



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

## MANAGEMENT ADVISORY MEMORANDUM

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JUNE 2023

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Notification of Concerns Regarding  
Federal Bureau of Prison Policies Pertaining  
to the Use of Oleoresin Capsicum Aerosol  
Spray on Inmates with Certain Pre-Existing  
Medical Conditions

INVESTIGATIONS DIVISION



June 6, 2023

Management Advisory Memorandum

To: Colette S. Peters  
Director  
Federal Bureau of Prisons

From: Michael E. Horowitz  
Inspector General

Subject: Notification of Concerns Regarding Federal Bureau of Prison Policies Pertaining to the Use of Oleoresin Capsicum Aerosol Spray on Inmates with Certain Pre-Existing Medical Conditions

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The purpose of this memorandum is to advise you of concerns the Department of Justice Office of the Inspector General (OIG) has identified in connection with Federal Bureau of Prisons (BOP) policy regarding the use of Oleoresin Capsicum Aerosol Spray (OC spray) on inmates with certain medical conditions rendering them potentially vulnerable to additional harm from its use. The OIG identified these concerns in connection with an OIG investigation into the circumstances surrounding the death of an inmate with a diagnosed form of psychosis after BOP personnel used OC spray during their attempts to subdue him.<sup>1</sup> While the OIG concluded that the Lieutenant who ordered the use of the OC spray appeared to possess the authority under applicable BOP policy to do so given that an immediate response to the inmate's actions was required, we were unable to conclude whether the actual deployment of the OC spray in this circumstance violated other BOP policies. Specifically, we found that the BOP's current policies regarding the steps to be taken prior to the use of OC spray on certain inmates with known medical conditions to be ambiguous in the context of situations requiring an immediate response from BOP personnel. In this memorandum the OIG makes two recommendations to address the concerns we identified.

### Relevant Authorities

The BOP's Program Statement 5566.06, Use of Force and Application of Restraints (Use of Force Policy), § 552.20, Section 1, Purpose and Scope, states that BOP personnel are authorized to use force only as a last alternative after all other reasonable efforts to resolve a situation have failed. When authorized, BOP staff must only use that amount of force necessary to gain control of the inmate, to protect and ensure the safety of other inmates, staff and others, to prevent serious property damage, and to ensure institution security and good order.

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<sup>1</sup> The OIG publicly announced the completion of its investigation into this matter. That public announcement can be found here:

<https://oig.justice.gov/news/doj-oig-releases-report-investigation-regarding-circumstances-surrounding-death-inmate-jamel>.

In the Use of Force Policy, at § 552.21, Section 5, Types of Force, the BOP differentiates between “Immediate” and “Calculated” uses of force. Immediate use of force is authorized when the inmate’s behavior constitutes an immediate, serious threat to the inmate, staff, others, property, or to institution security and good order. Calculated use of force occurs in situations where an inmate is in an area that can be isolated and where there is no immediate threat to the inmate or others.

BOP Program Statement 5576.04, Oleoresin Capsicum (OC) Spray (OC Aerosol Spray Policy) states that its purpose is to “authorize and regulate the use of the [OC] aerosol dispenser (pepper spray) by trained institution staff.” The OC Aerosol Spray Policy further states that the OC aerosol dispenser is “designed primarily for immediate use of force in situations where there is a serious threat to the safety of staff, inmates, or others; to prevent serious property damage; and to ensure institution security and good order.”

BOP Program Statement 5500.15, Correctional Services Manual, Chapter One, § 103, Use of Aerosol Chemical and Oleoresin Capsicum Dispenser, specifically states that a facility’s warden or the warden’s designee can approve the use of OC spray, but also empowers the Shift Lieutenant to authorize the use of OC spray in situations that require an immediate response. Certain restrictions apply, however. In relevant part, § 103 states at Section 1:

1. Chemical Agent. During a calculated Use of Force, before using a chemical agent or OC, staff are equipped with working and well-maintained gas masks. Staff who are unable to don a gas mask because they wear glasses are only used as a last resort to enter an area, unless a mask that fits corrective lenses is available.

