach within physical contact range of the subject; and

(4) When law enforcement or security personnel determine that deadly force is not justified or not necessary.

(c) Before employing an LESD, law enforcement or security personnel must assess how effective it will be in their given situation. The decision to use an LESD will depend upon the totality of the circumstances, including but not limited to the level of resistance of the subject, the nature of the threat to the officer or others, the severity of the subject's suspected crime, and the overall hostility of the situation. After employing an LESD, law enforcement or security personnel must determine whether further employment is warranted based on the continuing presence of the conditions in paragraph § 632.7(b) and based on the totality of the circumstances described in this paragraph.

(d) An LESD is not a substitute for deadly force and should not be used in situations where deadly force is necessary.

(e) Prior to employing an LESD, law enforcement, correctional or security personnel will give a verbal warning and verbal commands to a resisting subject, when and if the situation permits. Verbal warnings and commands are not necessary if the threat to law enforcement personnel or to the safety of others dictates immediate action.

(f) The use of an LESD may eliminate the need for hands-on active countermeasures. Law enforcement, correctional or security personnel may utilize empty hand tactics prior to employing an LESD as the situation dictates. However, law enforcement, correctional, or security personnel are not required to attempt empty hand control tactics if they believe those tactics would be dangerous or ineffective.

(g) Notwithstanding § 632.7(b), an LESD will not be used:

(1) When it is known that the subject has come into contact with flammable liquids or is in a flammable environment; or

(2) When the subject is in a position where falling may cause significant injury or death; or

(3) As a punitive measure to coerce an uncooperative subject; or

(4) To awaken an unconscious subject (e.g., due to intoxication).

(h) Notwithstanding § 632.7(b), an LESD should not be used in the following circumstances unless absolutely necessary:

(1) On a subject operating a motor vehicle; or

(2) On a subject gripping a firearm; or

(3) On women known or suspected to be pregnant; or

- (4) On persons perceived to be 60 years of age or older, or disabled; or
- (5) On persons perceived to be children 14 years of age or younger.

(i) *Post-employment responsibilities.* (1) Law enforcement, correctional or security personnel must seek medical treatment or clearance from medical personnel prior to further law enforcement processing after employing an LESD on a non-compliant subject.

(2) If requested by the subject, law enforcement, correctional or security personnel must ensure that medical treatment is provided after an LESD has been employed, regardless of the subject's apparent medical condition.

(3) If an LESD probes are lodged in the soft tissue areas near the eye, throat, ear, groin, or genitals, law enforcement, correctional or security personnel will summon medical personnel to the scene, or will transport the subject to the nearest medical facility to have the probes removed by medical personnel.

(4) During processing, the apprehending law enforcement personnel will inform the detention personnel that they employed an LESD against the subject. Law enforcement personnel will not transfer a subject to a detention center after employment of an LESD if the probes have not been removed, or if the subject has not received, requested or required medical care.

§ 632.8 Oleoresin capsicum (OC) spray.

(a) The Army M39 Individual Riot Control Agent Dispenser (IRCAD) contains OC and is intended for law enforcement use in self-defense and for controlling rioters, prisoners, and/or non-compliant subjects. It is designed to provide a safe and effective way to subdue a subject without causing permanent injury. The M39 IRCAD contains enough OC or “pepper spray” for 15 one-second bursts. It has an operational range of 10 to 30 feet. ST 19-LESM, task 191-376-5108 and task 191-389-0037, outlines performance measures to subdue a subject with OC spray while in performance of law enforcement duties. Soldier Training Publication (STP) 19-31E1-SM, task 191-31E-0042 and 191-31E-1369, outline performance measures for use of OC spray while in a correctional facility.

(b) *Medical considerations.* (1) Once the subject has been taken into custody, begin the decontamination process.

(2) During transport, reassure the subject and monitor them for medical distress, coherence, and respiration.

(3) Seek immediate medical assistance upon any sign of medical distress.

(4) Seek medical assistance if the direct effects of the OC spray does not dissipate within an hour.

§ 632.9 Expandable or straight baton.

(a) The baton is used for law enforcement self-defense and for keeping rioters and/or non-compliant subjects out of arms reach. The baton may be employed in situations where the use of a firearm is not authorized or necessary, and when law enforcement, correctional or security personnel reasonably believe

that a lower level of force will be ineffective or jeopardize the safety of the law enforcement personnel.

(b) *Authorized use.* The baton may be used as a defensive impact instrument to block or strike an assailant. The subjects' actions and levels of resistance will determine how the baton is employed. STP 19-LESM, task 191-376-5210, outlines performance measures (e.g. appropriate and inappropriate strike areas) to subdue a subject with a straight baton while in performance of law enforcement duties. STP 19-31E-SM, task 191-376-4140, outlines performance measures when using a riot baton as a member of a riot control formation.

(c) *Location of use.* Consideration must be used when employing the baton on vital areas of the body such as the head, neck or spine. Baton blows to the head can cripple or kill. Batons will not be used to apply pressure to the head, neck or throat.

§ 632.10 Jurisdiction and authority.

(a) The DES, Correctional Facility Commander or PM for each installation, in coordination with the senior/garrison commander and the staff judge advocate (SJA), may place further limitations on the use of an LESD, OC, and/or baton beyond what is provided in this part. The servicing SJA is critical in analyzing the particular installation's jurisdictional arrangement, and determining whether state law (for U.S. installations) or host nation law (for non-U.S. installations) impacts the use of LESD, OC and/or baton on the installation.

(b) After consultation with the servicing judge advocate or legal advisor, conduct the appropriate level of inquiry in accordance with AR 15-6 for all

incidents involving law enforcement personnel's application of physical force in the line of duty. The completed inquiry will be filed as an enclosure within the Law Enforcement Report.

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