

**Army Report**  
**Tobyhanna Army Depot (TYAD)**  
**Tobyhanna, Pennsylvania**  
**OSC File Number DI-09-1816**  
**September 27, 2010**

*Redacted Version*



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
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SEP 27 2000

Acting Special Counsel William Reukauf  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20310-0101

RE: Whistleblower Investigation  
Tobyhanna Army Depot  
OSC File No. DI-09-1816

Dear Reukauf:

In accordance with Title 5, United States Code (USC), Sections 1213(c) and (d), the enclosed report is submitted in response to your referral of information requesting an investigation of allegations and a report of findings in the above referenced case.

The Secretary of the Army (SA) has delegated to me his authority, as agency head, to review, sign, and submit to you the report required by Title 5, USC, Section 1213(c) and (d) [Tab A].

The Department of the Army (DA) has enclosed two versions of its report. The first version of the report contains the names and duty titles of military service members and civilian employees of the DA as well as copies of regulations with restricted public access to them because of concerns associated with the protection and security of Army installations. This first version is for your official use only, as specified in Title 5, USC, Section 1213(e); we understand that, as required by that law, you will provide a copy of this first version of the report to the Whistleblower, the President of the United States and the Senate and House Armed Services Committees for their review. Other releases of the first version of the report may result in violations of the Privacy Act<sup>1</sup> and breaches of personal privacy interests.

The second version of the report has been constructed to eliminate references to privacy-protected information and is suitable for release to all others as well as the regulations that require protection as noted above. We request that only the second version of the report be made available on your web-site, in your public library, or in any other forum in which it will be accessible to persons not expressly entitled by law to a copy of the report.

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<sup>1</sup> The Privacy Act of 1974, Title 5, USC, Section 552a.

## INFORMATION INITIATING THE INVESTIGATION<sup>2</sup>

By letter dated July 9, 2009, the Office of Special Counsel (OSC) referred to the SA an allegation submitted by Patrick Wall, a Sergeant (Sgt.) on the Security Force of the Tobyhanna Army Depot (TYAD), Tobyhanna, Pennsylvania (PA). He consented to the release of his name [Tab B]. The OSC had concluded that there existed a substantial likelihood that information provided by the Whistleblower disclosed a violation of law, rule or regulation and a substantial and specific danger to public safety. Specifically, Sgt. Wall alleged that:

- Chief had not been re-certified to carry a firearm in 2008 or 2009;
- Captain Operations Officer, who began working as a Security Specialist (Operations) at the TYAD on October 12, 2008, had not obtained an initial firearms certification or any re-certification;
- Chief firearm and twenty-six rounds of ammunition had not been returned to the arms room for several months;<sup>3</sup>
- Operations Officer periodically checked out his firearm and ammunition, but did not return them at the end of his shift as required; and
- Sgt. Wall had informed his supervisor, Lieutenant (Lt.) Police Supervisor 1, about these violations, but Lt. Police Supervisor 1 had not attempted to remedy them because of his concerns about retaliation.

## CONDUCT OF THE INVESTIGATION

By letter dated July 31, 2009, the Secretary of the Army, through the Army Office of General Counsel (OGC), forwarded the OSC-referred allegations to the U.S. Army Materiel Command (AMC) [Tab C]. AMC subsequently referred the matter to TYAD, its subordinate command, for investigation.

By statute, an agency is afforded 60 days to complete the report required by Title 5, USC, Section 1213. In light of this statutory requirement, on August 5, 2009 the TYAD Commander

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<sup>2</sup> Review of the investigation conducted in response to the OSC-referred allegations identified three systemic issues: the classification of job descriptions for personnel exercising supervisory duties over law enforcement and security forces, the maintenance of weapons training records, and the continuation of authorization to carry a firearm in the context of one's official duties when firearm qualification timelines cannot be met for logistical reasons. These issues are the subject of ongoing review and action at Headquarters, Department of the Army level.

<sup>3</sup> Sgt. Wall asserted to OSC that the alleged failures of Chief and Operations Officer return their firearms and ammunition to the secure storage facility at the end of each duty shift violated AR 190-56, *The Army Civilian Police and Security Guard Program*, dated September 27, 2006. AR 190-56 governs Army civilian police and security guards employed in positions classified as Office of Personnel Management (OPM)-designated career series 0083 and 0085 [Tab D]. Both Chief and Operations Officer serve in positions classified as OPM-designated career series 0080, Security Specialist. Chief is a Supervisory Security Specialist; Operations Officer is a Security Specialist (Operations). Accordingly, AR 190-56 is inapplicable to Chief and Operations Officer. Rather, AR 190-14, *Carrying of Firearms and Use of Force for Law Enforcement and Security Duties*, dated March 12, 1993, is the regulation applicable to both Chief and Operations Officer [Tab E].

verbally authorized the initiation of an Informal Investigation under provisions of AR 15-6.<sup>4</sup> On August 13, 2009, the TYAD Commander formally appointed the AR 15-6 Investigating Officer (IO). The Army requested and received six extensions of time to complete its investigation and report.<sup>5</sup>

## BACKGROUND

The investigation conducted in response to the OSC referral focused on the firearms<sup>6</sup> qualification and storage practices of two TYAD Security Division employees: Chief and Operations Officer. To facilitate a better understanding of the Army's investigation and the resultant findings and recommendations, it is helpful to understand the organizational structure and functions of the TYAD Security Division.

**Organizational Structure.** The TYAD Security Division consists entirely of DA *civilian employees*, not military police. At all times relevant to the OSC-referred allegations, the Depot Commander required all law enforcement and security personnel, including the Chief of Security (Chief), the Operations Officer (Operations Officer), Security Officers, Security Guards, Desk Sergeants, Lieutenants and Investigators<sup>7</sup> to carry firearms in performing their official duties. The number of TYAD security and law enforcement personnel required to carry a weapon in performing their official duties totals approximately 50 Officers.<sup>8</sup> The wire diagram below provides additional detail about the organizational structure of the TYAD Security Division.

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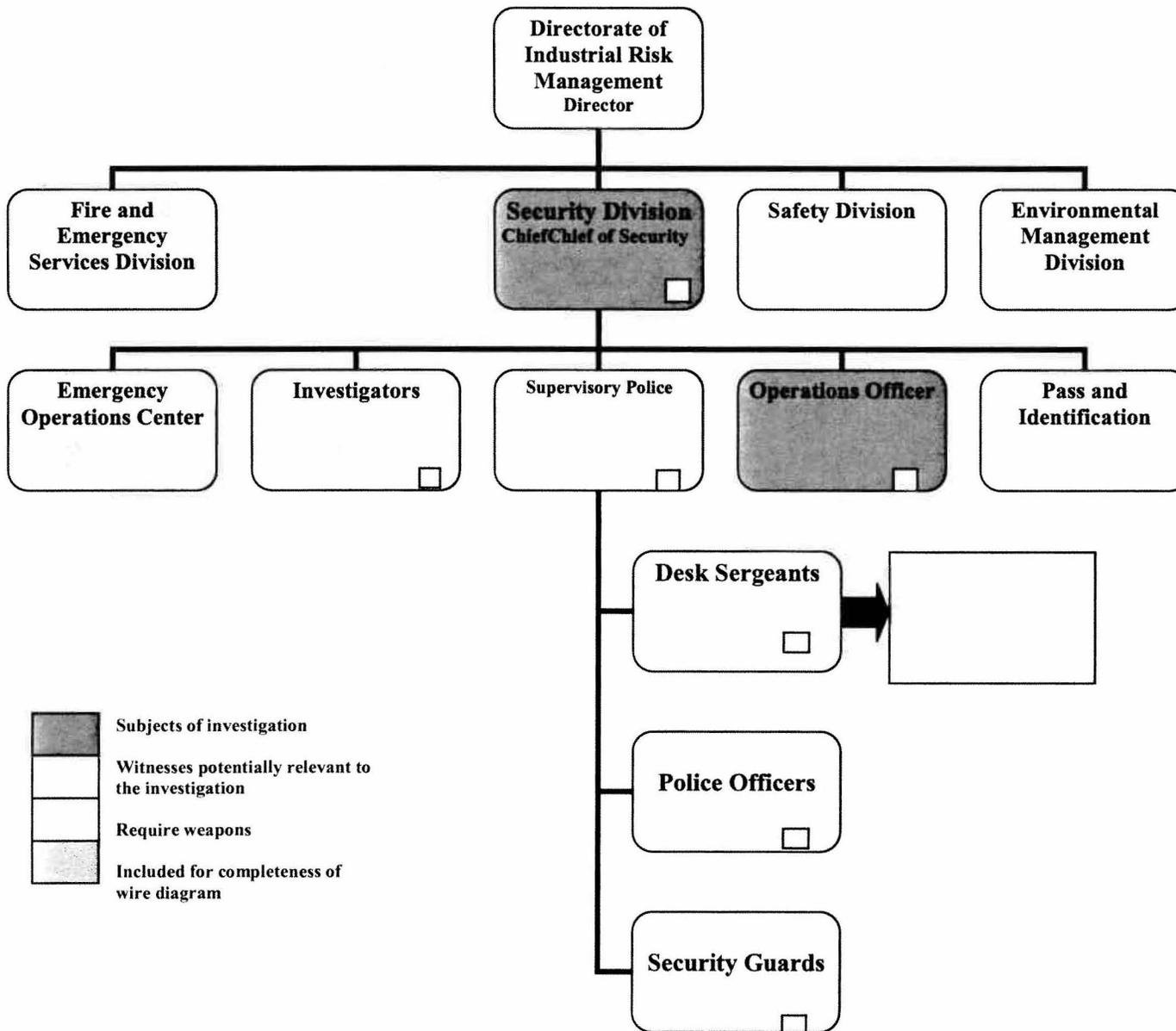
<sup>4</sup> AR 15-6, *Procedures for Investigating Officers and Boards of Officers*, dated October 2, 2006. The TYAD Commander's verbal authorization was based on his review of a proposed memorandum of appointment of an AR 15-6 Investigating Officer (IO) [Tab F].

<sup>5</sup> On September 9, 2009, at the request of TYAD and Army OGC, the OSC granted its first extension through November 10, 2009. On November 10, 2009, OGC requested a second extension of time; OSC granted it on November 30, 2009, extending the time for the submission of the Army report to January 11, 2010. On January 8, 2010, OGC requested its third extension of time; OSC granted that request on January 11, 2010, extending the Army's response time until March 15, 2010. OGC requested its fourth extension of time on March 11, 2010; OSC granted it on March 12, 2010, extending Army's response time until May 17, 2010. OGC's fifth request for an extension was submitted on May 14, 2010; OSC granted it on May 17, 2010, extending the Army's response time until July 19, 2010. Army's sixth and final extension request was made on July 15, 2010; OSC granted it on July 23, 2010, extending the response time until September 20, 2010.

<sup>6</sup> The terms "firearm," "weapon," and "pistol" are used interchangeably in this report. This investigation primarily relates to the 9mm pistols issued to Chief and Operations Officer.