If an inmate has a respiratory or cardiovascular disease, chronic dermatitis, or psychosis, chemical agents or OC may be harmful. Consult medical staff before use; avoid use on an inmate with any of these conditions unless other means of control have been attempted or deemed likely to be ineffective.

The Correctional Services Manual, at Chapter One, § 103 also references the Use of Force Policy, stating “[c]ircumstances that determine authorization are outlined in the Program Statement **Use of Force and Application of Restraints.**” (emphasis in original)

## **The Issue**

During the course of an OIG investigation into the death of an inmate with a diagnosed form of psychosis at the Metropolitan Detention Center in Brooklyn, New York (MDC Brooklyn) after BOP personnel used OC spray on the inmate, the OIG found that the Lieutenant who ordered the use of the OC spray appeared to possess the authority to do so under applicable BOP policy given that an immediate response to the inmate’s actions was required. We were, however, unable to conclude whether the actual deployment of the OC spray in this circumstance violated other BOP policies. Specifically, we were unable to determine if staff had complied with Correctional Services Manual, § 103, Section 1, regarding the use of chemical agents and OC spray. Primarily this was due to the ambiguity of the language as to whether that section’s requirements must be applied during an “immediate” use of force situation involving an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis. While the first paragraph of the section references only “calculated” uses of force in requiring staff use of gas masks, it is unclear if the second paragraph, which discusses consultation with medical staff in advance of the use of OC spray on inmates with certain medical conditions also applies only during a “calculated” use of force. Furthermore, the structure of the final sentence of the second paragraph leaves it unclear whether the policy requires both consultation with medical staff *and* staff attempts at other means of control (or a conclusion that such

other means of control would be ineffective) or requires only consultation with medical staff or attempts at other means of control (or a conclusion that such other means of control would be ineffective) prior to the use of OC spray as an alternative.

While the OIG recognizes that Correctional Services Manual, § 103 uses language that incorporates the provisions contained in the Use of Force Policy, that incorporation is of limited utility in the context of analyzing the propriety of OC Spray deployment given that nowhere in the Use of Force Policy is OC Spray referenced. The OIG acknowledges “pepper mace” (a common name for OC Spray) is referenced, but only in the implementing information following § 552.27, *Documentation of Use of Force and Application of Restraints Incidents*, and only in requiring that a “Use of Force Report” be completed and that a video recording of any medical examination be made after the use of pepper mace. Neither provision serves to clarify the ambiguity in the language of Correctional Services Manual, § 103, Section 1 identified above.

The OIG also acknowledges that the Use of Force Policy contains numerous references to the authorization and use of “chemical agents.” This includes implementing information following § 552.25, *Use of Chemical Agents or Non-Lethal Weapons*, which states:

Qualified health personnel (Physician, Physician’s Assistant, or nurse) shall be consulted prior to staff using chemical agents unless the circumstances require an immediate response.

It is not clear, however, that this specific provision (or any provisions in the Use of Force Policy that refer to chemical agents) applies to the use of OC Spray. As noted above, the term “OC spray” is not referenced in the BOP’s Use of Force and Application of Restraints Policy, and, to the extent that the Use of Force Policy references “pepper mace”, that term is treated as being distinct from the term “chemical agent.”<sup>2</sup> In addition, the OC Aerosol Spray Policy states that OC aerosol spray is a “less-than-lethal inflammatory agent derived from a pepper biodegradable resin,” but does not describe OC spray as a chemical agent or refer to chemical agents anywhere in the policy. Moreover, in the Correctional Services Manual, at Chapter One, § 103 – the specific section that is the subject of this Memorandum – “chemical agents” and “OC spray” are consistently and repeatedly referred to as two separate and distinct substances.<sup>3</sup> Thus, after reviewing these policies, it appeared to the OIG that the BOP does not consider OC spray to be a “chemical agent” within the meaning of the policies.

