



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

9.2.3

JUNE 17, 2015

EFFECTIVE DATE

(06-17-2015)

PURPOSE

- (1) This transmits revised IRM 9.2.3, Use of Force Procedures.

MATERIAL CHANGES

- (1) Subsection 9.2.3.7.1(1)d) has been updated to reflect that a copy of Form 9776, Use of Force Incident Report, and narrative must be sent to Director, National CI Training Academy (NCITA), Attention: Use of Force Senior Analyst.
- (2) Subsection 9.2.3.8.1(1)a) and b) are revised to update the criteria for responding to a Federal crime.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.2.3 dated January 30, 2014. This IRM also incorporates procedure(s) implemented by the Chief, Criminal Investigation, guidance memorandum dated September 10, 2014, [Subject: "Active Threat Preparedness and Response"].

AUDIENCE

CI

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9.2.3

Use of Force Procedures

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9.2.3.1
(04-14-2011)
OVERVIEW

- (1) The purpose of this section is to inform and guide special agents in the application of the Treasury Department's Use of Force Policy. This section contains the following information:
 - General Guidelines
 - Weaponless Control
 - Intermediate Weapon Control
 - Deadly Force
 - Use of Firearms by Special Agents (Firearms Policy)
 - Post Use of Force Procedures
 - Special Agents' Responsibilities and Authority When Crimes Are Committed Outside the Jurisdiction of IRS
 - Medical and Liability Considerations
 - Emergency Driving

9.2.3.2
(04-14-2011)
General Guidelines

- (1) Special agents may use force to establish and maintain lawful control of a situation. In deciding whether to use force, special agents must give paramount consideration to the preservation of life and prevention of physical injury. The force should be:
 - a. applied timely, and
 - b. at an appropriate level in light of the circumstances

9.2.3.2.1
(07-16-2002)
Before Using Force

- (1) If possible, special agents should:
 - a. identify themselves as law enforcement officers, and
 - b. exercise persuasion, advice, and verbal warning
- (2) However, if verbal means are or may be ineffective, special agents may use physical force to accomplish a law enforcement purpose.

9.2.3.2.2
(07-16-2002)
Levels of Force

- (1) The Treasury Policy Use of Force Levels on an escalating scale are:
 - a. weaponless control
 - b. intermediate weapon control
 - c. deadly force
- (2) The degree of force authorized is limited to that which is necessary to establish and maintain control and depends on the degree of danger perceived by the agents.

9.2.3.2.3
(01-23-2004)
When Force May Be Used

- (1) Force may be used to:
 - a. minimize the potential for injury
 - b. provide for the safety of the agent and others
 - c. accomplish duties authorized by law, such as performing a protective function or effecting an arrest
- (2) The duty of special agents is to take steps to prevent harm to themselves and others.
- (3) Special agents do not have to wait for injury to occur before taking appropriate action.

9.2.3.2.4
(04-14-2011)
**Responsibilities of
Special Agents,
Supervisory Special
Agents, and
Non-Treasury Law
Enforcement Officers**

- (4) Special agents may have to rapidly escalate or de-escalate the use of force depending on the totality of the circumstances.
- (1) Special agents are required to be familiar with the policies and procedures regarding use of force and post use of force.
- (2) Supervisory Special Agents (SSAs) must certify to their Special Agent in Charge (SAC), on an annual basis, that the special agents assigned to them have reviewed use of force and post use of force procedures.
- (3) Non-Treasury law enforcement officers who are participating in task forces sponsored, led, or funded by the Department of the Treasury must comply with this Use of Force Policy. This policy does not apply to non-Treasury law enforcement officers who work with IRS special agents on an ad hoc basis or who assist in a one-time law enforcement operation.

9.2.3.3
(01-23-2004)
Weaponless Control

- (1) Weaponless control is the most commonly used control and restraint. Techniques include:
 - a. special agent presence and approach
 - b. identification
 - c. verbal commands
 - d. contact controls
 - e. compliance techniques
 - f. defensive tactics
- (2) Weaponless controls are based on fundamental policing skills and capitalize upon the acceptance of authority by the general public.