<sup>7</sup> AR 190-14, paragraph 1-5, [Tab E], provides that the authorization to carry firearms will be issued only to qualified personnel when there is a reasonable expectation that life or Department of the Army assets will be jeopardized if firearms are not carried. This same provision of AR 190-14 goes on to state that DA personnel "regularly engaged in law enforcement or security duties will be armed" and are authorized to carry firearms while engaged in security duties, protecting personnel and vital Government assets and personnel, or guarding prisoners. AR 190-14, paragraph 2-2 [Tab E], sets forth additional instances when law enforcement personnel are authorized to carry firearms. Accordingly, by virtue of their assigned duties and OPM classification as Security Specialists, both Chief and Operations Officer were authorized to carry firearms in the execution of their duties in accordance with AR 190-14. Thus, both were subject to the eligibility and qualification standards prerequisite to carrying firearms, as set forth in AR 190-14 [Tab E].

<sup>8</sup> Security Division personnel work under various job descriptions and perform different functions. Except where specifically identified, this report refers to armed Security Division personnel collectively as "Officers."



**Mission.** The TYAD Security Division performs all law enforcement, physical security and force protection functions at the Depot. The TYAD Missions and Function Statement [Tab G]<sup>9</sup> explains that the mission of the Security Division is to formulate, direct and manage the execution of physical security, law enforcement, crisis management and anti-terrorism programs and policies, and to perform administrative duties in support of military members and their dependents (*e.g.*, in-processing service members assigned to the Depot). Functions performed by Security Division personnel include: managing the Emergency Operations Center, to include pre-deployment processing and support to hundreds of civilian employees currently in Southwest Asia; issuing identification cards and vehicle registrations to employees and contract workers; conducting law enforcement and investigating potential criminal activity on the Depot; and maintaining the physical security of the installation, to include conducting identification checks of all persons seeking entry to the installation, vehicle inspections, and patrolling of roads and buildings.

For several reasons, the Depot places great emphasis on physical security. First, the Army requires such security for force protection. In addition, TYAD serves as the Army's Center of Industrial and Technical Excellence for Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) and thus is responsible for a Communications Security (COMSEC) mission, which involves encrypted and classified items. Further, TYAD is in close proximity to a major interstate highway that links to New York City; a number of drivers exit the interstate highway and mistakenly access the installation. During routine stops of drivers, TYAD Security personnel have identified a number of individuals engaged in or subject to outstanding arrest warrants. Finally, TYAD is in close proximity to the shooting range that was used for training by the "Fort Dix Six," the group that intended to attack the military installation at Fort Dix, New Jersey.<sup>10</sup>

**Operations.** TYAD Security Division personnel operate on a 24-hour basis, 365 days a year. One of three Lieutenants supervises each eight-hour shift. Desk Sergeants provide additional support to the Lieutenants; the Desk Sergeants also staff the front desk, oversee day-to-day operations, process visitors, issue keys and provide instructions to Officers. Importantly, TYAD Standard Operating Procedure (TYAD SOP) Number 16<sup>11</sup> authorizes a shift supervisor or a Desk Sergeant<sup>12</sup>, to issue weapons to Officers at the start of each duty shift and to receive weapons turned-in by Officers at the end of each shift. The Chief, the Investigators and the Operations Officer typically work on the first (day) shift. However, the nature of their duties requires that they be "on call" on a 24-hour basis and be available to report to duty at any time.

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<sup>9</sup> Tobyhanna Army Depot Regulation No. 10-1, *Organization, Mission, and Functions*. Note that public access to this document is restricted because of concerns associated with the protection and security of Army installations.

<sup>10</sup> The Fort Dix Six refers to the group of six men who were arrested on May 7, 2008 and convicted in April 2009, for planning an attack on the U.S. Army installation at Fort Dix, New Jersey. Prior to their arrest, the group trained with weapons at the Gouldsboro shooting range, within ten miles of TYAD. More recently, it was determined that the fireworks used in the attempted bombing attack in Times Square, New York City, New York, were purchased at a store located about a one hour drive from TYAD; a recent media report questions whether the Pocono Mountain region of Pennsylvania, in which TYAD is located, with its abundant open space and proximity to major east coast cities, serves as a lure for those seeking to carry out attacks on U.S. soil.

<sup>11</sup> TYAD Standard Operating Procedure (SOP) Number 16, *Weapon Responsibility*, dated October 1, 2008 [Tab H].

<sup>12</sup> Note that the "shift supervisor" responsibility is carried out by the Lt. on duty. TYAD SOP Number 16 authorizes the shift supervisor or Desk Sgt to perform Arms Room duty. As used in this report, the term "shift supervisor" refers to the Lt. or Desk Sgt. on duty.

**Firearms qualification.** Officers use a variety of firearms, the 9mm pistol being the most common. Each Officer is issued a 9mm pistol. In accordance with AR 190-14, [Tab E]<sup>13</sup> an Officer must be qualified and certified on a particular type of firearm in order to carry that weapon. Qualification testing occurs at a firing or shooting range under the supervision of a training officer. Historically, firearms qualification testing of TYAD Security Division personnel has been performed at one of three local ranges: the Gouldsboro Range, in Gouldsboro, PA<sup>14</sup>; the Starr Uniform Range (Starr Range), in Scranton, PA; and the Route 423 Range in Coolbaugh Township, PA. Firearms qualification testing requires advance planning: a range must be scheduled, an adequate amount of ammunition must be available, a training officer must be available to conduct the tests and work schedules must be adjusted so that some Officers are available to perform law enforcement and security duties at TYAD while other Officers are at the range testing. For these reasons, firearms qualification testing is usually conducted only twice per year, on each occasion over the course of a few days.

**Firearms Security.** Firearms that are not in the possession of an Officer on duty must be securely stored. At TYAD, the secure storage site is the Arms Room, a secure vault in the Security Building, Building Number 20. The Arms Room (also known as the Weapons Room) contains shelves, each of which contains compartments for each Officer's pistol. Each pistol is permanently assigned to an Officer by use of a DA Form 3749 (Weapons Card), which contains the Officer's name, a description of the assigned pistol (*e.g.*, 9mm Sig Sauer), and the pistol's serial number. As noted above, the shift supervisor issues firearms to the Officers at the start of each work shift. The procedure for issuing a weapon requires that an Officer report to the shift supervisor and sign a TYAD Form 609 Weapons Control Register (Log). The signed entry on the Log indicates the serial number of the weapon received by the officer, the number of rounds of ammunition received with the weapon and the date and time of receipt. The shift supervisor removes the Officer's pistol from the assigned compartment in the Arms Room, initials the TYAD Form 609 Weapons Control Register (Log), receives the Officer's DA Form 3749 (Weapons Card) from the Officer, and issues the pistol to the Officer in exchange. The DA Form 3749 (Weapons Card) is then placed in the Arms Room compartment specifically designated for storage of the Officer's pistol.<sup>15</sup> Upon turning in a weapon at the end of the duty shift, the procedure is reversed: an Officer returns his or her weapon to the shift supervisor and signs the TYAD Form 609 Weapons Control Register (Log) to document return of the firearm and a specified quantity of ammunition. The shift supervisor returns the Officer's pistol and

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<sup>13</sup> AR 190-14, paragraph 2-5 [Tab E] provides that "[t]o be considered eligible to carry firearms, personnel must have satisfactorily completed mandatory training and proficiency testing within the prior 12 months." And, "[a]s a minimum, proficiency testing will include annual qualification firing according to Army qualification standards for the type of weapon being carried. Records of individual qualification results must be retained for as long as the individual possess a firearm."

<sup>14</sup> In 2009, the Gouldsboro Range imposed restrictions that rendered it non-compliant with Army qualification requirements. See Rules and Regulations Governing Weapons Qualifications and Weapons Control, Part B, p. 10 for a discussion of the range requirements and restrictions. Specifically, AR 190-14, paragraph 2-5(b)(1) [Tab E], requires weapons testing at a range that meets the requirements of Army Field Manual 19-10 [Tab J]. Field Manual 19-10, Appendix B, requires an Officer to fire five rounds, reload, and refire while being timed. In 2009, the Gouldsboro Range limited the number of rounds that could be loaded and fired at one time to three, making it impossible to fire five consecutive rounds as required by FM 19-10, Appendix B.

<sup>15</sup> Thus, at any given time, either the Officer's pistol or the Officer's DA Form 3749 (Weapons Card) should be present in the compartment designated for the Officer.

ammunition to the appropriate compartment in the Arms Room, retrieves the Officer's DA Form 3749 (Weapons Card) and returns the Weapons Card to the Officer.<sup>16</sup>

**Physical Structure.** The Security Building is the command center for Security Division personnel. In addition to the Arms Room, Building 20 contains private offices for Chief, Operations Officer and the Investigators. Building 20 also serves as the entry/exit point for employees, tenants and all visitors to the installation. For this reason, Building 20 is one of the busiest sites at TYAD.

Because of mission requirements and space constraints in Building Number 20, TYAD commenced a project to renovate the Building in the spring of 2009. During the renovation, all operations in Building Number 20 ceased except for use of the Arms Room. Because the Arms Room is a secure vault, it could not be relocated from Building Number 20 to an alternate site during the renovation project. The other operations typically performed in Building Number 20 (e.g., visitor control, badge check and office work) were relocated to a temporary modular building approximately 100 feet from Building Number 20. As a result of the renovation project, the shift supervisor had to leave the temporary building, go outside, and walk approximately 100 feet to the Arms Room in Building 20 whenever an Officer sought to be issued or to turn-in a weapon.<sup>17</sup> Photographs show the location of the temporary building in relation to Building Number 20.<sup>18</sup>

## **THE RULES AND REGULATIONS GOVERNING FIREARMS QUALIFICATION AND CONTROL**

The Army considers firearms and ammunition to be controlled assets. ARs 190-14 and 190-11<sup>19</sup> and TYAD SOP Number 16 [Tabs E, I, and H] govern firearms qualification and firearms and ammunition control and accountability requirements. The following is a summary of the regulatory provisions relevant to the OSC referral:

### **A. Authorization to Possess a Firearm.**

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<sup>16</sup> Note that TYAD SOP Number 16 [Tab H], particularly paragraph 5, also sets forth requirements for the control and accountability of ammunition. The processes governing the issue and turn-in of ammunition virtually mirror the processes related to weapons control. Ammunition is issued to an Officer with his or her weapon at the beginning of a duty shift and the Officer turns in the ammunition with the weapon at the end of his or her duty shift. Both weapons and ammunition are stored in the Arms Room. OSC referred allegations 3 and 4 relate to the failure to follow procedures for both weapons and ammunition control. Accordingly, unless otherwise noted, this report's discussion of weapons control processes also should be interpreted as applying to ammunition.

<sup>17</sup> Prior to the renovation of Building 20, the shift supervisor or Desk Sergeant had only to walk down a hallway approximately 20 feet to access the Arms Room.

<sup>18</sup> The Building 20 renovation project was completed in November 2009. Thereafter, Security Division personnel were resituated in Building 20 and the temporary facility was removed.

<sup>19</sup> AR 190-11, *Physical Security of Arms, Ammunition, and Explosives*, dated November 15, 2006. [Tab I]. Public access to this regulation is restricted because of concerns associated with the protection and security of Army installations.