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<sup>2</sup> See § 552.27, *Documentation of Use of Force and Application of Restraints Incidents*, Implementing Information at (a) stating “A Use of Force Report (BP-E583) will be prepared on the use of force, chemical agents/pepper mace, progressive restraints, and non-lethal weapons.” See also Implementing Information at (c), which provides:

The video recording will also include any medical examination conducted after:

- the application of restraints,
- use of chemical agents,
- use of pepper mace, and/or
- use of non-lethal weapons.

<sup>3</sup> This distinct treatment begins with the title of § 103 of the Correctional Services Manual, which is “Use of Aerosol Chemical and Oleoresin Capsicum Dispenser.” The distinct treatment of the two substances continues throughout, e.g. through references like “The Warden or designee can approve the use of chemical agents and OC. The Shift Lieutenant may authorize use of chemical agents and OC in situations that require an immediate response...”; “During a calculated Use of Force, before using a chemical agent or OC...”, “If an inmate has a respiratory or cardiovascular disease, chronic dermatitis, or psychosis, chemical agents or OC may be harmful”, “the use of chemical agents and/or OC on non-inmates by Bureau staff...”, “prior to using chemical agents or OC...” Section 103’s most explicit distinction between chemical agents and OC Spray can be found in § 103(3) and (4), where the program sets forth separate and specific policies regarding deployment and decontamination procedures for each substance.

Finally, the OC Aerosol Spray Policy states that OC aerosol spray is “designed *primarily* for immediate use of force” (emphasis added), thus indicating that OC aerosol spray may, in some circumstances, be used during a calculated use of force. However, the OC Aerosol Spray policy does not address whether in either an immediate or calculated use of force situation OC spray may be used on an individual with a respiratory or cardiovascular disease, chronic dermatitis, or psychosis, or whether medical staff must be consulted before the use of OC spray.

## Conclusions

The OIG has found that the ambiguities discussed above in Correctional Services Manual, § 103, Section 1, result in that section failing to provide guidance necessary to make BOP personnel aware of what must be done prior to the deployment of OC spray in an immediate use of force situation involving an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis. These ambiguities thus potentially jeopardize the health and safety of such inmates. These ambiguities also hamper any attempt to review the propriety of OC spray deployment and hold accountable any BOP personnel who may violate BOP policy in such situations.

## Recommendations

The OIG recommends that the BOP take the following actions to address the concerns identified in this memorandum:

1. The BOP should amend the language contained in Correctional Services Manual, § 103, Section 1, so as to clarify whether the requirement to consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis applies to only calculated uses of force or both calculated *and* immediate uses of force.
  - a. If, in response to recommendation 1, above, the BOP clarifies that the requirement to consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis applies in the context of an immediate use of force, then the BOP should also clarify within the Correctional Services Manual, § 103, what constitutes an acceptable consultation with medical staff in such a situation. (If, based on the response to recommendation 1, there is no requirement to consult with medical staff prior to using OC spray in the context of an immediate use of force, then this recommendation (recommendation 1.a.) becomes moot and there is no need for the BOP to respond to it.)
  - b. If, in response to recommendation 1, above, the BOP clarifies that the requirement to consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis applies in the context of an immediate use of force, then the BOP should also clarify within the Correctional Services Manual, § 103, whether BOP staff must *both* consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis *and* avoid the use of OC spray on such an inmate unless other means of control have been attempted or deemed likely to be ineffective. (If, based on the response to recommendation 1, there is no requirement to consult with medical staff prior to using OC spray in the context of an immediate use of force, then this recommendation (recommendation 1.b.) becomes moot and there is no need for the BOP to respond to it.)

2. The BOP should amend the language contained in Program Statement 5566.06, Use of Force and Application of Restraints, so as to make clear which provisions and implementing information (including whether any requirements exist to consult with qualified health personnel) pertain to the deployment of OC spray.

