

**FISH AND WILDLIFE SERVICE
LAW ENFORCEMENT**

Law Enforcement

Part 442 Firearms and Use of Force

Chapter 3 Board of Review

442 FW 3

3.1 What is the purpose of this chapter? This chapter establishes criteria and procedures for convening a Board of Review (BOR).

3.2 What is the scope of this chapter? This chapter applies to Service law enforcement officers when performing law enforcement duties and, in some circumstances, while off duty. Service law enforcement officers include both officers working for the Office of Law Enforcement (OLE) and the National Wildlife Refuge System (NWRS).

3.3 What other chapters may be applicable to situations requiring a BOR? Service law enforcement officers should be aware that 442 FW 2 (Use of Force) and 442 FW 6 (Critical Incident Management) may also be applicable in situations requiring a BOR.

3.4 What terms do you need to know to understand this chapter?

A. Force. Force is any intervention intended to stop an unlawful action or to induce control or compliance. Force may include, but is not limited to:

- (1) Physical touching of another,
- (2) Striking,
- (3) Kicking,
- (4) Using chemical agents and other intermediate force weapons,
- (5) Using restraints, or
- (6) Using firearms.

B. Deadly Force. Deadly force is any force, such as using a firearm, which is likely to cause death or serious injury. This does not include the use of less lethal force that unexpectedly results in death or serious injury.

C. Less Lethal Force. Less lethal force is the level or degree of force that is less likely or not intended to cause death or serious injury.

D. Firearm. In the scope of this chapter, a firearm includes:

- (1) Weapons the Service issues and approves for official use, and
- (2) Personally owned weapons in the possession of a law enforcement officer at the time of an incident meeting the BOR criteria in section 3.5.

E. Serious injury. Serious injury means injury to a person that involves:

- (1) A substantial risk of death,
- (2) Extreme physical pain,
- (3) Obvious disfigurement, or
- (4) Loss or impairment of function of a bodily member, organ, or mental faculty.

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3.5 When does the Service convene a BOR? We convene a BOR:

- A.** When the use of force by a Service law enforcement officer results in death or serious injury of another individual.
- B.** When an incident results in death or serious injury to a Service law enforcement officer while performing official duties.
- C.** When an incident involves death or serious injury to anyone in the custody or detention of a Service law enforcement officer.
- D.** When a vehicle pursuit involving a Service law enforcement officer results in death or serious injury to an individual.
- E.** After a firearms discharge by a Service law enforcement officer, on or off duty except:
 - (1)** Training and firearms qualifications where no injury occurs when training staff conduct a review of the incident;
 - (2)** Authorized destruction of animals or other resource management activities where no injury occurs;
 - (3)** Recreational shooting activities where no injury occurs; and
 - (4)** Approved covert hunting operations.
- F.** For any use of force during a Service-led task force that results in serious injury or death.
- G.** When a Service law enforcement officer uses unreasonable force or fails to intervene if another officer is using unreasonable force.
- H.** When the Director of the Fish and Wildlife Service or the Director of the Department of the Interior, Office of Law Enforcement and Security (Director/OLES) requires a BOR. They may require a BOR even if the incident does not meet the criteria above.

3.6 Who is responsible for convening and coordinating a BOR?

A. The Chief/OLE is responsible for:

- (1)** Developing policy on the BOR, in consultation with the Assistant Director/NWRS,
- (2)** Convening and coordinating a BOR when notified that an OLE officer has been involved in an incident described in section 3.5,
- (3)** Working with the OLE Special Agent in Charge of Training and Inspections (SAC/T&I) or his/her designee to select BOR members, and
- (4)** Reviewing and taking action on the final BOR report for OLE officers.

B. The Assistant Director/NWRS is responsible for:

- (1)** Selecting members for, convening, and coordinating a BOR when notified that a NWRS law

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enforcement officer has been involved in an incident described in section 3.5,

(2) Notifying the affected Regional Director that he/she is convening a BOR for an incident that occurred within the Region, and

(3) Reviewing and taking action on the final BOR report for NWRS officers.

3.7 Who must be on a BOR and what are their responsibilities?

A. Composition.

(1) The BOR must have at least five members, including:

(a) A chairperson.

(i) For OLE incidents, the OLE SAC/T&I or his/her designee must chair the BOR and select members in coordination with the Chief/OLE.

(ii) For NWRS incidents, the Assistant Director/NWRS appoints the BOR chairperson and members. The Division of Refuge Law Enforcement provides training on BOR duties to Regional NWRS officers to facilitate chairperson selection.

(b) A manager (GS-14 or above or NWRS equivalent), and

(c) Three other members.

(2) All BOR members must be Service law enforcement officers.