1. Authorization to carry firearms may be granted to personnel conducting law enforcement activities. *See* AR 190-14, paragraph 1-5 and 2-2c(1)-(5) [Tab E].
2. Officers of a civilian equivalent of a General Schedule (GS)-12 or above may authorize the carrying of firearms for law enforcement and security duties. *See* AR 190-14, paragraph 2-1a [Tab E].
3. Procedures must be established to ensure that any individual being issued a firearm has a written authorization in effect before actual issuance of the weapon. *See* AR 190-14, paragraph 2-3a [Tab E].
4. "Written authorization documents will consist of one of the following: DA Form 2818 (Firearms Authorization), memorandum, or amended organizations roster." *See* AR 190-14, paragraph 2-4a [Tab E].
5. Embedded in AR 190-14 is an "emergency" exception to the requirement that firearms qualification and written authorization to carry a weapon precede the issuance of firearm to an Officer. The regulation provides, "*[e]xcept in situations requiring immediate action to protect life or vital Government assets*, all authorizations to carry firearms by personnel will be, in writing, signed by the appropriate authorizing official, and issued only to personnel who are eligible to carry firearms as specified in paragraph 2-5 (of AR 190-14.)" *See* AR 190-14, paragraph 2-3b, emphasis added [Tab E].
6. "Department of the Army . . . civilian personnel regularly assigned to law enforcement or security duties may be given a continuing authorization (not to exceed one year) to carry firearms, provided they pass and maintain eligibility and qualification standards." *See* AR 190-14, paragraph 2-4c [Tab E].
7. Pursuant to AR 190-14, paragraph 2-5, Department of the Army personnel are "eligible" to carry a firearm upon satisfactory completion of mandatory training and proficiency testing within the preceding 12 months.<sup>20</sup> [Tab E].
8. A DA Form 3749 (Weapons Card) is used to permanently assign a weapon to each Officer. *See* TYAD SOP Number 16, paragraph 4b [Tab H].
9. Duty weapons (at TYAD, a 9mm pistol) will be assigned to all personnel performing Law Enforcement/Security duties at TYAD. *See* TYAD SOP Number 16, paragraph 4a [Tab H].

## **B. Firearms Qualification.**

1. Security personnel will initially qualify with their basic weapon prior to performing duties at TYAD. *See* TYAD SOP Number 16, paragraph 4a [Tab H].
2. To be considered eligible to carry a firearm, personnel must have satisfactorily completed mandatory training and proficiency testing within the preceding 12 months. Mandatory training must include:
  - a. A thorough briefing on individual responsibilities;
  - b. Use of deadly force instruction;
  - c. Instructions on safety functions, capabilities, limitations and maintenance procedures for the firearm to be carried.
  - d. As a minimum, proficiency testing will include annual qualification firing according to Army qualification standards. Civilian police and security guards will qualify annually on the Military Police Firearms Qualification Course as

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<sup>20</sup> Eligibility requirements are further explained in the next section, section B, Firearms Qualification.

specified in Field Manual (FM) 19-10.<sup>21</sup> [Tab J]. In the absence of a qualification standard for a type of firearm, successful completion of a familiarization course is acceptable, provided the course has been approved for the person authorizing the firearm to be carried. *See* AR 190-14, paragraph 2-5 and paragraph 2-5a-b<sup>22</sup> [Tab E].

3. An individual must be qualified at a firing range. Qualification testing is performed by a designated person.<sup>23</sup> In accordance with FM 19-10, Appendix B [Tab J], the candidate must successfully fire a pre-determined number of rounds (five rounds, reload, re-fire) of ammunition at a target measured a given distance from the firing point. The candidate must perform the tests while being timed. A score sheet is used to record an individual's "hits." Based on an individual's score, the training officer will determine if the individual is a "go" (may use a weapon) or a "no go" (requires re-testing).
4. DA Form 3749 (Weapons Card) serves as the written evidence that an individual has satisfied the qualification requirements and is authorized to be issued a firearm. *See* TYAD SOP Number 16, paragraph 4b [Tab H].
5. Security personnel will be armed at all times unless directed otherwise by their supervisor. *See* TYAD SOP Number 16, paragraph 4e [Tab H].

In summary, Army Regulations and the TYAD SOP require that an Officer complete mandatory qualification testing at a firing range before an Authorizing Official<sup>24</sup> may grant approval for that Officer to carry a firearm. If an Officer passes the weapons qualification test, he or she is deemed "qualified" or "certified." In accordance with AR 190-14, paragraph 2-4a, the Authorizing Official places the Officer's name on DA Form 2818, which authorizes the Officer to carry a firearm. Pursuant to TYAD SOP Number 16, the Authorizing Official completes and issues to the Officer a DA Form 3749 (Weapons Card), which serves as written evidence that the Officer has satisfied the qualification requirements and is authorized to be issued a weapons. An Officer must "qualify" initially in order to be authorized to receive and carry a firearm in the performance of duties and once every 12 months thereafter in order to retain certification to carry a firearm.<sup>25</sup>

### **C. Weapons Issuance.**

1. Weapons are issued only to personnel listed on the Master Authorization List (MAL).  
"Before a weapon is issued, the armorer must check the DA Form 3749 (Weapons Card)

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<sup>21</sup> Army Field Manual (FM) 19-10, *Military Police Law and Order Operations*, dated September 30, 1987 [Tab J]. Appendix B of FM 19-10 establishes standards for firearms qualification, to include firing range test procedures.

<sup>22</sup> AR 190-14, paragraph 2-5 [Tab E] requires that personnel assigned to law enforcement and security-related duties complete mandatory firearms training and proficiency testing within the preceding 12 months in order to remain qualified to carry a weapon. Paragraph 2-5b goes on to state that at a minimum proficiency testing will include annual qualification firing according to Army qualification standards for the type of weapon being carried.

<sup>23</sup> The regulation does not specify who is responsible for performing qualification testing. Borrowing from military procedures, in which the senior officer designates experienced personnel to conduct qualification testing, Chief designated Lt. Vogt and Sgt. Wall to conduct the testing.

<sup>24</sup> Chief, Chief of Police, is the Authorizing Official at TYAD.

<sup>25</sup> Note that AR 190-56 [Tab D], which is applicable only to Police Officers and Security Guards in the 0083 and 0085 OPM-designated career series, requires those personnel to undergo qualification testing semi-annually. In contrast, those law enforcement personnel whose duties are subject to AR 190-14 [Tab E], such as Chief and Operations Officer, are required to undergo annual qualification testing.

- with the MAL to make sure there is no unauthorized issue of weapons." See AR 190-11, paragraph 4-19e(1) [Tab I].
2. Weapons will be permanently<sup>26</sup> assigned to each person by use of a DA Form 3749 (Weapons Card). See TYAD SOP Number 16, paragraph 4b [Tab H].
  3. When an Officer is issued a weapon for 24 hours or more, the DA Form 3749 (Weapons Card) must be presented to the shift supervisor and the Officer must make an entry on a control sheet or log listing the date of the issue, the nomenclature and serial number of the item, the time of issue, and his or her signature. See AR 190-11, paragraph 4-19e(3) [Tab I]. However, "[w]hen individually assigned weapons are issued for 24 hours or less, only the turn-in of DA Form 3749 (Weapons Card) is required. An entry on the control sheet or log is not required for issues of 24 hours or less." See AR 190-11, paragraph 4-19e(2) [Tab I]. When weapons are turned in at the end of a shift, the control sheet is closed out and the DA Form 3749 (Weapons Card) is returned to the individual. See AR 190-11, paragraph 4-19e(3) [Tab I].
  4. Note that TYAD SOP Number 16 firearms security procedures applicable to all Officers at TYAD, are more stringent than those set forth in AR 190-11 [Tab I]. The TYAD SOP requires that an Officer sign the Form 609 Weapons Control Register (Log) even under circumstances in which the Officer is receiving a firearm for a period of *less than* 24 hours. In other words, at TYAD an Officer receives his or her assigned weapon by handing the shift supervisor his or her DA Form 3749 (Weapons Card) *and* by signing the Form 609 Weapons Control Register (Log) on each and every occasion on which an Officer receives a weapon, regardless of the length of time for which it is expected the weapon will be issued.<sup>27</sup>

#### **D. Storing and Accounting for Firearms and Ammunition.**

1. AR 190-14, paragraph 2-9a and b, provide: "An individual authorized to carry a firearm is responsible for ensuring proper safeguards to prevent loss, theft, or unauthorized use. Firearms will be returned to a designated control point on completion of the assignment for storage and accountability according to AR 190-11." [Tab I].
2. AR 190-11 governs the security of weapons and ammunition. Paragraph 1-1 of that regulation explains, "[t]his regulation prescribes standards and criteria for the physical security of sensitive conventional arms, ammunition, and explosives." Firearms and ammunition must be stored in a secure facility, such as an arms room. AR 190-11, paragraph 1-12b [Tab I] requires and that "Commander[s] and custodians . . . [e]nsure necessary measures are taken to safeguard [firearms and ammunition] at all times." Personnel shall be assigned "to control all categories" of weapons. See AR 190-11, paragraph 2-11 [Tab I].
3. AR 190-11 paragraph 5-8c authorizes Commanders of store ammunition in an Arms Room and establishes the storage criterion (*e.g.*, secured in banded crates, approved metal containers or cabinets) [Tab I].

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<sup>26</sup> The word "permanently" in this context means that each Officer is issued his or her own personally assigned firearm by means of the DA Form 3749 (Weapons Card). Because each firearm is tracked by serial number, the DA Form 3749 (Weapons Card) serves to account for each firearm assigned to each Officer.

<sup>27</sup> In contrast, AR 190-11, paragraph 4-19e [Tab I] requires the Officer's signature on the weapons control log ONLY when a firearm is issued for *more than* 24 hours.

4. Paragraph 6-3 of AR 190-11 [Tab I] requires a physical inventory of ammunition in accordance with the procedures of AR 710-2, *Supply Policy Below the National Level*, March 28, 2008. The installation's property accountability office must perform a monthly inventory of weapons and ammunition. At TYAD, the Directorate of Public Works serves as the property accountability office that performs the monthly inventory of weapons and ammunition to ensure accountability.
5. Pursuant to AR 190-11, paragraph 4-1 [Tab I], and AR 190-14, paragraph 2-9 [Tab E], firearms accountability and security must be maintained at all times; "firearms will be returned to the designated control point [the Arms Room] on completion of the assignment [duty shift] for storage and accountability according to AR 190-11." See AR 190-14, paragraph 2-9, *Safeguarding Firearms* [Tab E]. Upon reporting for a duty shift at TYAD, the shift supervisor must ensure that each Officer legibly signs a Form 609 Weapons Control Register (Log) indicating the serial number of the weapon and the number of ammunition rounds issued to the Officer and the date/time of issuance. The shift supervisor removes the firearm and ammunition from the Arms Room and hands them to the Officer. At the end of the shift, the Officer turns-in the cleared/unloaded weapon and the ammunition to the shift supervisor and signs the Form 609 Weapons Control Register (Log) indicating return of the weapon and a specific number of ammunition rounds. See TYAD SOP Number 16, paragraph 5 [Tab H].
6. The Form 609 Weapons Control Register (Log) is retained until the next monthly inventory. Then the control sheet is destroyed. See AR 190-11, paragraph 4-19e(5) [Tab I]. In other words, only the current month and the prior month's weapons control log sheets must be retained at any given time.
7. Class 5 storage/security containers (office safes) are authorized for the safeguarding of weapons "instead of arms rooms," provided that the containers are "adequately protected". See AR 190-11, paragraph 4-20a [Tab I]. Further, "Arms racks and containers weighing less than 500 pounds will be fastened to the structure with bolts or with chains equipped with secondary padlocks." See AR 190-11, paragraph 4-22e.