The OIG provided a draft of this memorandum to the BOP, and the BOP's response is incorporated as Appendix 1. The BOP indicated in its response that it disagreed with Recommendation 1 but agreed with Recommendation 2. Appendix 2 provides the OIG's analysis of the BOP's response and a summary of the actions necessary to close the recommendations. The OIG requests that the BOP provide an update on the status of its response to the recommendations within 90 days of the issuance of this memorandum. If you have any questions or would like to discuss this information in this memorandum, please contact me at (202) 514-3435 or Sarah E. Lake, Assistant Inspector General for Investigations, at (202) 616-4730.

cc: Bradley Weinsheimer  
Associate Deputy Attorney General  
Department of Justice

Ashley Robertson  
Counsel to the Deputy Attorney General  
Department of Justice

# Appendix 1: The BOP's Response



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

May 22, 2023

MEMORANDUM FOR SARAH E. LAKE  
ASSISTANT INSPECTOR GENERAL  
INVESTIGATIONS DIVISION

FROM: Colette S. Peters, Director

A handwritten signature in blue ink, appearing to read "Colette S. Peters", is written over the printed name.

SUBJECT: Response to the Office of Inspector General's (OIG) Final Draft MAM: Notification of Concerns Regarding Federal Bureau of Prison Policies to the Use of Oleoresin Capsicum Aerosol Spray on Inmates with Certain Pre-Existing Medical Conditions

The Bureau of Prisons (BOP) appreciates the opportunity to formally respond to the Office of the Inspector General's above-referenced final draft MAM. The BOP has completed our review and offer the following comments regarding the recommendation.

**Recommendation 1:** The BOP should amend the language contained in Correctional Services Manual, § 103, Section 1, so as to clarify whether the requirement to consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis applies to only calculated uses of force or both calculated and immediate uses of force.

a. If, in response to recommendation 1, above, the BOP clarifies that the requirement to consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis applies in the context of an immediate use of force, then the BOP should also clarify within the Correctional Services Manual, § 103, what constitutes an acceptable consultation with medical staff in such a situation. (If, based on the response to recommendation 1, there is no requirement to consult with medical staff prior to using OC spray in the context of an immediate use of force, then this recommendation (recommendation 1.a.) becomes moot and there is no need for the BOP to respond to it.)

b. If, in response to recommendation 1, above, the BOP clarifies that the requirement to consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis applies in the

**context of an immediate use of force, then the BOP should also clarify within the Correctional Services Manual, § 103, whether BOP staff must both consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis and avoid the use of OC spray on such an inmate unless other means of control have been attempted or deemed likely to be ineffective. (If, based on the response to recommendation 1, there is no requirement to consult with medical staff prior to using OC spray in the context of an immediate use of force, then this recommendation (recommendation 1.b.) becomes moot and there is no need for the BOP to respond to it.**

**BOP Response:** Respectfully, BOP does not concur with this recommendation because the Correctional Services Manual currently indicates that consultation with medical employees is only appropriate in calculated uses of force, and because the Correctional Services Manual is not the optimal vehicle for such guidance.

As noted in the OIG report, Program Statement 5500.15, Correctional Services Manual, § 103, Section 1, indicates under the heading of “chemical agent” that “[d]uring a calculated Use of Force, before using a chemical agent or OC, staff are equipped with working and well-maintained gas masks.” That section continues by providing further guidance to employees on the use of chemical agents or OC during calculated uses of force, describing procedures for employees who are unable to don a gas mask because they wear glasses; and, in a new paragraph under the same heading, instructing employees to “[c]onsult medical staff before use” of chemical agents or OC if “an adult in custody has a respiratory or cardiovascular disease, chronic dermatitis, or psychosis.” Both articulations of guidance to employees occur under the same subheading relating to use of chemical agents during a calculated use of force.

Further, because the Correctional Services Manual is limited in dissemination to employees, it is not the optimal vehicle for guidance on uses of force. Instead, the Use of Force policy is more widely available and is therefore the appropriate place for any necessary clarification.

For these reasons, it is inappropriate to amend the Correctional Services Manual as recommended. Because BOP does not concur with the recommendation to amend the Correctional Services Manual, and because there is no requirement to consult with medical employees prior to using OC spray in the context of an immediate uses of force, BOP respectfully declines to take action based on recommendation 1, and views recommendation 1 subparts a. and b. as moot.