9.2.3.3.1
(04-14-2011)
**Categories of
Weaponless Control
Techniques**

- (1) Weaponless control techniques can be classified into four categories:
 - a. Cooperative control, which relies on communication skills, verbal directions, relative positioning, and special agent presence
 - b. Contact control such as the escort position and the palm-heel push
 - c. Compliance techniques such as joint locks and pressure points
 - d. Defensive tactics such as escape techniques, striking techniques, and weapon retention

9.2.3.3.2
(04-14-2011)
**When to Use
Weaponless Control
Techniques**

- (1) Special agents should use communication skills when they perceive their presence, identification, and verbal commands are sufficient to establish and maintain control.
- (2) Special agents should escalate to contact control, compliance techniques, or defensive tactics when they perceive these are necessary to establish and maintain control.

9.2.3.3.3
(08-14-2012)
**Handcuffs and
Restraints**

- (1) The purpose of handcuffs, transport handcuff restraints, and flexcuffs is to restrain the movements of a subject or prevent further physical resistance by a subject.
- (2) All subjects taken into custody should be handcuffed behind their backs and the handcuffs should be double-locked to ensure the safety of the special agent and other citizens. Exceptions from this procedure are appropriate when:

- a. The subject has an injury that does not permit handcuffing behind the back.
 - b. The subject's age or physical limitations warrant a change in procedure.
 - c. It is tactically unsafe for the special agent to double-lock the handcuffs.
 - d. Transporting the subject for extended periods of time and it is tactically safe to use transport handcuff restraints to secure a subject's hands in front.
- (3) All subjects should be handcuffed prior to being searched to ensure safety of all special agents.

9.2.3.4
(07-29-1998)
**Intermediate Weapon
Control**

- (1) Intermediate weapons are weapons other than firearms or lethal weapons with non-lethal munitions, designed to supplement weaponless control techniques.

9.2.3.4.1
(07-23-2013)
**Authorized Intermediate
Weapon**

- (1) Oleoresin Capsicum (OC) is the only authorized intermediate weapon that special agents are allowed to carry, with one exception detailed in subsection 9.2.3.4.6.
- (2) Oleoresin Capsicum canisters must consist of a nonflammable aerosol propellant, a nontoxic and nonflammable carrier, and a percentage of OC ranging from 5 to 10 percent.
- (3) While OC is the only authorized intermediate weapon for special agents, emergency use of a common object is also permitted as an intermediate weapon.

9.2.3.4.2
(08-14-2012)
**When Oleoresin
Capsicum May Be
Carried**

- (1) Special agents are authorized to carry the OC intermediate weapon only after they have successfully completed appropriate training. Oleoresin Capsicum should be carried in a safe, secure, and readily accessible manner.
- (2) Oleoresin Capsicum should be carried during tactical operations, (i.e., arrests or search warrants).
- (3) During any other official duties, special agents are allowed but not required to carry OC. Special agents should not carry OC while assigned to headquarters-initiated protective details. Additionally, special agents should not carry OC while assigned to Secret Service protection details, consistent with the policy guidelines promulgated by the Director of the Secret Service.
- (4) Special agents may carry OC on board an aircraft if secured in checked baggage. The OC canister should be placed in a zip-loc type plastic bag, and locked in luggage that will be placed in the cargo compartment of the aircraft. Special agents should contact the airline they will be traveling on to verify permission to transport OC in the above manner. If the airline denies permission, the special agents may obtain OC after arriving at their destination from the nearest CI office. The SAC of that field office will make OC available to visiting special agents upon verification that the special agents have completed the approved training.