## **SUMMARY OF THE EVIDENCE OBTAINED FROM THE INVESTIGATION**

The Whistleblower, Sgt. Patrick Wall, made the following allegations that were subsequently referred by OSC to the SA:

**OSC-Referred Allegation 1: Chief has not been re-certified to carry a firearm in 2008 or 2009.**

### **A. Alleged Lack of Certification for Chief in 2008.**

Lt. Stephen Police Supervisor 1, who serves as a Weapons Instructor at TYAD, verified that he provided firearms qualification testing to Chief in 2008 [Tab K, Sworn Statement of Lt. Police Supervisor 1, August 7, 2009, p. 1, paragraph 1]. The record of that test shows it was

performed on July 18, 2008. Chief passed the test with a score of 195.<sup>28</sup> Qualification testing of other members of the TYAD Security Force occurred on July 10-12 and July 17-18, 2008.

**Conclusion as to Allegation 1A:** This allegation is not substantiated because Chief's 2008 firearms qualification test was successfully performed and completed on July 18, 2008.

**B. Alleged Lack of Certification for Chief in 2009.**

The AR 15-6 IO was unable to locate any evidence that Chief completed a 2009 firearms qualification test until August 18, 2009. Pursuant to AR 190-14, paragraph 2-5, weapons qualification testing is required every 12 months. The evidence substantiates that Chief's weapons qualification expired on July 19, 2009, 12 months after his last successful firearms qualification. Chief lacked certification to carry a weapon for a period of about 30 days between July 19, 2009 and August 18, 2009, when he next completed mandatory firearms training and qualification.

The record reveals that several factors contributed to Chief's inability to be certified on a timely basis in 2009. First, Chief, Lt. Police Supervisor 1, and others in the Security Division stated that they were unable to secure ammunition due to a nationwide shortage of ammunition. [See Tab L-1, Sworn Statement of Chief, August 12, 2009, paragraph 2; Tab K-1, Sworn Statement of Stephen Police Supervisor 1, August 7, 2009, p. 1; Tab M, Sworn Statement of Police Supervisor 2, August 14, 2009, paragraph 4; Tab N, Sworn Statement of Police Supervisor 3, August 17, 2009, paragraph 2; Tab O, September 1, 2009 email from [Redacted] of the Starr Uniform Center]. This fact was confirmed by personnel from the Starr Range.<sup>29</sup> Chief explained that in February 2009, TYAD submitted a request through command channels to AMC, its superior command, requesting an order of new operational ammunition and permission to re-designate TYAD's existing operational ammunition as training ammunition.<sup>30</sup> Chief went on to state that TYAD never received a response to this request.

Operations Officer explained that when he and another officer attended the Army's Total Ammunition Information System (TAMIS) training in September 2009, they realized that their prior procedures for requesting ammunition (via memorandum to AMC) had been futile, and that the proper mechanism for preparing and routing requests for ammunition now was through the automated system known as the Total Army Management Information System (TAMIS) [Tab P-1, Sworn Statement of Operations Officer, September 15, 2009, paragraph 1]. Utilizing the TAMIS system, TYAD should have adequate quantities of ammunition in the future.

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<sup>28</sup> If TYAD assigned ratings, Chief's score would rate at the expert level.

<sup>29</sup> The Depot has a contract with the Starr Uniform Range, a range and ammunition supply vendor in Scranton, Pennsylvania, for "range time" to perform qualification testing and to provide ammunition for testing.

<sup>30</sup> Operational ammunition is issued to Officers with their weapons prior to a duty shift to be used in performing their law enforcement and/or security duties. Training ammunition is used only for firearms training and qualification testing. The difference is primarily in the designation of the ammunition; there is little difference in the functionality. In this situation, Chief requested new ammunition, which would be designated as operational ammunition; when the new operational ammunition was received, the current operational ammunition would be re-designated for training.

Second, in addition to the lack of ammunition for firearms qualification testing, witnesses explained that it was difficult to find a firing range on which qualification testing could be conducted. Following the arrest of the “Fort Dix Six,” the terrorists who trained at the Gouldsboro Range, the Commonwealth of Pennsylvania placed restrictions on use of that range that rendered it non-compliant with the weapons qualification requirements set forth in FM 19-10, Appendix B. The lack of ammunition and the lack of a range on which to conduct qualification testing contributed significantly to Chief’s failure to complete firearms qualification testing on a timely basis in 2009.

**Conclusion as to Allegation 1B:** This allegation is substantiated because Chief failed to successfully complete his firearms training and proficiency testing within the appropriate time period in 2009.

**OSC-Referred Allegation 2: Operations Officer, who began working as a Security Specialist (Operations) at the TYAD on October 12, 2008, has not obtained an initial firearms certification or any re-certification.**

Operations Officer transferred from the U.S. Army Communications and Electronic Command, Life Cycle Management Command (CECOM) to TYAD in October of 2008. At that time, he did not hold a weapons qualification that had been issued by the Army.<sup>31</sup> His employment at TYAD started after the TYAD Security Force had completed its annually scheduled firearms qualification testing in July 2008.<sup>32</sup> Operations Officer stated that he was assigned his permanent 9mm pistol in December of 2008 [Tab P-2, Sworn Statement of Operations Officer, August 13, 2009, p. 1, paragraph 1, and Tab P-1, Sworn Statement of Operations Officer, September 15, 2009, p. 1, paragraph 1].

In accordance with AR 190-14, paragraph 2-3b, Chief was authorized to conduct firearms testing<sup>33</sup> and to issue the DA Form 3749 (Weapons Card) to TYAD Security Officers. Chief explained to the AR 15-6 IO that shortly after Operations Officer’s arrival, he determined that Operations Officer should be in a weapon-capable state of readiness.<sup>34</sup> [Tab L-1, Sworn Statement of Chief, August 12, 2009, pp. 1-2]. After observing Operations Officer’s capabilities, Chief determined that he would personally test Operations Officer’s competency at the Gouldsboro Range.<sup>35</sup> [Tab L-1, Sworn Statement of Chief, August 12, 2009, paragraph 2; Tab K-1, Sworn Statement of Stephen Police Supervisor 1, August 7, 2009, p. 1].

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<sup>31</sup> AR 190-14 requires that the Army procedures (set forth in FM 19-10), be utilized for satisfying the Army’s firearms qualification testing requirements.

<sup>32</sup> As reflected above on page 6, firearms qualification testing is conducted on an annual basis only during particular times of the year.

<sup>33</sup> This regulatory provision authorizes an employee holding a position in the grade of GS-12 or above to be the “Authorizing Official” and to issue a weapons card. At the time in question, Chief was classified as a National Security Personnel System (NSPS) YC-0080-02, which placed him at the level of a GS-12 equivalent supervisor.

<sup>34</sup> At the time in question, Operations Officer’s Job Description stated that he served as the Operations Officer, the principal advisor to the Chief of Security. Operations Officer’s duties required that he be armed and, by implication, firearms qualified.

<sup>35</sup> Chief and Lt. Vogt explained that TYAD does not have a firing range on the installation, so weapons qualification testing must be performed at an off-post range. Chief related that the Gouldsboro Range, which is owned and operated by the Commonwealth of Pennsylvania, has since been closed after it was determined that it served as the training site for the “Fort Dix Six.”

Following that test, Chief determined that Operations Officer possessed the necessary skills and capabilities to possess a weapon. Accordingly, Chief issued a DA Form 3749 (Weapons Card) to Operations Officer, thus authorizing Operations Officer to be issued a 9mm pistol [Tab L-1, Sworn Statement of Chief, August 12, 2009].

However, Chief's testing of Operations Officer at the Gouldsboro Range did not satisfy the technical requirements of FM 19-10, Appendix B [Tab H]. When Chief and Operations Officer visited the Gouldsboro range in 2008, that range did not meet FM 19-10 requirements for the conduct of firearms testing and qualification because it imposed a limit of *three (3)* on the number of rounds of ammunition a person could have at one time in a "clip" (ammunition magazine). Three rounds of ammunition in a clip was insufficient to meet the requirement for handgun testing set forth in FM 19-10, Appendix B, which requires repeated firings of *five (5)* rounds within a given time period.

Chief explained that due to a lack of ammunition at TYAD (as explained above),<sup>36</sup> he could not qualify Operations Officer at the Starr Uniform Range, the FM 19-10 compliant range in the area. The Depot has a contract with the Starr Uniform Range, a range and ammunition supply vendor in Scranton, Pennsylvania, for "range time" to perform qualification testing and to provide ammunition for testing. Witnesses explained that it is difficult to get range time at the Starr Uniform Range and TYAD did not have its own ammunition available for testing purposes [See Tab L-1, Sworn Statement of Chief, August 12, 2009, paragraph 2; Tab K-1, Sworn Statement of Stephen Police Supervisor 1, August 7, 2009, p. 1; Tab M, Sworn Statement of Police Supervisor 2, August 14, 2009, paragraph 4; Tab N, Sworn Statement of Police Supervisor 3, August 17, 2009, paragraph 2; and Tab O, Email from Starr Uniform, September 1, 2009, pp. 1-2]. Chief explained that at some point in time, the Starr Uniform Range was able to secure seven (7) boxes of ammunition from the Scranton, PA Police Department; when this ammunition became available, Chief decided to utilize the Starr Uniform Range to qualify new Security Officers, persons serving in positions that required the employees to carry a weapon every work day. Chief explained that it made more sense to use this ammunition to qualify the new Officers rather than Operations Officer because, unlike many TYAD Security Officers, Operations Officer did not need his weapon every day to perform his job [Tab L-2, Sworn Statement of Chief, September 23, 2009, p. 1].

Chief justified his decision as Authorizing Official to issue a DA Form 3749 (Weapons Card) to Operations Officer, notwithstanding that Operations Officer had not completed standard Army firearms training and proficiency testing, on the following grounds:

- Chief had reviewed the resumes and interviewed the candidates for Operations Officer's position. He knew Operations Officer had been firearms qualified while serving in the U.S. Air Force as a Military Police Officer.
- Operations Officer's job description and duties required that he be firearms qualified and certified.

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<sup>36</sup> If the initial February 2009 TYAD request to AMC for ammunition had been fulfilled, TYAD would have had sufficient ammunition to complete all necessary firearms qualification testing. Instead, it was not until TYAD personnel attended the TAMIS training that they realized that they had improperly requested ammunition by not utilizing the Army's TAMIS automated process.

- As the Operations Officer, Operations Officer served as the principal advisor and Deputy to the Chief of Security. In that law enforcement position, he should be authorized to carry a weapon.
- It was difficult to schedule range time.
- TYAD had never received a response to the February 2009 request to AMC for ammunition and thus did not have ammunition on hand for firearms qualification testing.
- Notwithstanding his issuance of a DA Form 3749 (Weapons Card) to Operations Officer, Chief limited Operations Officer's access to his assigned weapon by requiring that Operations Officer receive specific permission from Chief prior to accessing his firearm. The 2009 weapons control logs indicate that Operations Officer appeared to comply with this restriction.<sup>37</sup> [See Summary of Weapons Control Log Entries," *infra* p. 16; Tab L-1, Sworn Statement of Chief, August 12, 2009, p.1; Tab Q-1, Sworn Statement of Desk Sgt. 2, September 20, 2009, p. 1, paragraph 1; Tab R, Sworn Statement of Desk Sergeant 1, September 17, 2009, paragraph 1].