**Recommendation 2:** The BOP should amend the language contained in Program Statement 5566.06, Use of Force and Application of Restraints, so as to make clear which provisions and implementing information (including whether any requirements exist to consult with qualified health personnel) pertain to the deployment of OC spray.

**BOP Response:** BOP concurs with this recommendation and will amend Program Statement 5566.06, Use of Force and Application of Restraints, to clarify that employees are not required to



consult with medical employees prior to the use of chemical agents in the context of an immediate use of force situation.

BOP notes, however, that the current Use of Force policy already indicates that medical employees should be consulted only in calculated use of force situations. As BOP noted in its previous responses to OIG, current BOP policy on the Use of Force and Application of Restraints (P.S. 5566.06) and 28 C.F.R. § 552.25 indicates that use of chemical agents or non-lethal weapons is authorized “only when the situation is such that the inmate: (a) is armed and/or barricaded; or (b) cannot be approached without danger to self or others; and (c) it is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate or others, or would result in a major disturbance or serious property damage.”

The Use of Force and Application of Restraints policy also currently contains the following direction to employees:

Qualified health personnel (Physician, Physician’s Assistant, or nurse) shall be consulted prior to staff using chemical agents unless the circumstances require an immediate response.

Ordinarily, in a calculated use of force situation, the inmate's medical file must be reviewed by these personnel to determine whether the inmate has any diseases or conditions which would be dangerously affected if chemical agents or non-lethal weapons are used.

This includes, but is not limited to: asthma, emphysema, bronchitis, tuberculosis, obstructive pulmonary disease, angina pectoris, cardiac myopathy, or congestive heart failure.

Further, BOP’s policy on Oleoresin Capsicum (OC) Aerosol Spray (P.S. 5576.12), indicates that the OC aerosol spray is designed primarily for immediate use of force in situations where there is a serious threat to the safety of employees, adults in custody, or others; to prevent serious property damage; and to ensure institution security and good order. This policy is based upon the Eric Williams Correctional Officer Protection Act of 2015, which amends United States Code Title 18 to authorize the Director of the Bureau of Prisons to issue Oleoresin Capsicum spray to officers and employees of the Bureau of Prisons.

It is also consistent with the Department of Justice’s Policy Statement on the Use of Less-Than Lethal Devices, which authorizes Department of Justice (DOJ) officers to use less-than-lethal devices only in situations where reasonable force, based on the totality of the circumstances at the time of the incident, is necessary to protect any person from physical harm. The policy also states that DOJ officers are not authorized to use less-than-lethal devices if voice commands or physical control achieves the law enforcement objective. Additionally, DOJ officers are prohibited from using less-than-lethal devices to punish, harass, or abuse any person.

In immediate use of force situations, it is highly unlikely that there will be an opportunity to consult with medical employees prior to use of chemical agents or OC. These situations, by

definition, require immediate intervention and methods other than less-than-lethal devices have either failed or are not viable.

However, although current BOP policies already reflect appropriate procedures in use of force situations, BOP will make further amendments to the Use of Force policy to clearly indicate that there is no requirement to consult with medical employees in immediate use of force situations.

Clarification amendments to this policy are expected to be issued after negotiation with BOP's Union, per BOP's normal policy development and amendment process. Finalization of such amendments is therefore anticipated within the next six months, at a minimum.

## Appendix 2: Office of Inspector General Analysis of the BOP's Response

The OIG provided a draft of this memorandum to the BOP, and the BOP's response is incorporated as Appendix 1. The BOP indicated in its response that it disagreed with Recommendation 1 but agreed with Recommendation 2.

The following provides the OIG's analysis of the BOP's response and a summary of the actions necessary to close the recommendation. The OIG requests that the BOP provide an update on the status of its response to the recommendation within 90 days of the issuance of this memorandum.