- 9.2.3.4.3
(01-23-2004)
When Oleoresin Capsicum May Be Used
- (1) Special agents may use OC when they perceive that weaponless control techniques are or may be insufficient to maintain lawful control.
 - (2) Special agents may use OC to control animals in situations where the animal poses a threat to special agents or other individuals.
- 9.2.3.4.4
(07-16-2002)
Effect of Oleoresin Capsicum
- (1) Oleoresin Capsicum is designed to temporarily render an individual incapable of continuing to resist lawful control.
- 9.2.3.4.5
(01-23-2004)
Purchase and Disposal of Oleoresin Capsicum
- (1) Oleoresin Capsicum may be purchased by field offices and assigned either to individual special agents on a permanent basis or retained in a pool in the local office and withdrawn as needed.
 - (2) Oleoresin Capsicum purchased by the Director, Field Operations and Headquarters will be retained in a pool and withdrawn as needed.
 - (3) The Chief, CI; Director, Field Operations; and SAC, shall make provisions to ensure that chemical weapons are properly disposed of at the expiration of their shelf life.
- 9.2.3.4.6
(07-23-2013)
Collapsible Baton Intermediate Weapon
- (1) The collapsible baton is an authorized intermediate weapon special agents are allowed to carry only when assigned to Headquarters' protective details.
 - (2) Special agents are only allowed to carry collapsible batons issued by IRS Criminal Investigation. Special agents are not allowed to modify their issued collapsible baton.
- 9.2.3.4.7
(07-23-2013)
When the Collapsible Baton May Be Carried
- (1) Special agents are authorized to carry the collapsible baton intermediate weapon only after they have successfully completed IRS Criminal Investigation authorized training. The collapsible baton should be carried in a safe, secure, and readily accessible manner.
 - (2) The collapsible baton should be carried during all protective operations.
 - (3) Special agents will continue to be authorized to carry the baton with annual refresher training.
- 9.2.3.4.8
(07-23-2013)
When the Collapsible Baton May Be Used
- (1) Special agents may use the collapsible baton when they perceive that weaponless control techniques are or may be insufficient to maintain lawful control.
 - (2) Special agents will use the amount of force authorized by subsection 9.2.3.2.3. Special agents will strike an assailant at the major muscle groups of the arms and the legs, avoiding strikes to the trunk of the body. Special agents will not intentionally strike the head or neck since serious injury or death may occur. Special agents will cease striking a person with a baton when lawful control is obtained.
 - (3) The collapsible baton may be used as a non-impact weapon when applied to suitable pressure points on an assailant's body.
 - (4) Special agents may use the collapsible baton to control animals in situations where the animal poses a threat to special agents or other individuals.

9.2.3.5

(07-29-1998)

Deadly Force

- (1) Deadly force is any force likely to cause serious physical injury or death.

9.2.3.5.1

(01-23-2004)

Authority to Carry Firearms

- (1) Special agents' authority to carry firearms is implied from the authority to make arrests and seizures found in 26 USC §7608 (b).

9.2.3.5.2

(04-14-2011)

When Deadly Force May Be Used

- (1) Use of deadly force is permitted only when necessary and if in the considered opinion of the special agent, either the special agent or another person is in imminent danger of loss of life or serious physical injury.
 - a. "Imminent" has a broader meaning than "immediate" or "instantaneous."
 - b. A subject may pose an imminent danger even if he/she is not at that very moment pointing a weapon at the agent.
 - c. Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death **and** the escape of the subject would put the special agent or others in imminent danger of serious physical injury or death.
 - d. Special agents may direct deadly force against dogs or other vicious animals when necessary for self defense or the defense of others.

9.2.3.5.3

(08-14-2012)

When Deadly Force Results in Injury (Role of Special Agents)

- (1) Special agents should apply the following procedures when injury, property damage, or death results from the use of deadly force. These procedures are intended as guidelines; they are not intended to be all-inclusive or limiting.
- (2) Special agents should:
 - a. Place the subject under arrest (if appropriate), read the subject the Statement of Rights, and secure any weapons present.
 - b. Call for medical assistance for all injured parties.
 - c. Notify their immediate supervisor.
 - d. If the situation coincides with a protection detail, evacuate the protectee(s) to a safe location.
 - e. Secure the scene if possible until local law enforcement arrives.
 - f. Identify individuals with knowledge of the incident for subsequent interviews by local law enforcement authorities and the Treasury Inspector General for Tax Administration (TIGTA).
 - g. Compile notes, as soon as possible to maintain accuracy.
 - h. Furnish their firearms, if discharged, to local law enforcement authorities. This should be done through the SSA or senior special agent on site and a receipt should be obtained.
 - i. Cooperate with local law enforcement authorities and the TIGTA by identifying themselves and providing information in a manner and to the extent consistent with the constitutional protection of special agents, (e.g., that firearms were discharged (or other deadly force employed) while acting in an official capacity; that medical assistance has been requested; that suspects are in custody).
 - j. When discussing the incident, exercise caution so that confidential tax information is not disclosed.