In defense of his decision to approve weapons qualification for Operations Officer, Chief explained that AR 190-14, paragraph 2-3b, contains an exception to the firearms testing and proficiency requirements under circumstances like those with which he believed he was confronted at the time with regard to Operations Officer. That exception provides that periodic training and testing are prerequisites to an Officer being authorized to carry a firearm, "[e]xcept in situations requiring immediate action to protect life or vital Government assets." [Tab E, AR 190-14, paragraph 2-3, pp. 1-2]. Chief explained his belief that if a situation arose that required Operations Officer to carry a weapon for the protection of life or vital Government assets, he (Chief) would not have sufficient time to complete the paperwork authorizing Operations Officer to carry a weapon; by the time he completed the requisite paperwork, life or property could be at risk.

There is no evidence in the weapons control logs or in witness statements that Operations Officer received or possessed a weapon on a daily basis. Operations Officer's firearm is identified as serial number B334266, weapon number 59. Operations Officer explained that he withdrew his weapon only about once per month to clean it and to maintain operational familiarization with it [Tab P-1, Sworn Statement of Operations Officer, September 15, 2009, p. 1, paragraph 1]. Indeed, the AR 15-6 IO found that Operations Officer was assigned his permanent 9mm pistol in December of 2008 and possessed it on only a limited number of days in 2009. Specifically, the weapons control log<sup>38</sup> and witness statements reflect that between January and September of 2009, Operations Officer's firearm was removed from the Arms Room on only ten (10) occasions, as set forth in the following chart:

## **SUMMARY OF 2009 WEAPONS CONTROL LOG ENTRIES FOR OPERATIONS OFFICER**

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<sup>37</sup> There is contradictory evidence as to whether Chief communicated this restriction to other Security Division personnel. Although Chief and Operations Officer understood that Operations Officer could not possess his weapon without Chief's specific approval, Desk Sgts. Desk Sgt. 2 and Jason Desk Sergeant 1 stated that they were unaware of this restriction on Operations Officer's ability to receive his weapon from the Arms Room.

<sup>38</sup> Although AR 190-11, paragraph 4-19e(5), requires an installation to retain only two months of the weapons control logs, the TYAD Security Division retained the logs for all of Calendar Year 2009.

DATE	BASIS FOR ISSUING OPERATIONS OFFICER'S WEAPON TO HIM
1/30/2009	<b>Potential cleaning.</b> The entry on the weapons control log under the heading, "Received by Patrolman" appears to be Operations Officer's signature.
2/3/2009	<b>Potential cleaning.</b> The entry on the weapons control log under the heading, "Received by Patrolman" appears to be Operations Officer's signature.
2/18/2009 2/19/2009 2/20/2009 3 Days	<b>Undetermined.</b> Notations in the log indicate that Operations Officer's (and Chief's) weapons were issued from the Arms Room and returned on each of these three days. However, as to Operations Officer, the entry does not appear to bear his signature and, in his sworn statement to the AR 15-6 IO, he made no reference to having received his weapon on any of these dates. Operations Officer also told TYAD personnel who were assisting in crafting this report to OSC that he did not recall possessing his weapon on February 18, 19, or 20, 2009. He expressed surprise when told that his weapon had been signed out on these three days and stated that he did not know that the Desk Sgts. had removed his weapon from the Arms Room and placed it in the evidence container so frequently, or words to that effect. The entry on the weapons control log of the officer issuing the weapon on these three days appears to be the letter "W." Desk Sgt. Wall clarified that wrote "CAPTAIN AND CHIEF" and his initials on the weapons control log on these three dates, but that he DID NOT issue the weapon to Operations Officer. Rather, Operations Officer's weapon had been removed from the Arms Room and secured in an evidence container under the control of the Desk Sgts. in accordance with a practice discussed in more detail on pages 18 through 24 of this report. <sup>39</sup>
3/13/09	<b>Potential cleaning.</b>
4/17/09	<b>Support Service of Arrest Warrant.</b> The entry under the heading, "Received by Patrolman" reflects Operations Officer's signature. This is believed to be the occasion on which Operations Officer supported the PA State Police in serving a warrant on TYAD.
5/21/09	<b>Potential cleaning.</b> The entry under the heading, "Received by Patrolman" appears to be Operations Officer's signature.
7/17/09	<b>TYAD Employee Appreciation Day.</b> Chief authorized Operations Officer to carry a weapon for force protection purposes during TYAD Employee Appreciation Day on July 17, 2009. This determination was based on a Vulnerability Assessment prepared by the TYAD Force Protection Officer. There is no indication in the weapons control log that Operations Officer accessed his weapon on July 17, 2009, but Desk Sgt. Jason Desk Sergeant 1 and Operations Officer both stated that Operations Officer was issued his weapon on that date.
8/18/09	<b>Firearms qualification test.</b> Operations Officer successfully completed firearms qualification training and proficiency testing at the Starr Range in Scranton, Pennsylvania, on August 18, 2009, formally earning his firearms certification.

None of the other evidence collected and analyzed by the IO supported the allegation that Operations Officer possessed his weapon more frequently than had been annotated in the weapons control logs. Lt. Police Supervisor 1 stated that he "thought that Operations Officer wore his more often because the guys were always making comments about his big badge and shoulder holster." [Tab K-2, Sworn Statement of Lt. Stephen Police Supervisor 1, August 25,

<sup>39</sup> Desk Sgt. Desk Sgt. 2 explained that during the renovation of Building 20 and prior to the installation of the secure containers (office safes) in the temporary building, "we [desk sergeants] would sign his [Chief's] weapon in and out on the log for him as a convenience...[T]he weapon would be signed out on a Monday morning prior to the Chief's arrival and held in the evidence locker until the Chief arrived for the day, [sic] the Chief would place his weapon in the evidence container at the end of his day, the weapon would remain in the evidence locker until Friday evening when it would be returned to the arms room." [Tab Q-1]. Desk Sgt. Desk Sergeant 1 explained that the Desk Sgts. similarly signed out Operations Officer's weapon from the Arms Room and kept it in the evidence container as a convenience [Tab R]. Based on this evidence, the IO concluded that the Desk Sgts. had removed firearms from the Arms Room, but the weapons were not necessarily handed to Chief or to Operations Officer. Rather, the firearms were stored for undetermined periods of time in an evidence container that was under the control of the Desk Sgts.

2009, p. 1, paragraph 1]. However, Lt. Police Supervisor 1 worked on third shift,<sup>40</sup> at which time he would have had little opportunity to observe Operations Officer, who routinely worked the first shift—their shifts would have overlapped by only thirty (minutes).<sup>41</sup> Sgt. Wall stated that Chief’s and Operations Officer’s weapons “are not stored in the arms room when they are not on duty,” which implies that their weapons were frequently checked out. He also stated that Operations Officer’s weapon was missing from the Arms Room.<sup>42</sup> Like Lt. Police Supervisor 1, Sgt. Wall worked on the third shift for most of 2008 and 2009; when interviewed by the AR 15-6 IO, he was unable to state when he saw Operations Officer with his weapon [Tab S-1, Sworn Statement of Sgt. Patrick Wall, August 7, 2009, p. 2, paragraph 2]. Lt. Police Supervisor 2 recalled that Operations Officer “only withdrew it [his firearm] a couple of times.” [Tab M, Sworn Statement of Police Supervisor 2, August 14, 2009, p.1, paragraph 3] Desk Sgt. 2 stated that it “seemed like” Operations Officer withdrew his weapon from the Arms Room with some frequency “when he first became the Operations Officer, but he doesn’t remove it very much anymore. . . . The last time he removed it was probably on July 17, 2009.” [Tab Q-2, Sworn Statement of Desk Sgt. 2, August 17, 2009, p. 1, paragraph 2].

The IO found all of the testimony credible, but determined that the weapons control log, although not entirely accurate in that it did not reflect the fact that Operations Officer had drawn his weapon on TYAD Employee Appreciation Day on July 17, 2009, was the most persuasive evidence that Operations Officer’s possession of his weapon in 2009 was limited to no more than ten (10) occasions. In actuality, the evidence supports a finding that Operations Officer possessed his weapons on only seven (7) occasions. It appears that Operations Officer did not possess his weapons on any of the three days in February 2009 identified on the weapons control log, but that on those days, the weapon had, in fact, been removed from the Arms Room by the Desk Sgt. and stored in a nearby evidence container. This practice that will be discussed in detail on pages 18 through 24, below. None of the available evidence indicates that Operations Officer possessed his weapon any more frequently.

A review of this case by the Office of the Provost Marshal General (OPMG), the Headquarters, Department of the Army (HQDA) proponent of policy pertaining to DA law enforcement and security personnel and functions, revealed that under the circumstances, Chief had improperly relied on the “exception” set forth in AR 190-14, paragraph 2-3b to permit Operations Officer to be issued a weapon without having completed formal firearms training and proficiency testing.

The “exception” language provides, “[e]xcept in situations requiring immediate action to protect life or vital Government assets, all authorizations to carry firearms by personnel will be, in writing, signed by the appropriate authorizing official, and issued only to personnel who are eligible to carry firearms as specified in paragraph 2-5.” OPMG experts advised that the language, “immediate action to protect life or vital Government assets” must be interpreted literally. The OPMG did not find appropriate or

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<sup>40</sup> The “third shift” comprised the hours from 2130 to 0600 (10:30P.M. to 6:00 A.M.).

<sup>41</sup> The “first shift” comprised the hours from 0530 to 1400 (5:30 A.M. to 2:00 P.M.).

<sup>42</sup> Although it is quite possible that during the periods that Sgt. Wall perceived the Operations Officer’s weapon to be “missing” from the Arms Room, the weapon had, in fact, been removed from the Arms Room by a Desk Sgt. and stored in a nearby evidence container, a practice that will be discussed in detail on pages 18 through 24, below.

persuasive Chief's rationale that his decisions to issue a DA Form 3749 (Weapons Card) to Operations Officer, even though he had not yet attained Army firearms qualification, and to allow him to draw a weapon were justified because were he to be confronted with an "immediate" requirement to arm Operations Officer, he would not have time to prepare the requisite paperwork. OPMG opined that were an "immediate" emergency situation to arise, the regulation would have allowed Operations Officer to draw a weapon, on Chief's order, to protect life or vital government assets. But the *mere possibility* that such a situation, otherwise unspecified, might occur, at some undefined point in the future, was not a sufficient basis for Chief to issue Operations Officer a weapons card or authorize him to carry a weapon prior to his completion of firearms training and certification requirements. In addition, neither of the two circumstances in which Operations Officer was issued his weapon for operational purposes: supporting the PA State Police in serving a warrant on TYAD and providing force protection for TYAD Employee Appreciation Day, appear to be the type of "emergency" situation requiring "immediate action to protect life or vital Government assets." That Operations Officer only infrequently withdrew his weapon from the Arms Room and that he secured Chief's express permission to do so in advance of each such occasion mitigates, but does not cure this inappropriate decision by Chief.

Further, Chief's decision to allow Operations Officer to carry a firearm in the course of his duties, despite not having completed firearms certification, was significant enough that it would have been prudent for Chief to have advised his chain of command of this precedent-setting decision and/or consulted with OPMG as to whether his use of the exception authority provided by the regulation was appropriate in this case. As well, he should have made known to the TYAD Director of Industrial Risk Management and to the Depot Commander that the lack of ammunition and range availability prevented Operations Officer from completing firearms qualification testing and certification. Notwithstanding these concerns, none of the available evidence indicates that Chief acted in bad faith and, no adverse consequences or danger to public health or safety resulted from this error.