1. **Recommendation 1:** The BOP should amend the language contained in Correctional Services Manual, § 103, Section 1, so as to clarify whether the requirement to consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis applies to only calculated uses of force or both calculated *and* immediate uses of force.
  - a. If, in response to recommendation 1, above, the BOP clarifies that the requirement to consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis applies in the context of an immediate use of force, then the BOP should also clarify within the Correctional Services Manual, § 103, what constitutes an acceptable consultation with medical staff in such a situation. (If, based on the response to recommendation 1, there is no requirement to consult with medical staff prior to using OC spray in the context of an immediate use of force, then this recommendation (recommendation 1.a.) becomes moot and there is no need for the BOP to respond to it.)
  - b. If, in response to recommendation 1, above, the BOP clarifies that the requirement to consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis applies in the context of an immediate use of force, then the BOP should also clarify within the Correctional Services Manual, § 103, whether BOP staff must *both* consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis *and* avoid the use of OC spray on such an inmate unless other means of control have been attempted or deemed likely to be ineffective. (If, based on the response to recommendation 1, there is no requirement to consult with medical staff prior to using OC spray in the context of an immediate use of force, then this recommendation (recommendation 1.b.) becomes moot and there is no need for the BOP to respond to it.)

**Status:** Unresolved.

**BOP Response:** The BOP reported the following:

Respectfully, BOP does not concur with this recommendation because the Correctional Services Manual currently indicates that consultation with medical employees is only

appropriate in calculated uses of force, and because the Correctional Services Manual is not the optimal vehicle for such guidance.

As noted in the OIG report, Program Statement 5500.15, Correctional Services Manual, § 103, Section 1, indicates under the heading of "chemical agent" that "[d]uring a calculated Use of Force, before using a chemical agent or OC, staff are equipped with working and well maintained gas masks." That section continues by providing further guidance to employees on the use of chemical agents or OC during calculated uses of force, describing procedures for employees who are unable to don a gas mask because they wear glasses; and, in a new paragraph under the same heading, instructing employees to "[c]onsult medical staff before use" of chemical agents or OC if "an adult in custody has a respiratory or cardiovascular disease, chronic dermatitis, or psychosis." Both articulations of guidance to employees occur under the same subheading relating to use of chemical agents during a calculated use of force.

Further, because the Correctional Services Manual is limited in dissemination to employees, it is not the optimal vehicle for guidance on uses of force. Instead, the Use of Force policy is more widely available and is therefore the appropriate place for any necessary clarification. For these reasons, it is inappropriate to amend the Correctional Services Manual as recommended. Because BOP does not concur with the recommendation to amend the Correctional Services Manual, and because there is no requirement to consult with medical employees prior to using OC spray in the context of an immediate uses of force, BOP respectfully declines to take action based on recommendation 1, and views recommendation 1 subparts a. and b. as moot.

#### **OIG Analysis:**

The BOP's response is not responsive to this recommendation. The BOP has declined to take action on this recommendation. The BOP stated that it believes the Correctional Services Manual is already clear that consultation with medical employees is only required for calculated uses of force, because the paragraph regarding consulting medical employees is in the same section as a separate paragraph which states, "During a calculated Use of Force, before using a chemical agent or OC, staff are equipped with working and well maintained gas masks." However, neither the heading of this section nor the paragraph related to consultation with medical staff references calculated or immediate uses of force. As a result, we found that the Correctional Services Manual was unclear as to whether consultation with medical staff is required only during calculated uses of force or also during the immediate uses of force.

The BOP further stated that it is declining to take action because the Correctional Services Manual is limited in dissemination to employees and, therefore, the BOP does not believe that it is the optimal vehicle for guidance on uses of force. However, the Correctional Services Manual already provides guidance on uses of force. As such, the guidance that is provided in the Correctional Services Manual should be clear.

Accordingly, the OIG will consider whether to close this recommendation after the BOP amends the language contained in Correctional Services Manual, § 103, Section 1, so as to clarify whether the requirement to consult with medical staff prior to the use of OC spray on an inmate with a known history of respiratory or cardiovascular disease, chronic dermatitis, or psychosis applies to only calculated uses of force or both calculated *and* immediate uses of force, and responds to parts (a) and (b) of this recommendation as appropriate.

