



U.S. Immigration
and Customs
Enforcement

MAR 29 2018

MEMORANDUM FOR: HSI Special Agent Applicants and Trainees

FROM:

Derek N. Benner (b)(6); (b)(7)(c)
Deputy Executive Associate Director and
Senior Official Performing the Duties of the
Executive Associate Director

SUBJECT: Physical Fitness Testing Waiver Submissions

U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) is the investigative arm of the Department of Homeland Security and is a vital U.S. asset in combating criminal organizations illegally exploiting America's travel, trade, financial, and immigration systems. Work as an HSI Special Agent (SA) is physically demanding. Accordingly, in addition to an initial Pre-Employment *applicant* Physical Fitness Test (PFT), all SA *trainees* are required to pass an initial, mid-term, and final HSI PFT in order to graduate from the HSI Basic Training Program at the Federal Law Enforcement Training Center (FLETC), pursuant to the *Physical Fitness Testing Policy for HSI Special Agent Applicants and Trainees*, dated May 12, 2017. The HSI Basic Training Program consists of the FLETC Criminal Investigator Training Program (CITP) and the HSI SA Training Program (HSI SAT).

As it is recognized that, in some cases, conditions may exist that could preclude an applicant or trainee from performing some or all elements of the PFT, pursuant to Title 5, Code of Federal Regulations (C.F.R.), Section 339.204 (Waiver of standards and requirements and medical review boards), HSI has established a process by which HSI SA applicants and trainees may submit requests for waivers to all or any portion of the established PFT standards/requirements.

Applicants will submit their requests for a waiver electronically or in writing directly to the Deputy Assistant Director (DAD), Investigative Services Division (ISD). Such waivers will specifically outline the reason for being unable to perform an element or elements of the PFT as well as proof of the applicant's ability to perform the essential job functions of an HSI SA (see Attachment A in the absence of passing the requirement(s) of the PFT). (Note: If the waiver request references a medical condition, the ICE Medical Officer will review the medical documentation submitted in support of the waiver request and will participate when the Training Review Board (TRB) evaluates the request.)

Upon an HSI trainee's failure to pass a remedial PFT, the Unit Chief (UC), HSI Academy, will send a letter to the trainee notifying him or her of his or her failure to pass the PFT (see Attachment B). This letter will also inform the trainee of his or her right to request a physical requirement waiver under 5 C.F.R. §§ 339.203 and 339.204. The UC, HSI Academy, will then forward a copy of the letter to the HSI Training Unit and the trainee's chain of command in the appropriate Special Agent in Charge (SAC) office.

Trainees' requests for a waiver will be submitted electronically or in writing through their chain of command to the DAD, ISD. Such waivers will specifically outline the reason for being unable to perform an element or elements of the PFT as well as proof of the trainee's ability to perform the essential job functions of an HSI SA (see Attachment 1) in the absence of passing the requirement(s) of the PFT.

The following support information from the previous year should be included in the waiver request:

- 1) the employee's training file from relevant prior employment and any relevant HSI provided pre-academy training, including any training certificates, transcripts, or other official achievement-related records;
- 2) in the case of previously employed law enforcement personnel, any relevant evaluations of the employee's performance and supervisory testimonials reflecting the applicant's/trainee's experience and ability to currently physically perform the essential job functions of an HSI SA, specifically as they relate to the basis of the waiver; and
- 3) any other pertinent information helpful to the TRB panel in evaluating a recommended course of action.

Pursuant to ICE Directive 6002.1 (former number: 8-2.0), entitled *Training Review Board*, dated September 10, 2007, the Office of Training and Tactical Programs's (OTTP) TRB process will be utilized to review all submissions of waivers to the HSI PFT standards/requirements. The TRB's function is to make recommendations for action regarding the resolution of waivers referred by the Executive Associate Director (EAD), HSI, and other Directorate EADs and Heads of Program Offices. The TRB will review all PFT-related waiver submissions to ensure that an impartial and consistent review process exists.

The DAD, ISD, will forward the waiver request to the EAD, HSI, for forwarding to the Assistant Director (AD), OTTP, who will assemble a TRB panel and refer the request to the TRB for the development of a recommendation. The TRB may request additional information as required to assist with the formulation of a recommendation or decision.

The AD, OTTP, will consider the TRB's recommendation, make a decision, and forward the decision to the EAD, HSI, who, in turn, will forward it to the DAD, ISD. The DAD, ISD, will then forward the decision to the responsible official (i.e., Academy Director/UC or SAC). The appropriate official may request a reconsideration by forwarding such a request, through the

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DAD, ISD, and the EAD, HSI, to the AD, OTTP. The AD, OTTP, will make a final determination and forward it to the EAD, HSI, and the DAD, ISD, who will notify the appropriate official.