9.2.3.5.4
(01-23-2004)

**Rights of Special Agents
When Deadly Force
Results in Injury**

- (1) Special agents have the same constitutional protections as other individuals, (e.g., due process, the right to counsel, etc.).
- (2) Special agents cannot be compelled to make self-incriminating statements.
- (3) The United States **may** provide legal representation, depending on the facts of the incident and the type of action(s) initiated.
- (4) Special agents may choose to consult a private attorney before providing any oral or written statements.
- (5) Special agents will be responsible for selecting and paying for a private attorney.

9.2.3.5.5
(04-14-2011)

**When Deadly Force
Results in Injury (Role of
Supervisory Special
Agents)**

- (1) The SSA or senior special agent at the site should:
 - a. Oversee protection of subject(s), witness(es), other special agents, and the evidence.
 - b. Notify local law enforcement authorities and the TIGTA.
 - c. Act as an intermediary or assign a “companion agent” to act as an intermediary between the special agents, the TIGTA, and local law enforcement authorities until the special agents regain their composure and understand their rights.
 - d. Ensure that the special agents involved in the incident receive prompt medical attention, if needed; are removed from the scene as soon as possible; and are not subject to media attention.
 - e. If the discharge of a special agent’s firearm resulted in injury or death, ensure that the firearms and spent cartridges are placed into evidence with local law enforcement authorities. Normally, a different firearm is issued to the special agent until his/her regular weapon is returned.
 - f. If special agents are injured, personal contacts should be afforded to their families and transportation provided to the site of treatment. If feasible, the contacts should be by someone who knows the families, by a senior special agent, or by an SSA.
 - g. For more detailed information about the role of a SSA in trauma situations, see IRM 1.4.9, Resource Guide for Management Officials -- Criminal Investigation.

9.2.3.6
(08-14-2012)

**Use of Firearms by
Special Agents
(Firearms Policy)**

- (1) Special agents may discharge their firearms when, in the considered opinion of the special agent, there is an imminent danger of loss of life or serious physical injury to the special agent or to another person.
- (2) Special agents must conceal their handguns upon their persons, keeping them away from public view when conducting official business. However, special agents may display their handguns, if they feel it will relieve a threat against special agents or others.
- (3) Special agents should draw their handguns only if there is sufficient cause to expect they will be used and doing so affords the agent a tactical advantage.
- (4) Special agents may not fire their firearms solely to disable a moving vehicle. Special agents may fire their firearms at the driver or other occupants of a moving motor vehicle **only** when:
 - a. special agents and others are in imminent danger of serious physical injury or death; **and**

- b. public safety benefits of using such force outweigh the safety risk to special agents or others

- (5) Warning shots are prohibited due to the risk they pose to innocent parties. In addition, warning shots can communicate to fellow agents/officers that the use of deadly force is warranted, leading to improper reactions.
- (6) Special agents detailed and/or temporarily assigned to another Federal law enforcement agency, will follow the policies and guidelines promulgated by that agency (e.g., temporary Air Marshal, Secret Service details, etc.)
- (7) Special agents detailed and/or assigned to multi-agency task forces will continue to follow IRS-CI policies and guidelines (e.g., JTTF, OCDETF, HIDTA, etc.)