(3) Members may not be Service law enforcement officers involved in the incident, the immediate supervisor of someone involved in the incident, or anyone lacking objectivity about the incident.

B. Responsibilities. The BOR must:

(1) Analyze all factors related to the incident. This includes:

(a) Property damage and personal injury or death to people involved,

(b) Compliance with Service policy,

(c) Weaknesses, if any, in Service policy,

(d) Effective communication of Service policy, and

(e) Environmental factors (time of day, weather, etc.) that may have affected the Service law enforcement officer's actions.

(2) If necessary, gather additional information, conduct interviews, and document additional facts, in consultation with the Professional Responsibility Unit (PRU).

(3) Not discuss the incident outside of BOR proceedings or reveal the identity of people involved in the incident.

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- (4)** Prepare a report of their findings (see section 3.9).
- (5)** Recommend potential appropriate actions to reduce the possible likelihood of recurrence or improve the Service's handling of or response to future similar incidents. Recommendations may:
 - (a)** Address a need to review or revise existing procedures, policies, training, and/or equipment;
 - (b)** Include additional or refresher training for Service law enforcement officers; and
 - (c)** Not include suggestions for criminal, civil, or disciplinary actions.

3.8 What are the procedures for establishing and running the BOR?

A. When a Service law enforcement officer is involved in an incident described in section 3.5, our PRU will conduct a fact-finding investigation (see 441 FW 5). The PRU:

- (1)** Investigates as soon as practical, and
- (2)** Sends their Report of Investigation to the Chief/OLE for approval.

B. The Chief/OLE or the Assistant Director/NWRS (depending on the officer involved):

- (1)** Convenes a BOR within 5 working days of receiving the PRU report,
- (2)** Notifies the Director/OLES that he/she has convened a BOR. The notification must include the names and titles of the BOR members,
- (3)** Issues a document empowering the BOR and stating its purpose, and
- (4)** Provides the BOR with:
 - (a)** A copy of this chapter for information and instruction,
 - (b)** A copy of the PRU Report of Investigation, and
 - (c)** A due date for the final BOR report. This date should be 45 calendar days from the day the BOR was established.

C. The BOR may convene in person, via telephone, or through a combination of both, depending on the nature of the incident.

D. To avoid compromising ongoing investigations or judicial proceedings linked to the serious incident under review, the BOR must coordinate with other involved parties (e.g., the PRU; the Department's Office of Inspector General; external law enforcement agencies; the Office of the Solicitor; prosecutorial offices at Federal, State, local, and tribal levels, etc.).

(1) If an involved party concludes BOR inquiries may compromise ongoing investigations or judicial proceedings, the BOR chairperson must request that the involved party provide the BOR with a written statement requesting a postponement of the review.

(2) The chairperson must send a copy of the postponement request to the Director/OLES through the appropriate chain of command.

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3.9 What must be in the BOR report and how does the Service use it?

A. The BOR must structure its report using the following headings:

(1) Introduction and BOR Members.

(2) Summary of the Incident Requiring a BOR.

(3) Scope of Employment of Service Law Enforcement Officers Involved. (This is a reiteration of the official Scope of Employment determination that the Department of Justice made. We note it here only to contextualize the findings and recommendations of the BOR.)

(4) Authority and Jurisdiction of Service Law Enforcement Officers Involved.

(5) BOR Analysis of the Incident. This analysis must include, but is not limited to, descriptions of the following:

(a) Any human injury/death;

(b) Property damage;

(c) Firearms, ammunition, other weapons, and vehicles involved; and

(d) Personal protective gear Service law enforcement officers used.

(6) Conclusion (observations about safety, policy compliance, and training issues).

(7) Recommendations. This section should include possible prescriptive actions to prevent the recurrence of similar incidents and improve handling of future similar incidents.

(8) Attachments. The following information, if pertinent, should be included in the report:

(a) PRU Report of Investigation;

(b) Other Agency Report of Investigation. If an outside agency investigated the incident and declines to provide its report, the BOR chairperson must document the declination in the BOR report;

(c) Witness interviews and statements;

(d) Firearms qualification and training records, when relevant;

(e) Declination of prosecution, or other relevant communications, from prosecutors' offices;

(f) Medical records, if relevant and available; and

(g) Dissenting opinion(s), if applicable (see section 3.9B below).

B. A majority of BOR members must concur with the BOR's conclusion and recommendations and sign the final report. Any member who disagrees with the majority's conclusion and recommendations must write a report describing the dissenting view.

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C. Within 45 days of establishment, the BOR must send its final report to the Chief/OLE or the AD/NWRS for appropriate action.

/sgd/ Daniel M. Ashe
DEPUTY DIRECTOR

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