**Conclusion as to Allegation 2:** The allegation that Operations Officer, who began working at the TYAD on October 12, 2008, had not obtained an initial firearms certification substantiated. A preponderance of the evidence reflects that Operations Officer lacked the necessary certification to possess a firearm from October 2008, when he entered on duty at TYAD, until August 18, 2009, when he successfully completed Army firearms qualification testing. This violation is not attributable to Operations Officer, however. Operations Officer had no reason to question the validity of Chief's issuance to him of a DA Form 3749 (Weapons Card), authorizing him to draw a weapon and further appears to have complied faithfully with Chief's mandate that Operations Officer seek his express permission on each occasion before drawing his weapon. A preponderance of the evidence indicates that the violation at issue is attributable to an erroneous decision on the part of Chief. However, none of the available evidence indicates that Chief acted in bad faith and, no adverse consequences or danger to public health or safety resulted from this error.

**OSC-Referred Allegation 3: Chief's firearm and twenty-six rounds of ammunition have not been returned to the Arms Room for several months.**

Pursuant to AR 190-11, paragraph 4-1, and AR 190-14, paragraph 2-9, firearms and ammunition accountability and security must be maintained at all times. AR 190-14, paragraph 2-9, requires that Government-owned firearms must be turned-in by an Officer at the end of duty; with few exceptions, none of which apply to the instant case, Federally-employed Army law enforcement and security personnel are not permitted to retain firearms or ammunition after completing their normal tour of duty [Tab D]. Tobyhanna SOP Number 16 [Tab H] further enumerates exacting procedures for weapons and ammunition issuance and turn-in.<sup>43</sup>

Documentary and testimonial evidence gathered by the AR 15-6 IO indicates that no TYAD Security Division weapons or ammunition ever were lost or missing. The IO used a routine external audit of physical security and accountability of arms and ammunition initiated on October 1, 2008, immediately before Operations Officer commenced work at the Depot, as a baseline indication that the TYAD Arms Room was in compliance with regulatory requirements as of that date. That audit determined that all TYAD Security Division weapons were properly logged at the beginning and end of each duty shift.<sup>44</sup>

The AR 15-6 IO's review of Sensitive Item Inventory (Weapons and Ammunition) reports applicable to the TYAD Arms Room for the ensuing two (2) year period also revealed no discrepancies in weapons accountability and further substantiate that no firearm ever was lost or missing.<sup>45</sup>

The weapons control logs and witness statements gathered by the AR 15-6 IO do reflect, however, that Chief had not turned-in his weapon and ammunition at the Arms Room since March 19, 2009 [Tab L-1, Sworn Statement of Chief, August 12, 2009, p. 2, paragraph 1; Tab M, Sworn Statement of Police Supervisor 2, August 14, 2009, p. 1, paragraph 2; Tab N, Sworn Statement of Police Supervisor 3, August 17, 2009, p. 1, paragraph 3; and Tab Q-2, Sworn Statement of Desk Sgt. 2, August 17, 2009, p. 1, paragraph 3]. Based on the evidence gathered

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<sup>43</sup> As discussed above, the SOP requires a shift supervisor to issue each Officer's firearm at the start of the Officer's duty shift in exchange for receipt of an Officer's DA Form 3749 (Weapons Card). Upon removing the Officer's weapon from its specially designated compartment in the Arms Room, the shift supervisor places the Officer's DA Form 3749 (Weapons Card) in that same compartment to reflect that the weapon has been issued. Thus, it can readily be determined which Officer's weapon has been "checked out" by looking in the Arms Room: if a firearm has been issued, it will not be in its assigned storage location and a DA Form 3749 (Weapons Card) will be in its place. The shift supervisor hands the Officer his or her firearm, identified by a unique serial and weapon number, and the requisite ammunition. TYAD SOP Number 16 requires that each Officer sign the weapons control log, which documents the issuance of the weapon, identifying the Officer by name, and recording the date and time. The shift supervisor then initials the log to verify the transaction. At the end of his or her duty shift, the Officer returns his or her firearm to the shift supervisor who reverses the process.

<sup>44</sup> A specific finding in the external audit report notes that the audit determined that all weapons were determined to be properly logged at the beginning and end of each duty shift.

<sup>45</sup> The AR 15-6 IO collected all of the monthly Sensitive Item Inventory Reports for the TYAD arms room for the period beginning November 2008 through the present, with only two exceptions. No inventory was performed in June 2009 because an asbestos abatement project prevented the individual assigned to conduct the inventory from accessing the Arms Room. Further, no inventory was performed in July 2009 because the party assigned to perform the inventory had deployed to Southwest Asia. By the time these omissions were discovered, it was too late to perform the inventory for those months.

by the IO, it appears that Chief's failure to turn-in his weapon and ammunition to the Arms Room since March 19, 2009 can be attributed to actions taken by other members of the TYAD Security Division for their convenience and for the convenience of Chief and Operations Officer, particularly during the period in which the Security Building was undergoing renovation. The evidence reflects that sometime in February of 2009, in anticipation of the renovation project at the Security Building, Chief authorized the purchase of four (4) Class 5 Security Containers (safes) for storage of weapons and ammunition. These safes were delivered to the Security Division in March 2009.

The use of secure office safes is authorized for the safeguarding of weapons "instead of arms rooms" provided that the containers are adequately protected.<sup>46</sup> However, in accordance with AR 190-11, paragraph 4-22e, "security containers weighing less than 500 pounds must be fastened to the structure . . . with bolts or with chains equipped with secondary padlocks." Chief purchased the four (4) safes at issue for his use and for the use of Operations Officer and two special Investigators assigned to TYAD [Tab L-1, Sworn Statement of Chief, August 12, 2009, p. 2, paragraph 1]. These four individuals occupied the private office areas in both Building 20 and in the temporary modular building used during the renovation project. It appears that Chief purchased the safes for the convenience of these individuals; use of the safes eliminated the need for them to leave the temporary security building in which they were located during the renovation of Building 20 and walk outside a greater distance to receive their firearms from the Arms Room, which remained located in Building 20 throughout the renovation. Inspection of the four (4) safes revealed that each was securely bolted to stationary objects, in full compliance with the requirements of AR 190-11, paragraph 4-22e. Chief used the safe in his office to store his weapon, accounting for the documented absence of Chief's weapon from the Arms Room in Building 20 from March 19, 2009, until the AR 15-6 IO questioned the practice in September of 2009 in the course of investigating the allegations referred by OSC. As soon as the AR 15-6 IO questioned the practice of storing his weapon in his office safe, Chief returned his pistol to the Arms Room for storage. Notably, Operations Officer did not store his weapon in the safe provided for that purpose; rather, all evidence indicates that on the occasions on which he withdrew his weapon from the Arms Room, Operations Officer returned his weapon to the shift supervisor at the conclusion of his period of duty.<sup>47</sup> [Tab P-1, Sworn Statement of Operations Officer, September 15, 2009, paragraph 1].

There is some evidence that Chief notified members of the Security Division that he would store his firearm and ammunition in the safe installed in his office; some witnesses recalled reading an email from Chief to this effect. [ See Tab M, Sworn Statement of Police

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<sup>46</sup> See AR 190-11, paragraph 4-20a. Paragraph 4-2(a)(5) of AR 190-11, states that Category IV arms (pistols) may be stored in a General Services Administration (GSA)-approved Class 5 security container, not containing classified material or documents, or a safe-type steel file cabinet not containing classified material or providing forced entry protection as approved by GSA (Fed Spec AA-F-363D, as amended) and that containers weighing less than 500 pounds will be secured to the structure.

<sup>47</sup> The Investigator also turned his weapon over to the shift supervisor at the end of each duty shift; he did not use the office safe.

Supervisor 2, August 14, 2009, p. 1, paragraph 4; Tab N, Sworn Statement of Police Supervisor 3, August 17, 2009, p. 1, paragraph 3; Tab Q-2, Sworn Statement of Desk Sgt. 2, August 17, 2009, p. 1, paragraph 2]. None of the witnesses were able to produce a memorandum or an email to this effect from Chief, and the third shift supervisors during this time period, Desk Sgt. Wall and Lt. Police Supervisor 1, stated that they had never been made aware that Chief had installed an office safe, much less that he would be storing his weapon there. [Tab S-2, Sworn Statement of Sgt. Patrick Wall, September 15, 2009, p. 1, paragraph 1; Tab K-2, Sworn Statement of Lt. Stephen Police Supervisor 1, August 25, 2009, p. 1, paragraph 1].

However, Sgt. Wall told the AR 15-6 IO that Chief's weapon and ammunition were missing for long periods of time before the purchase and installation of the individual office safes. Sgt. Wall could not be more specific with dates or events [Tab S-2, Sworn Statement of Sgt. Patrick Wall, September 15, 2009, p. 1, paragraph 1, lines 4-12]. Based upon interviews with the Desk Sgts., the Investigators and Chief, the AR 15-6 IO determined that the shift supervisors had removed Chief's weapon and ammunition from the Arms Room and stored it in an evidence container in the period preceding the purchase and installation of the office safes.<sup>48</sup> In the instant case, because the TYAD Arms Room did meet the AR 190-11 criteria for storage, it was inappropriate for the evidence container to be used for storage—a practice that was only done for everyone's convenience.

Specifically, the AR 15-6 IO concluded that prior to the purchase of the office safes, some of the shift supervisors were using an evidence container, a metal cabinet containing locked sections, to store weapons and ammunition temporarily for Chief and possibly for other Officers, to include Operations Officer and one of the Investigators, rather than immediately returning the weapons to the Arms Room at the end of the shifts that Chief, Operations Officer and the Investigator worked [See Q-2, Sworn Statement of Desk Sgt. 2, August 17, 2009, p. 1, paragraph 2; Q-1, Sworn Statement of Sgt. Desk Sgt. 2, September 20, 2009, p. 1, paragraph 1; Tab L-2, Sworn Statement of Chief, September 23, 2009, p. 1-2; Tab S-2, Sworn Statement of Sgt. Patrick Wall, September 15, 2009, p. 2, paragraph 1; Tab K-3, Sworn Statement of Lt. Stephen Police Supervisor 1, September 16, 2009, p. 1, paragraph 1]. There is no evidence indicating that any of these weapons ever were missing or unaccounted for. Desk Sgt. Desk Sgt. 2 explained that the Desk Sgts. would remove Chief's and Operations Officer's weapons from the Arms Room on Monday so that it would be available when they reported for duty, store it in the evidence container throughout the week, and return it to the Arms Room on Friday. [See Summary of Weapons Control Log Entries, notations for entry on February 18, 2010; Tab Q-1, Sworn Statement of Desk Sgt. 2, September 20, 2009, p. 1, paragraph 1]. Sgt. Wall stated, "[The AR 15-6 IO] asked me if I felt comfortable using the evidence container in this manner and I responded that I did. I said the evidence container was in a secured area that was manned by an armed sergeant. I also stated that due to the irregular shifts of some personnel and the duties of the desk sergeant it was at times a necessity." [Tab S-2, Sworn Statement of Sgt. Patrick Wall, September 15, 2009, p. 2, paragraph 1, lines 1-4]. This breakdown in adherence to AR and

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<sup>48</sup> As the name implies, an evidence container is used to temporarily store evidence, such as contraband, that is confiscated from perpetrators. For example, if an Officer conducts a routine vehicle search and discovers an illegal substance, the Officer will store the substance in the evidence container to maintain the chain of custody in future criminal proceedings. An evidence container is NOT considered to be a safe or security container for purposes of AR 190-11, however.