9.2.3.6.1 (07-23-2013) **Discharge of Firearms**

- (1) Whenever special agents discharge their firearms while in the performance of official duties, the post use of force procedures outlined in this section must be followed. These procedures do not apply to routine firearm discharges, such as during firearms training, qualification, testing, etc.
- (2) Whenever special agents have an accidental discharge of their firearms, they must report the incident via memorandum and forward through channels to the Director, National CI Training Academy (NCITA).

9.2.3.6.2 (01-30-2014) **Notification When Intentional or Accidental Firearm Discharge Occurs**

- (1) In all instances where a non-training intentional discharge of a firearm occurs, the following notifications must be made, as soon as possible:
 - a. The involved special agent must notify his/her immediate supervisor of the incident.
 - b. The immediate supervisor must notify the TIGTA and the SAC or equivalent level supervisor.
 - c. The SAC or equivalent level supervisor must submit a copy of the Report of Investigation completed by the TIGTA to the Director, NCITA.
- (2) Whenever special agents have an accidental discharge of their firearms, they must report the incident via memorandum and forward through the appropriate channels, as noted below, to the Director, NCITA.
- (3) In all situations where an accidental discharge of a firearm occurs, notification must be made, as soon as possible according to the following procedures so that a determination of further action can be made:
 - a. The involved special agent must notify his/her immediate supervisor in all accidental discharge situations, as well as the firearms training coordinator, when the incident is training related.
 - b. The supervisor, with the assistance of the firearms training coordinator when appropriate, and/or the special agent involved in the incident, will prepare a memorandum containing facts surrounding the incident and submit a copy of the memorandum to the SAC or equivalent level supervisor.
 - c. The SAC or equivalent level supervisor will review and submit a copy of the memorandum to their respective Director, Field Operations or Headquarters SES Director.

- d. The Director, Field Operations or Headquarters SES Director must follow appropriate procedures and report to TIGTA if the accidental discharge is determined to involve misconduct and/or inappropriate conduct.
 - e. Accidental training or non-training discharge(s), at a minimum, require the involved special agent to participate in 2 hours of general remedial firearms safety and 2 hours of specific remedial firearms training, relative to the particulars surrounding the incident, i.e., shotgun, rifle, reloading, holstering, etc.
 - f. If remedial training is not conducted immediately, the special agent must surrender their IRS-issued weapon to the appropriate SAC, or designee, until they meet the remedial training requirements. This will require management to place the special agent on temporary restricted duty (TRD).
- (4) In situations where disciplinary action is warranted, management must contact the servicing Labor Employee Relations specialist to proceed with appropriate action.

9.2.3.7
(08-14-2000)
**Post Use of Force
Procedures**

- (1) After force is used in an official capacity, special agents must follow these procedures.

9.2.3.7.1
(06-17-2015)
**Notification When Force
Results in Injury**

- (1) In all instances where use of force results in injury, serious property damage, or death, the following notifications must be made:
- a. The involved special agents or assisting special agents (if the involved special agents are incapacitated due to injury) must immediately notify their immediate supervisor of the incident regardless of the time of day.
 - b. The immediate supervisor must immediately notify the TIGTA and the SAC.
 - c. The SAC must then notify the Director, Field Operations, who will in turn notify the Chief, CI.
 - d. Special agents must complete page 1 of Form 9776, Use of Force Incident Report, including a narrative and submit it to the SAC. A copy of this report and attached narrative must be sent through the appropriate channels to the Director, NCITA, Attention: Use of Force Senior Analyst.

9.2.3.7.2
(07-23-2013)
**If a Firearm was
Discharged**

- (1) If a firearm was discharged and resulted in injury, serious property damage, or death, the following notifications must be made to the:
- a. Chief, Criminal Investigation
 - b. Director, NCITA
- (2) Absent any legitimate Fifth Amendment (privilege against self incrimination) concerns, special agents must complete Form 9776, Use of Force incident Report, including a narrative. A copy of this report and attached narrative must be sent through the appropriate channels to the Director, NCITA, Attention: Use of Force Senior Analyst.
- (3) This procedure must be followed irrespective of whether shots were fired by special agents/officers of other law enforcement agencies, a subject, or a third party.