(Note: ICE memorandum titled, “ICE Office of Training and Tactical Programs Reorganization,” approved on February 8, 2018, by Thomas D. Homan, Deputy Director and Senior Official Performing the Duties of the Director, mandates the deconsolidation of OTTP and that its functions be reassigned, as appropriate, to HSI and Enforcement and Removal Operations within 45 days of the date of approval. This includes the dissolution of the existing TRB. The process described in this memorandum includes the functions of the current TRB (which includes a role for OTTP). Should there be any changes in the programmatic oversight of HSI training, superseding guidance will be issued.)

Attachments:

Attachment A, Essential Job Functions for HSI Special Agents

Attachment B, Template Letter: Failure of Remedial PFT for Trainees and Right to Apply for a Waiver

ESSENTIAL JOB FUNCTIONS FOR HSI SPECIAL AGENTS

The following represents a non-exhaustive list of essential physical abilities related to job functions/tasks common to Homeland Security Investigations (HSI) Special Agents (SAs) in the field. These physical abilities do not define the entire scope of abilities relevant to an HSI SA, but rather are those which have been found to be generally essential. The essential physical abilities related to job functions/tasks include the following:

(a) *Arrest and detention of suspects.* Possess the physical strength, mobility, and endurance to:

- (1) Arrest persons pursuant to a warrant and conduct warrantless arrests.
- (2) Gain control of passive or actively resistant suspects.
- (3) Apply handcuffs to compliant and noncompliant suspects.
- (4) Engage in foot pursuit of up to 1+ miles.
- (5) Gain control of passive or actively resistant suspects immediately following foot pursuit.
- (6) Tackle a fleeing suspect.
- (7) Strength and full range of motion of arms, shoulders, legs, and manipulative dexterity of hands to handcuff in the standing, kneeling, and prone positions to control a subject.
- (8) Utilize proper techniques to control breathing and heart rate during strenuous physical encounters.
- (9) Ability to react quickly and calmly in emergency situations to determine proper use of force.

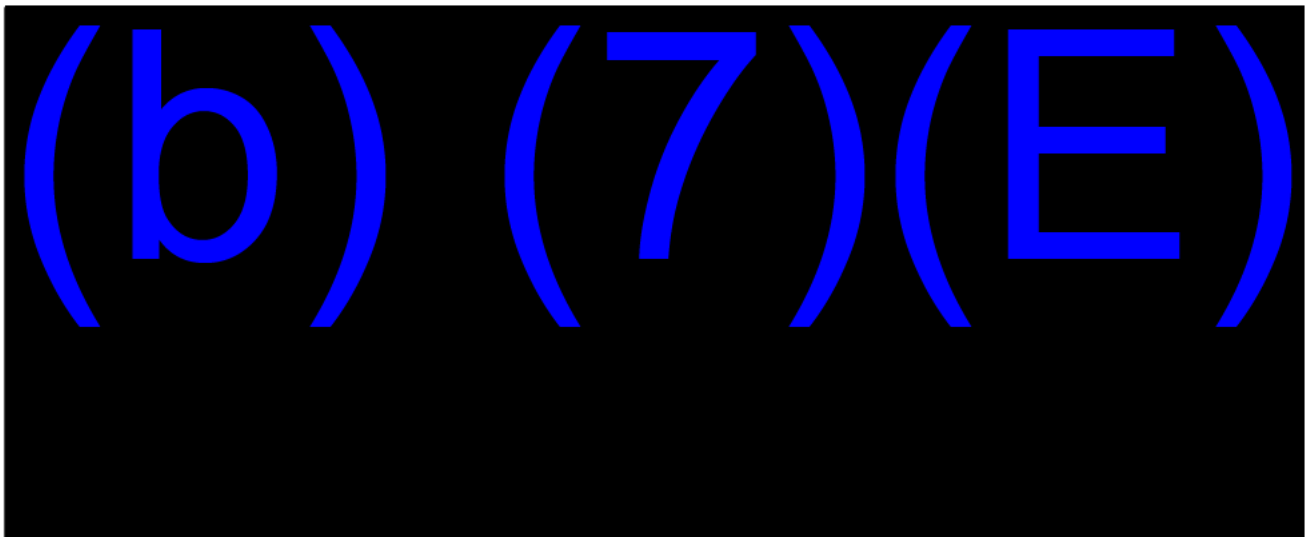
(b) *Use of physical force.* Possess the physical strength, mobility, and endurance to:

- (1) Break up fights between two or more persons.
- (2) Carry an immobile person by yourself.
- (3) Subdue physically attacking person.
- (4) Use weaponless defensive tactics.
- (5) Subdue person resisting arrest.
- (6) Disarm violent armed suspect.
- (7) Strike person with baton.
- (8) Have joint structures that are flexible and free of abnormalities, which can withstand force/pressure during non-lethal control techniques.
- (9) Possess full range of motion in the neck, back, hips, arms, and legs.
- (10) Sustain repeated shock loads to, and torsion strains of, the limbs and trunk.
- (11) Execute car removal techniques of noncompliant suspects through a window or open door.
- (12) Have hand and finger dexterity to safely and effectively manipulate an electronic control device (ECD) and exchange cartridges during normal lighting and/or reduced lighting conditions.
- (13) Stand for more than half of work shift and/or walk for more than half of shift.
- (14) Grip person tightly to prevent escape/control movement.