TYAD SOP Number 16 led to the appearance that the weapons and ammunition at issue were not secured; an individual entering the Arms Room would see that neither Chief's weapon nor his DA Form 3749 (Weapons Card) was present in the compartment reserved for him and naturally would perceive that the weapon was unaccounted for.

The IO concluded that the accountability of all weapons and ammunition was and always had been intact, in that none of the weapons and ammunition ever were lost or missing, but that the use of the evidence container to store weapons must be discontinued. Upon being notified of this recommendation by the AR 15-6 IO on or around September 18, 2009, [Tab L-2, Sworn Statement of Chief, September 23, 2009, page 2, paragraph 1]. Chief immediately removed the evidence container from the Desk Sgts.' area and prohibited anyone from using it for the temporary storage of weapons and ammunition [Tab L-2, Sworn Statement of Chief, September 23, 2009, p. 2, paragraph 1]. Further corrective action as a result of the instant investigation is reflected the TYAD Security Division's enhanced commitment to the strict implementation of TYAD SOP Number 16—in each and every case, a shift supervisor personally withdraws an Officer's weapon and ammunition from the Arms Room and ensures that each Officer documents the withdrawal and return of their weapon and ammunition on the Weapons Control Log.

When this case was referred to OPMG for review, OPMG experts expressed concern with TYAD's practice of storing weapons in office safes. While conceding that the use of safes for weapons storage was not in violation of AR 190-11, OPMG cautioned that the practice should be employed only in extraordinary circumstances. OPMG advised that such a practice could lead to the circumvention of regulatory requirements by allowing individuals to maintain weapons without conducting the requisite inventories. Particularly given that TYAD has an approved Arms Room, OPMG advised that all weapons assigned to the TYAD Security Division be secured there, without exception, noting that no special treatment should be given to the four Officers (Chief, Operations Officer and the two Investigators) to secure their weapons in their own Class 5 office safes. OPMG further confirmed that the use of an evidence container to store weapons and ammunition was not in accord with AR—the TYAD Arms Room met the AR 190-11 criteria for storing Categories III and IV arms and the evidence container should not have been used for convenience. Finally, OPMG advised that TYAD comply strictly with the procedures set forth in AR 190-11 regarding weapons and ammunition accountability and inventory controls.

**Conclusion as to Allegation 3:** The allegation that Chief has not stored his firearm and twenty-six rounds of ammunition in the Arms Room since March of 2009 is factually correct. However, the weapon and ammunition were never lost, missing or unaccounted for at any time. Rather, all of the available evidence indicates that Chief stored his firearm and ammunition in his office safe between March and September 2009. Chief's use of his office safe, a Class 5 security container, was authorized by AR 190-11. Regardless, Chief should have notified all Security Division Officers of his practice and retained a weapons accountability log for his safe, ensuring that the log was countersigned by a shift supervisor each time he (Chief) withdrew his weapon and ammunition from the safe. However, notwithstanding that his practice accorded with regulations regarding the storage of weapons and ammunition, Chief's use of his safe rather than the Arms Room to store his firearm and ammunition created the appearance of a lack

of accountability and failed to comply with the procedures established by TYAD SOP 16 governing the issuance and turn-in of weapons and ammunition. Further, regardless of the fact that actual accountability of weapons and ammunition was maintained at all times, that Chief did not store his weapons in the Arms Room created the appearance that his weapon remained signed out, and potentially unaccountable, for an overlong period of time—extending well beyond his official duty shift. Accordingly, Chief has discontinued the practice of storing his weapon and ammunition in his office safe and always stores them in the Arms Room when he is not using them in the performance of his official duties.

In addition, the evidence reveals that some shift supervisors used an evidence container, not a safe, to store temporarily the weapons and ammunition of Chief, Operations Officer and one of the Investigators, rather than immediately returning them to the Arms Room when the Officers turned them in at the end of their respective duty shifts. The practice of using an evidence container to store weapons does not comport with AR or TYAD policy and further contributed to perceptions that accountability of the weapons and ammunition had been lost. The evidence container has been removed from the Desk Sgts.' area and the practice of using the evidence container temporarily to store weapons and ammunition has been stopped.

**OSC-Referred Allegation 4: Operations Officer periodically checked out his firearm and ammunition, but did not return them at the end of his shift as required.**

Pursuant to AR 190-11, paragraph 4-1, and AR 190-14, paragraph 2-9, firearm accountability and security must be maintained at all times; “firearms will be returned to the designated control point [the Arms Room] on completion of the assignment [duty shift] for storage and accountability according to AR 190-11.”

Operations Officer testified, and the weapons control logs substantiate, that he never used the security container (safe) in his office to store his weapon and ammunition, even during the renovation of Building 20. The evidence establishes that on six (6) of the seven (7) instances in 2009 on which Operations Officer drew his personal weapon, he properly signed-out his weapon and ammunition from, and returned them to the shift supervisor, as required by AR and TYAD SOP.<sup>49</sup> There is no weapons control log entry reflecting the issue or turn-in of Operations Officer’s weapon and ammunition on July 17, 2009 for TYAD Employee Appreciation Day. However, Desk Sgt. Desk Sgt. 2 specifically recalls issuing Operations Officer’s weapon to him on that day and Operations Officer specifically recalls receiving it [Tab R, Sworn Statement of Jason Desk Sergeant 1, September 17, 2009, p. 1, paragraph 1]. The failure to properly document the issue and turn-in of Operations Officer’s firearm and ammunition on July 17, 2009 indicates a breakdown in adherence to accountability procedures, but it does not support the conclusion that Operations Officer periodically failed to return his firearm and ammunition to the Arms Room at the end of his period of duty.

However, the evidence also makes clear that shift supervisors periodically stored Operations Officer’s weapon in an evidence container in the Desk Sgts.’ work area. Specifically, on February 18, 19 and 20, 2009, shift supervisors stored Operations Officer’s weapon and

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<sup>49</sup> See *supra* pages 15-17.

ammunition in an evidence container in the Desk Sgts.' work area, not in the Arms Room. There is no evidence that Operations Officer ever was issued or otherwise possessed his weapon and ammunition on any of these three days. Desk Sgt. Wall clarified that wrote "CAPTAIN AND CHIEF" and his initials on the weapons control log to document having removed Operations Officer's weapon from the Arms Room on these three days, but that he DID NOT issue the weapon to Operations Officer. Because the use of the evidence container to store weapons and ammunition appears to have been a routine and accepted practice for some period of time, it is possible that shift supervisors used the evidence container to store Operations Officer's weapon and ammunition on days other than those cited above, but there is no definitive testimonial or documentary evidence definitively proving that theory. The shift supervisors' use of an evidence container to store Operations Officer's weapon and ammunition did not accord with AR and TYAD SOP 16 and contributed to the appearance of a lack of accountability regarding Operations Officer's items. However, the AR 15-6 IO determined that there was no evidence that Operations Officer's firearm or ammunition ever was lost, missing or otherwise unaccounted for.

**Conclusion as to Allegation 4:** The allegation that Operations Officer periodically checked out his firearm and ammunition, but did not return them at the end of his shift as required is not substantiated. None of the available evidence indicates that Operations Officer's weapon was ever lost, missing or unaccounted for. All available evidence indicates that on the seven (7) occasions on which Operations Officer drew his weapon and ammunition in 2009, shift supervisors issued the items to him from the Arms Room and he properly returned the items to the shift supervisor and the Arms Room no later than at the conclusion of his period of official duty. There is no evidence that Operations Officer ever used his office safe for the storage of his weapon and ammunition.

However, the evidence does reflect that on three days in February 2009 (February 18, 19 and 20), shift supervisors stored Operations Officer's weapon and ammunition in an evidence container in the Desk Sgts.' work area, not in the Arms Room. There is no evidence that Operations Officer ever was issued or otherwise possessed his weapon and ammunition on any of these three days. Because the use of the evidence container to store weapons and ammunition appears to have been a routine and accepted practice for some period of time, it is possible that shift supervisors used the evidence container to store Operations Officer's weapon and ammunition on days other than those cited above, but there is no definitive testimonial or documentary evidence definitively proving that theory. The shift supervisors' use of an evidence container to store Operations Officer's weapon and ammunition did not accord with AR and TYAD SOP 16 and contributed to the appearance of a lack of accountability regarding Operations Officer's items. An individual entering the Arms Room during any period in which Operations Officer's weapon and ammunition were secured in the evidence container would see that neither his weapon nor his DA Form 3749 (Weapons Card) was located in the Arms Room compartment reserved for Operations Officer and could have reasonably concluded that Operations Officer had failed to return his weapon and ammunition at the end of his duty shift, thus leading to a perception that the items were unaccounted for.

**OSC-Referred Allegation 5: Sgt. Wall informed his supervisor, Lt. Police Supervisor 1, about these allegations, but Lt. Police Supervisor 1 did not attempt to remedy them because of his concerns about retaliation.**

In his sworn statement to the AR 15-6 IO, dated August 25, 2009 [Tab K-2], Lt. Police Supervisor 1 stated:

“Sgt. Wall showed me the [OSC] complaint that he had filed. The last sentence in the complaint said that I didn’t attempt to remedy the situation because of the fear of retaliation. I told Sgt. Wall that I couldn’t agree with this part of his complaint. Sgt. Wall stated that he assumed that this was the reason that his concerns were not passed up the chain of Command ....

[The AR 15-6 IO] asked me if I ever passed up Sgt. Wall [sic] allegations against Chief and Operations Officer to get them addressed or answered. I told him that I didn’t because Sgt. Wall had not made allegations but had asked me if he could be held liable as a firearms instructor if someone was carrying a weapon without qualifying. I told him that we were not the ones that authorized anyone to carry a weapon, [sic] that the chief was the authorizing official. I also told him that if the chief wanted to authorize someone to carry a weapon that the liability would be his. I thought that I had answered Sgt. Wall’s questions so I did not take it any further.”

Lt. Police Supervisor 1’s sworn statement shows that contrary to the allegation, he was not concerned with being subject to retaliation were he to raise a concern up the chain of command to Chief or higher. Further, Lt. Police Supervisor 1 explained that he viewed Sgt. Wall’s concern as a question, not as an allegation that should be raised to Chief for investigation. Finally, Lt. Police Supervisor 1’s statement reflected that he understood who could authorize Operations Officer to possess a firearm and the process for such authorization.

**Conclusion as to Allegation 5:** The allegation that Sgt. Wall informed his supervisor, Lt. Police Supervisor 1, about this situation, but that Lt. Police Supervisor 1 did not attempt to remedy these violations because he was concerned about retaliation is unsubstantiated. A preponderance of the evidence indicates that Lt. Police Supervisor 1 reasonably perceived that Sgt. Wall approached him with a question, not a complaint or “allegation” that required Lt. Police Supervisor 1 to take affirmative action to investigate the matter or to forward it up the chain of command. None of the available evidence supports Sgt. Wall’s assertion that Lt. Police Supervisor 1 did not further report the allegations or take action to remedy them because he was concerned about retaliation.<sup>50</sup>

**LISTING OF VIOLATIONS OR APPARENT VIOLATIONS OF LAW, RULE, OR REGULATIO**

**The investigation of the OSC-referred allegations revealed violations of AR 190-14 in that:**

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<sup>50</sup> Sgt. Wall raised a concern to the IO regarding retaliation against him for filing a complaint with the OSC. The IO properly advised Sgt. Wall that any adverse personnel action taken against him as a result of his role in initiating this investigation would be retaliation, and that Sgt. Wall should seek legal counsel were he to have any concerns.