- 9.2.3.7.3
(01-23-2004)
Coping with the Incident
- (1) Psychological counseling is available to special agents involved in a use of force incident that resulted in serious injury or death. All communications between the special agents and the psychological counselor will fall under the patient-doctor confidentiality rules.
 - (2) Psychological counseling is also available to the agent's immediate family members.
 - (3) Special agents involved in a use of force incident and/or his/her family members may contact the Employee Assistance Program's (EAP) toll free line for law enforcement officers and their families. Counselors with a law enforcement background are available 24 hours a day, 7 days a week to address the unique concerns of law enforcement and their families. In addition to telephone counseling, face to face meetings can also be requested. A counselor can be reached regarding law enforcement concerns at 1-888-270-8958.
 - (4) At the discretion of the SAC, administrative leave may be granted to special agents involved in an incident that resulted in serious injury or death.
- 9.2.3.7.4
(07-23-2013)
Notification When Force Does Not Result in Injury
- (1) If a special agent uses force at the level of compliance techniques or higher he/she must complete Form 9776, including a narrative and submit it to the SAC. A copy of this report and attached narrative must be sent to the Director, NCITA, Attention: Use of Force Senior Analyst.
 - (2) If a firearm is discharged, special agents must complete page 2 of Form 9776. A copy of this report and attached narrative must be sent to the Director, NCITA, Attention: Use of Force Senior Analyst.
- 9.2.3.8
(04-14-2011)
Special Agents' Responsibilities and Authority When Crimes Are Committed Outside the Jurisdiction of IRS
- (1) The extent of a special agent's responsibilities and authority with respect to crimes committed outside the jurisdiction of IRS is determined, in the first instance, by whether the crimes committed are Federal or non-Federal.
- 9.2.3.8.1
(06-17-2015)
Federal Crimes
- (1) Special agents on official duty are expected to respond when a Federal crime is committed in their presence by:
 - a. notifying the appropriate Federal, state or local agency; and
 - b. responding as Federal law enforcement officers if there is an imminent threat of death or serious injury or an incident in which the special agents are inextricably involved
- 9.2.3.8.2
(08-14-2012)
Non-Federal Crimes
- (1) The Federal Law Enforcement Officers Good Samaritan Act (FLEOGSA) provides Federal law enforcement officers "scope of employment coverage and protection when taking reasonable action to protect individuals from injury or bodily harm during the commission of a crime of violence."
 - (2) The law states "...a law enforcement officer shall be construed to be acting within the scope of his/her office of employment, if the officer takes reasonable action, including the use of force to protect an individual in the presence of the officer from a crime of violence; provide immediate assistance to an individual who has suffered or is threatened with bodily harm; or prevent the escape of

any individual who the officer reasonably believes to have committed in the presence of the officer, a crime or violence.”

- (3) A “scope of employment” determination is required before the government can represent IRS employees. Moreover, a determination that the employee acted “in the due performance of his/her official duty” is a prerequisite to reimbursement for monetary judgments against IRS employees, 26 USC §7423(2).
- (4) The FLEOGSA does not enhance the law enforcement authority or jurisdiction of any Federal law enforcement officer nor does it require federal law enforcement officers to become involved. Rather, it assures the agents that if they take reasonable actions to intervene in a crime of violence that may result in a loss of life or serious bodily harm, the Act will provide the agents with significant protection from liability.
- (5) Any actions taken must be “a reasonable officer’s response” as established in *Graham vs. Connor*. In some circumstances, notifying the local authorities rather than becoming involved will be the appropriate response.
- (6) Special agents must follow the Treasury Department’s Use of Force Guidelines at all times when a firearm is used. These guidelines must be followed regardless of whether a particular state or local law may be more liberal in allowing law enforcement officers to use firearms.

9.2.3.8.2.1 (01-23-2004)

Department of Justice’s Position on Representation

- (1) The Department of Justice (DOJ) is currently prohibited by statute from representing special agents who acted outside the scope of their employment.
- (2) The DOJ will determine on a case-by-case basis whether special agents acted within the scope of their employment and whether representation by the government is in the interest of the United States.