**Recommendation 2:** The BOP should amend the language contained in Program Statement 5566.06, Use of Force and Application of Restraints, so as to make clear which provisions and implementing information

(including whether any requirements exist to consult with qualified health personnel) pertain to the deployment of OC spray.

**Status:** Resolved.

**BOP Response:** The BOP reported the following:

BOP concurs with this recommendation and will amend Program Statement 5566.06, Use of Force and Application of Restraints, to clarify that employees are not required to consult with medical employees prior to the use of chemical agents in the context of an immediate use of force situation.

BOP notes, however, that the current Use of Force policy already indicates that medical employees should be consulted only in calculated use of force situations. As BOP noted in its previous responses to OIG, current BOP policy on the Use of Force and Application of Restraints (P.S. 5566.06) and 28 C.F.R. § 552.25 indicates that use of chemical agents or nonlethal weapons is authorized "only when the situation is such that the inmate: (a) is armed and/or barricaded; or (b) cannot be approached without danger to self or others; and (c) it is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate or others, or would result in a major disturbance or serious property damage."

The Use of Force and Application of Restraints policy also currently contains the following direction to employees:

Qualified health personnel (Physician, Physician's Assistant, or nurse) shall be consulted prior to staff using chemical agents unless the circumstances require an 'immediate response.

Ordinarily, in a calculated use of force situation, the inmate's medical file must be reviewed by these personnel to determine whether the inmate has any diseases or conditions which would be dangerously affected if chemical agents or non-lethal weapons are used.

This includes, but is not limited to: asthma, emphysema, bronchitis, tuberculosis, obstructive pulmonary disease, angina pectoris, cardiac myopathy, or congestive heart failure.

Further, BOP's policy on Oleoresin Capsicum (OC) Aerosol Spray (P.S. 5576.12), indicates that the OC aerosol spray is designed primarily for immediate use of force in situations where there is a serious threat to the safety of employees, adults in custody, or others; to prevent serious property damage; and to ensure institution security and good order. This policy is based upon the Eric Williams Correctional Officer Protection Act of 2015, which amends United States Code Title 18 to authorize the Director of the Bureau of Prisons to issue Oleoresin Capsicum spray to officers and employees of the Bureau of Prisons.

It is also consistent with the Department of Justice's Policy Statement on the Use of Less-Than Lethal Devices, which authorizes Department of Justice (DOJ) officers to use less-than-lethal devices only in situations where reasonable force, based on the totality of the circumstances at the time of the incident, is necessary to protect any person from physical harm. The policy

also states that DOJ officers are not authorized to use less-than-lethal devices if voice commands or physical control achieves the law enforcement objective. Additionally, DOJ officers are prohibited from using less-than-lethal devices to punish, harass, or abuse any person.

In immediate use of force situations, it is highly unlikely that there will be an opportunity to consult with medical employees prior to use of chemical agents or OC. These situations, by definition, require immediate intervention and methods other than less-than-lethal devices have either failed or are not viable.

However, although current BOP policies already reflect appropriate procedures in use of force situations, BOP will make further amendments to the Use of Force policy to clearly indicate that there is no requirement to consult with medical employees in immediate use of force situations.

Clarification amendments to this policy are expected to be issued after negotiation with BOP's Union, per BOP's normal policy development and amendment process. Finalization of such amendments is therefore anticipated within the next six months, at a minimum.

**OIG Analysis:** The BOP's response is partially responsive to the recommendation. The BOP has stated that it will make amendments to the Use of Force policy to clearly indicate that there is no requirement to consult with medical employees in immediate use of force situations. However, the recommendation is also for the BOP to amend the language in the Use of Force Policy to "make clear which provisions and implementing information . . . pertain to the deployment of OC spray."

Accordingly, the OIG will consider whether to close this recommendation after the BOP amends the language contained in Program Statement 5566.06, Use of Force and Application of Restraints, so as to make clear which provisions and implementing information (including whether any requirements exist to consult with qualified health personnel) pertain to the deployment of OC spray.