(c) *Firearms manipulation.*

- (1) Clean and inspect weapons.
- (2) Discharge firearm at night.
- (3) Discharge firearm at person.
- (4) Draw weapon to protect self or third party.

- (5) Participate in firearms training.
- (6) Fire weapon in dark environment with flashlight in one hand.
- (7) Defend against suspects going after officer's firearm.
- (8) Possess hand and finger dexterity to safely and effectively load, unload, and manipulate firearms in normal lighting and/or reduced lighting conditions.
- (9) Have sufficient hand, arm, and wrist strength to prepare magazines and to manipulate the action of a handgun, rifle, or submachine gun during charging and clearing operations.
- (10) Have adequate hand, arm, and wrist strength to control a handgun, rifle, or submachine gun during recoil with service ammunition.
- (11) Have adequate hand, arm, and wrist strength to accurately shoot one handed while carrying a 25-lb ballistic shield.
- (12) Extract handgun from a tight fitting and/or stiff holster in one second or less, hold handgun with both hands, arms extended in front of the body while firing.
- (13) Able to assume kneeling, sitting, and prone firing positions, shoulder a shoulder fired weapon, and rise up off the ground without using hands or any other object to assist in becoming upright and standing on one's feet.
- (14) Rise from a position lying on the back to standing, while maintaining sight alignment of a handgun on a suspect.



(e) *Search and Arrest Warrant Administration.*

- (1) Conduct field search of arrested persons.
- (2) Search for a person in a darkened building or environment.
- (3) Conduct frisk or pat down.
- (4) Search premises, conveyances, or property in hot pursuit/emergency situations.
- (5) Carry and deploy a 25-lb ballistic shield for distances of 20-40 yards.
- (6) Carry a 40-lb breaching ram and/or sledge hammer and halligan tool for distances of 20-40 yards, then physically breach a door.
- (7) Occasionally conduct enforcement operations in sleep deprived conditions.
- (8) Move furniture commonly found in residences/offices.
- (9) Crawl under an obstruction, jump down from a height, climb over a fence, jump across a ditch or other obstacle, climb through a window or other such opening.
- (10) Run upstairs, run down stairs, and climb stairs in multiple story buildings.

(f) *Vehicle operations.*

- (1) Engage in high speed pursuit or response driving off road.
- (2) Engage in high speed pursuit or response driving on open road.
- (3) Conduct vehicle stops or vehicle assaults.
- (4) Pull person out of vehicle who is resisting arrest.
- (5) May be required to operate, board, or be a passenger in a maritime vessel or aircraft.
- (6) Enter/exit a motor vehicle quickly.



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Attachment B

[DATE]

Mr./Mrs./Ms. [Name],

On [DATE], you failed the HSI Physical Fitness Test (PFT) while at the ICE Academy. Three training days later, on [DATE], you failed your retest. All Special Agent trainees are required to pass an initial, a mid-term, and a final HSI PFT in order to graduate from the HSI Basic Training Program. Special Agent trainees who fail the PFT are ineligible to graduate from the HSI Basic Training Program, but may reapply under a future vacancy announcement. Accordingly, you were removed from the HSI Basic Training Program and returned to HSI [NAME OF HSI OFFICE] on [DATE].

The reason for this letter is to provide you with a notification of your right to request a physical fitness test requirement waiver under 5 C.F.R. §§ 339.203 and 339.204. If you choose to request a waiver, please submit your waiver request within ten business days of receipt of this letter. A waiver request shall be forwarded in memorandum format to the Deputy Assistant Director, Investigative Services Division, through your local Special Agent in Charge (SAC). The request must include sufficient evidence that you can perform the essential duties of the position, with or without reasonable accommodation, without endangering the health and safety of yourself or others. HSI will provide trainees an allowance for a reasonable extension of time to submit waiver requests based upon good cause shown.

Pending submission and adjudication of a waiver request, you will return to your assigned SAC office in a limited duty capacity.

Sincerely,

[Name]
Unit Chief, HSI Training Division
ICE Academy

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ACKNOWLEDGMENT OF RECEIPT

Please sign this acknowledgment as evidence that you have received the cited letter. Your signature does not mean that you agree or disagree with its contents and, by signing, you do not forfeit any of the rights cited above. Your acknowledgement of receipt should be returned to the bearer of this notice.

I acknowledge receipt of the _____ Failure of Remedial PFT for Trainees and
Right to Apply for a Waiver. (date)

Employee's signature: _____ Date: _____

Witness's/Bearer's signature: _____ Date: _____

cc: [Name of person being copied]

Enclosure: Attachment A, Essential Job Functions for HSI Special Agents