9.2.3.9 (08-14-2012)

Medical and Liability Considerations

- (1) Whenever a subject is injured during the application of a weaponless control technique or by an intermediate weapon (OC), special agents must ensure that the subject receives medical attention, as soon as possible.
 - a. If an injured subject refuses medical assistance, special agents cannot force the subject to receive treatment.
 - b. If a subject in custody refuses treatment, documentation should be obtained from medical personnel that the subject refused treatment.
- (2) If special agents cause injury to a person, the injured person is responsible for paying for needed medical services regardless of how the person was injured, even if by accident.
- (3) Special agents do not have the authority to pay or commit Federal funds for medical services to a person injured by special agents, see 31 USC §1341(a)(1)(A), Antideficiency Act.
 - a. Inadvertently violating this act could result in administrative discipline, including employment termination (31 USC §1518).
 - b. Violating this act knowingly could result in a fine and imprisonment (31 USC §1519).

9.2.3.9.1

(01-23-2004)

The Federal Tort Claims Act

- (1) The Federal Tort Claims Act (FTCA), 28 USC §1346(b), §§2671-2680, allows an individual to claim damages against the United States for injury or death caused by the negligent or wrongful acts or omissions of special agents acting within the scope of their employment, where the United States, if a private person, would be liable under applicable state law.
- (2) In order for a person to obtain damages, special agents must have acted in a negligent or wrongful manner.
- (3) In order for the United States to assume liability, special agents must have been acting within the scope of their employment, as determined by the state law where an injury occurred. Otherwise, the United States will not assume liability and special agents acting outside the scope of their employment could be sued in state court and held personally liable for damages upon a judgment against them.

9.2.3.9.1.1

(01-23-2004)

If Injured Person Alleges Violation of Constitutional Rights

- (1) If an injured person alleges a violation of his/her constitutional rights, that person could file a lawsuit against the special agents. This is known as a *Bivens* suit (see *Bivens v Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971)). Unlike FTCA cases, special agents are the defendants and not the United States. Special agents will be represented by the government if DOJ determines the special agents were acting within the scope of their official duties and representation is in the interest of the United States. The special agents will be personally liable upon a judgment against them. However, 26 IRC §7423(2) authorizes the Secretary of Treasury to repay damages and costs recovered against federal employees in any suit brought against them by reason of anything done within the scope of their official duties.

9.2.3.9.2

(07-16-2002)

Special Agents' Rights

- (1) If special agents are injured in the performance of their official duties, the special agents may file claims under the Federal Employees' Compensation Act (5 USC §8101).

9.2.3.9.3

(07-23-2013)

Professional Liability Insurance

- (1) Professional liability insurance (PLI) is available through private insurance carriers for CI employees. Employees are personally responsible for contacting a private insurance carrier of their choosing to secure PLI and payment of the premiums.
- (2) Section 636 of Public Law 104-208 of the Treasury, Postal Service and General Government Appropriations Act for FY 1997, permits the following groups of employees to receive reimbursement for a portion of the premiums paid for PLI:
 - a. Executives
 - b. Managers
 - c. Supervisors
 - d. Management Officials
 - e. Special Agents
- (3) The PLI reimbursements will be paid at 50 percent of the cost of premiums paid during the fiscal year. The reimbursement will be included in salary payments and will also be reflected on earnings and leave statements. There

is no deadline by which reimbursement requests must be received. One of the following methods will be used to compute reimbursements for PLI premiums paid:

- a. by payroll allotment and based on 50 percent of the payroll deductions made during the fiscal year.
 - b. directly to insurance carriers and prorated based on the premium amount for insurance coverage during the fiscal year.
- (4) To receive 50 percent reimbursement of premiums paid (regardless of the method of payment for premiums) during a fiscal year, eligible employees must complete the Self-Certification of Premiums Paid for Professional Liability Insurance form after the end of the fiscal year. The form can be obtained from the Employee Resource Center (ERC) web at <http://erc.web.irs.gov/>, searching under liability insurance. The completed form should be mailed to:

Philadelphia Payroll Center
 2970 Market Street, Drop Point 5721
 Attn: Professional Liability Insurance
 Philadelphia, PA 19104-5016

- (5) The ERC can be contacted for additional information on their web site at <http://erc.web.irs.gov/>, 1-866-743-5748, or TTY 1-866-924-3578.