- Chief did not complete his 2009 annual firearms training and proficiency testing within 12 months from the date of his 2008 certification and thus lacked the certification required to carry a weapon between July 19, 2009, when his 2008 certification expired, and August 18, 2009, when he successfully completed the firearms certification requirements.

Chief erroneously applied the provisions of the regulation to issue Operations Officer a DA Form 3749 (Weapons Card) and to authorize him to draw a weapon and ammunition, despite the fact that Operations Officer had not completed firearms training and proficiency testing in accordance with Army standards.

**The investigation of the OSC-referred allegations revealed violations of AR 190-11, AR 190-14 and TYAD SOP 16 in that:**

- Between March and September 2009, Chief used an office safe to store his weapon and ammunition. Although Chief's use of a safe in this manner was authorized by AR, this practice circumvented the reticulated procedures for the issuance and turn-in of weapons and ammunition set forth in AR 190-14 and TYAD SOP 16. Further, notwithstanding the fact that Chief's weapon and ammunition never were lost, missing or otherwise unaccounted for, his use of his office safe to store these items contributed to perceptions that their accountability had been compromised. Accordingly, the TYAD Security Division and Chief have discontinued the use of office safes to store weapons and ammunition.
- The TYAD Security Division frequently stored weapons and ammunition in an evidence container in the Desk Sgts.' work area. AR 190-11 does not authorize the storage of weapons and ammunition in evidence containers and the practice circumvented the reticulated procedures for the issuance and turn-in of weapons and ammunition set forth in AR 190-14 and TYAD SOP 16. Further, notwithstanding the fact that no weapons or ammunition ever were lost, missing or otherwise unaccounted for, use of the evidence container to store weapons and ammunition contributed to perceptions that accountability for these sensitive items had been compromised. Accordingly, use of the evidence container to store weapons and ammunition has been discontinued and the evidence container has been removed from the Desk Sgts.' work area.

## **CORRECTIVE ACTIONS UNDERTAKEN**

### **Analysis of Individual Culpability**

None of the regulatory violations identified in the context of this investigation constitute criminal offenses. Rather, they are properly categorized as administrative errors or violations of non-punitive regulations. Accordingly, no criminal referral will be made to the Attorney General pursuant to 5 USC §1213(d)(5)(d).

In accordance with AR 190-14, responsibility for ensuring that each Officer was properly certified and re-certified to carry a firearm rested with the TYAD Commander's designated Law Enforcement Official, Chief. Acting on the recommendation of the AR 15-6 IO, the Depot Commander referred this matter to the TYAD Civilian Personnel Management and Employee Relations Office for review and consideration. On August 4, 2010, Chief's supervisor, the

TYAD Director of Industrial Risk Management, issued a Letter of Reprimand to-Chief based on the following misconduct:

- Failing to ensure that all Officers were weapons qualified or re-qualified on a timely basis in accordance with AR 190-14 and FM 19-10.
- Failing to elevate to the Commander the issues regarding the lack of ammunition and unavailability of a firing range for firearms qualification testing.
- Permitting the use of an office safe and an evidence container to temporarily store weapons, which led to the perception that weapons accountability had been compromised.
- Failing to ensure that each issue and turn-in of a weapon was properly recorded in the weapons control log.
- Failing to ensure that TYAD Security Division training records were complete and current.

### **Other Corrective Actions Taken**

- The Director of Industrial Risk Management, TYAD, has prepared a request to establish the new civilian position of Security Division Training Officer. Pending establishment of this position and the hire of a qualified civilian to fill it, a Military Police sergeant has been appointed as to perform the duties of Security Division Training Officer. The Training Officer is charged to ensure that all Security Division training records are current and complete and must notify the Director if an Officer fails to comply with any training or certification requirement. The Training Officer will also designate individuals qualified to conduct firearms qualification training and testing.
- The TYAD Directorate of Industrial Risk Management has implemented a database to track recurring Security Division qualification requirements and the status of those requirements. The Director has also purchased software that will automatically notify the Security Division Training Officer and an Officer's supervisor of the Officer's training status and when an Officer's firearms qualification or other training requirements are due. The software also automatically schedules requisite training courses for the Officer.
- TYAD SOP Number 16 has been modified to state expressly that only Officers with valid firearms qualifications will be issued weapons from the Arms Room.
- In September 2009, the evidence container was removed from the Desk Sgts.' work area and is no longer used to store weapons or ammunition. Office safes have been retained, but the Security Division has implemented a strict policy prohibiting the use of the safes for the temporary storage of weapons or ammunition and mandating storage in the Arms Room of any weapon or ammunition not being carried by an Officer in the performance of official duties.
- In July 2010, the TYAD Internal Review and Audit Compliance (IRAC) Office commenced a review of Security Division procedures to ensure compliance with applicable Army Regulations, Field Manuals and TYAD SOPs. The TYAD IRAC review, which will include unannounced "inspections," will include an assessment of Security Division processes for Sensitive Item Inventory (Weapons and Ammunition) and other physical inventories to ensure that all are properly performed and documented. To date, the TYAD IRAC Office has performed three unannounced "inspections" of Security Division procedures.
- Refresher Corporate Philosophy Training (a TYAD Process-Based management process) has been requested for all members in the Security Division to emphasize the need for open communications, particularly during shift change meetings; conflict resolution among personnel; and the importance of elevating and addressing employee concerns on a timely basis.
- The TYAD Legal Office has begun to provide periodic training to Security Division personnel addressing topics such as the use of force, an Officer's responsibility and liability for weapons and ammunition control, general law enforcement authorities and the proper role of TYAD Officers in the service of warrants and TYAD jurisdiction. The TYAD Legal Office has conducted three training sessions to date and continued regularized training sessions are planned for the future.
- The Security Division is properly using the TAMIS automated system to order ammunition.
- The TYAD Commander meets regularly with Chief to discuss the Commander's expectations for the Chief's performance of duties as the Commander's designated Law Enforcement Representative.
- The TYAD Commander has conducted two sensing sessions: one with the Security Division management team and one with the Officers. Actions are on-going to address any and all concerns identified during these sensing sessions.

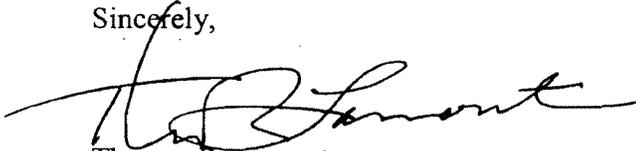
## Conclusion

The Department of the Army takes very seriously its responsibility to address in a timely and thorough fashion the concerns of the OSC. Although the investigation initiated by the Army in response to the referral of information from OSC revealed that some allegations were unsubstantiated, the OSC referral facilitated the Army's ability to identify several regulatory violations and to initiate appropriate corrective action to address them.

I believe that the Department of the Army has taken appropriate action to correct all deficiencies identified as the result of the OSC referral. In addition, I am confident that the new processes and procedures that have been implemented will ensure the robust oversight necessary to prevent such violations in the future.

Should you have any additional questions regarding this report, please do not hesitate to contact my point of contact, [REDACTED], at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "T. R. Lamont", written over a white background.

Thomas R. Lamont  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

**Army Report Documents**  
**Tobyhanna Army Depot (TYAD)**  
**Tobyhanna, Pennsylvania**  
**OSC File Number DI-09-1816**

**Tab**            **Description**

**A--** Secretary of the Army (SA) delegation to the Assistant Secretary of the Army (Manpower & Reserve Affairs) his authority, as agency head, to review, sign, and submit to Office of Special Counsel the report required by Title 5, USC, Sections 1213(b), (c), and (d), dated February 1, 2008

**B--** OSC referral dated February 20, 2009, to the SA requesting he investigate allegations of violations of law, rule, or regulation and a substantial and specific danger to the public health and safety related to activities at the Munson Army Health Center, Fort Leavenworth, Kansas

**C--** Secretary of the Army, Memorandum For Commander, U.S. Army Materiel Command, SUBJECT: Whistleblower Investigation—Tobyhanna Army Depot, Tobyhanna, Pennsylvania – (Office of Special Counsel File Number DI-09-1816), dated July 31, 2009

**D--** AR 190-56, *Military Police – The Army Civilian Police and Security Program*, dated September 27, 2006, provisions referenced in this report

**E--** AR 190-14, *Military Police – Carrying of Firearms and Use of Force for Law Enforcement and Security Duties*, dated March 12, 1993, provisions referenced in this report

**F--** Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Boards of Officers*, dated October 2, 2006

**G--** \*TYAD Regulation No. 10-1, dated May 3, 2010, Organization and Functions (Organization, Mission, and Functions) of the TYAD Security Division *\*(Note: Distribution is Restricted. Public access to this regulation is restricted because of concerns associated with the protection and security of Army installation)—copy deleted from redacted Army Report version*

**H--** TYAD Security Division, "Standing Operating Procedure Number 16," dated October 1, 2008

**I--** \*AR 190-11, *Military Police – Physical Security of Arms, Ammunition, and Explosives*, dated November 15, 2006, provisions referenced in this report. *\*(Note: Distribution is Restricted. \*(Note: Distribution is Restricted. Public access to this regulation is restricted because of concerns associated with the protection and security of Army installation)—copy deleted from redacted Army Report version*

**J--** Field Manual 19-10, *Military Police: Law and Order Operations*, dated September 1987

**K--** K-1--Sworn Statement of Mr. Stephen Vogt dated August 7, 2009

- K-- K-1--Sworn Statement of Police Supervisor 1 dated August 7, 2009
- K-2-- Sworn Statement of Police Supervisor 1 dated August 25, 2009
- K-3-- Sworn Statement of Police Supervisor 1 dated September 16, 2009
- L-- L-1--Sworn Statement of Chief dated August 12, 2009
- L-2-- Sworn Statement of Chief, dated September 23, 2009 with an email dated September 1, 2009, from Chief to [Redacted] regarding TAMIS Class at Redstone Arsenal
- L-3-- Sworn Statement of Chief dated February 10, 2010
- M-- Sworn Statement of Police Supervisor 2 dated August 14, 2009
- N-- Sworn Statement of Police Supervisor 3 dated August 17, 2009
- O-- Email from Chief to [Redacted] and the IO enclosing an email from [Redacted] of the Starr Uniform Center dated September 1, 2009
- P— P-1-- Sworn Statement of Operations Officer dated September 15, 2009
- P-2--Sworn Statement of Operations Officer dated August 13, 2009
- Q-- Q-1-- Sworn Statement of Desk Sergeant 2 dated September 20, 2009
- Q-2-- Sworn Statement of Desk Sergeant 2 dated August 17, 2009
- R-- Sworn Statement of Desk Sergeant 1 dated September 17, 2009
- S-- S-1-- Sworn Statement of Mr. Patrick Wall dated August 7, 2009
- S-2-- Sworn Statement of Mr. Patrick T. Wall dated September 15, 2009
- S-3-- Sworn Statement of Mr. Patrick Wall dated July 13, 2010
- S-4-- Email dated August 21, 2009, from IO to Mr. Patrick Wall, entitled "Statement," and advising Mr. Wall to seek counsel if negative impacts result from a whistleblower investigation
- S-5—Sworn Statement of Mr. Patrick Wall dated August 20, 2009
- T-- Witness Listing for Army Report --DI-09-1816—*copy only in unredacted Army Report version*