9.2.3.10
 (03-26-2008)
Emergency Driving

- (1) Criminal Investigation special agents may engage in emergency driving only when the seriousness of the emergency outweighs the danger created by such driving. When engaging in emergency driving, special agents must continually balance the need to engage in such driving against safety considerations.
- (2) Directive No. 7 establishes guidelines consistent with a uniform Treasury standard for law enforcement officers to use in making decisions regarding emergency driving.
- (3) The goal of this directive is to ensure the safety of law enforcement officers, other persons involved, and the general public by balancing the seriousness of the emergency with safety considerations.
- (4) Directive No. 7 applies when a suspect is being followed to make an apprehension, surveillance is being conducted, or exigent circumstances exist. It encompasses driving situations in which the posted speed limit or other traffic laws are disregarded. The directive also notes that some driving maneuvers with a vehicle, referred to as emergency driving tactics (i.e., blocking, ramming, forcing vehicles off the road), may constitute the use of deadly force and may only be used in compliance with Treasury's Policy on the Use of Force, Treasury Order 105-12.

9.2.3.10.1
 (03-26-2008)
Definitions

- (1) Emergency Driving: Driving in a manner that disregards the posted legal speed limits or other traffic laws for one or more of the following purposes:
 - a. following a suspect vehicle to make an apprehension
 - b. conducting surveillance
 - c. responding to other exigent circumstances

- (2) **Emergency Driving Tactics:** Emergency driving tactics are maneuvers made while pursuing a vehicle that are likely to cause deliberate physical contact between the vehicles. Examples of emergency driving tactics may include blocking (except for slow moving vehicles), cutting off, ramming, and forcing vehicles off the roadway.
- (3) **Deadly Force:** 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.

9.2.3.10.2
(03-26-2008)
Factors To Consider

- (1) When balancing the need for emergency driving with safety considerations, CI special agents should consider all relevant factors, including but not limited to the following:
 - a. the nature of the emergency
 - b. the imminent danger to public safety if a suspect is not apprehended
 - c. the seriousness of the offense
 - d. the probability of apprehending a suspect at a later time
 - e. the location, weather, speed, traffic, and road conditions
 - f. the time of day
 - g. the presence of pedestrians
 - h. the special agent's driving ability
 - i. the condition of all the vehicles involved
 - j. the availability of emergency equipment
 - k. the availability of assistance from uniformed police officers in marked police vehicles
 - l. the possibility of alternative courses of action

9.2.3.10.3
(03-26-2008)
Emergency Driving Tactics

- (1) In some circumstances, emergency driving tactics may constitute the use of deadly force. Those emergency driving tactics that are likely to cause death or serious physical injury may constitute the use of deadly force. Special agents may use deadly force only when necessary; that is, when the special agent has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the special agent or to another person.
- (2) Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe:
 - a. The subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death; or
 - b. The escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person.
- (3) If force, other than deadly force, reasonably appears to be sufficient to accomplish an arrest or otherwise accomplish the law enforcement purpose, the use of deadly force is not necessary. See Treasury Order 105-12, Policy on the Use of Force, for additional guidance.

9.2.3.10.4
(08-14-2012)
Other Agencies

- (1) In the planning of Treasury led joint operations involving other Federal, state, or local law enforcement agencies, each participant will be informed of this policy and that this policy will be controlling.

9.2.3.10.5
(03-26-2008)

Emergency Equipment

- (1) Criminal Investigation should review state requirements for emergency systems/equipment on vehicles engaged in emergency driving and comply when appropriate.

9.2.3.10.6
(03-26-2008)

Rights of Third Parties

- (1) Nothing in these guidelines is intended to create, or does create, an enforceable legal right or private right of action.