



Audit of the Department of Justice's
Implementation of its Policy to
Electronically Record Statements of
Arrestees in Custody



AUDIT DIVISION

24-100

SEPTEMBER 2024



Audit of the Department of Justice's Implementation of its Policy to Electronically Record Statements of Arrestees in Custody

Introduction

In May 2014, to help ensure accountability and promote public confidence in the institutions and processes that guide the nation's law enforcement efforts, the Attorney General announced Department of Justice (DOJ) Policy 9-13.001 Electronic Recording of Statements (the e-Recording Policy). This policy established the presumption that, starting in July 2014, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); and United States Marshals Service (USMS), the DOJ's primary law enforcement components, will electronically record statements made by individuals in their custody when in a place of detention (POD) with suitable recording equipment following arrest, but prior to the individual's first court appearance.

Objective

The audit objective was to assess component-level policies and procedures implemented to effectuate the e-Recording Policy. Our audit covered the period from May 2014 (the date that the Attorney General announced the policy) to November 2023. To accomplish our objective, we interviewed a total of 35 officials from the Office of the Deputy Attorney General and law enforcement component headquarters offices, as well as the Executive Office for United States Attorneys, and 2 United States Attorney's Offices (USAOs). In addition, we interviewed 53 Special Agents, Deputy U.S. Marshals, Supervisory Special Agents, Supervisory Deputy U.S. Marshals, Technically Trained Agents, Physical Security Specialists, Telecommunications Specialists, and Staff Operations Specialists across a total of 16 ATF, DEA, FBI, and USMS sites nationwide. At these locations, we inspected the interview rooms and recording equipment used for custodial interviews and reviewed a judgmental sample of closed investigative case files. Appendix 1 contains further details on our audit scope and methodology.

Audit Results

We found that the DOJ's law enforcement components integrated the e-Recording Policy into their internal policies, procedures, and operations. Specifically, each of DOJ's primary law enforcement components had its own internal policy that generally aligned with the DOJ e-Recording Policy. Although USAOs reported isolated instances of non-compliance or inadequate recordings, none reported significant issues or regular non-compliance by any component. Additionally, we found that each of the 16 sites that we visited had functional and accessible recording equipment. Moreover, the law enforcement personnel that we interviewed demonstrated knowledge of the e-Recording Policy's recording presumption.

We did, however, identify inconsistencies in the application of the e-Recording Policy or the components' internal policy in 17 of 81 (or nearly 21 percent) of the sampled closed case files that we reviewed. These inconsistencies were largely administrative in nature. We also found that most of the personnel we interviewed were unaware of permissible exceptions to the policy. We did not, however, find that individuals' lack of knowledge of the permissible exceptions to the e-Recording Policy increased the number of instances in which exceptions to the e-Recording policy were used or that the exceptions were relied on improperly. Finally, we found that some components did not train their Task Force Officers (TFO) on the e-Recording Policy. Therefore, we believe that the law enforcement components have an opportunity to strengthen some of their practices to avoid unnecessary risks.

Implementation of DOJ e-Recording Policy

According to the DOJ e-Recording Policy, each law enforcement component was required to:

1. Draft its own policy governing placement, maintenance, and upkeep of suitable recording equipment, as well as requirements for the preservation and transfer of recorded content; and
2. bear the cost of acquiring and maintaining recording equipment in sufficient numbers to meet expected needs for

the recording of custodial interviews that occur in the PODs they control.¹

The e-Recording Policy further specifies that electronic recording, which may be covert or overt, will begin as soon as the subject enters the interview area and will continue until the interview is completed. In addition, the e-Recording Policy established the following exceptions to recording:

1. **Refusal by Interviewee.** If the interviewee is informed that the interview will be recorded and indicates that he or she is willing to give a statement only if it is not electronically recorded.
2. **Public Safety and National Security.** When questioning is done for the purpose of gathering public safety information under *New York v. Quarles*, 467 U.S. 649 (1984) or, in those limited circumstances, when questioning ensues to gather national security-related intelligence and law enforcement personnel perceive that recording presents a risk of public disclosure of sources or methods, which would compromise national security.
3. **Recording Is Not Reasonably Practicable.** When circumstances prevent recording or render an otherwise presumptively recorded interview not reasonably practicable, such as equipment malfunction, an unexpected change of interview location, or a need for multiple interviews in a limited timeframe exceeding the number of available recording devices.
4. **Residual Exception.** When the Special Agent-in-Charge and the United States Attorney (or their designees) agree that a significant and articulable law enforcement purpose requires setting the electronic recording aside.² The e-Recording Policy states that this exception is to be used sparingly.

The e-Recording Policy further states that USAO and field offices of each agency should consider collaborating, if and as needed, to provide periodic training for agents and prosecutors on best practices associated with electronic recording of interviews.

¹ The e-Recording Policy defines PODs as all places where persons are held in connection with federal criminal charges and can be interviewed. This includes federal facilities as well as any state, local, or tribal law enforcement facility, office, correctional or detention facility, jail, police, or sheriff's station, holding cell, or other structure used for such purpose. With respect to a POD owned or controlled by the law enforcement components, the e-Recording Policy defines suitable recording equipment as an electronic recording device deemed suitable by the agency for the recording of interviews that is reasonably designed to capture electronically the entirety of the interview.

Also, the e-Recording Policy strongly encourages the use of video recording. However, the policy also states that when video recording equipment is not available, audio recording may be used.

Components Established Internal Policies and a Sample of USAOs Reported that Components Generally Complied with the e-Recording Policy

We found that the law enforcement components established internal policies on electronic recording of statements that contained all the required elements specified in the e-Recording Policy, including incorporating the presumption to record, the definition of suitable recording equipment according to its needs, and a requirement for their personnel to document the use of any exceptions allowed by the e-Recording Policy and to make this documentation available to the United States Attorney. In addition, except for the DEA and FBI, the components included discretionary elements of the e-Recording Policy in their internal policies. Specifically, the DEA did not include e-Recording Policy provisions for the use of audio recording when suitable video recording equipment is unavailable, and the FBI did not include e-Recording Policy language that strongly encourages the use of video recording.

Finally, as the end customer for custodial interview recordings, USAOs have an interest in ensuring that the law enforcement components provide legally sufficient recordings that are clear and indisputable records of important statements and confessions made by individuals who have been detained. We selected a judgmental sample of 10 USAO offices nationwide and requested information about the sufficiency of recordings that the components in their district provide. While some USAOs reported isolated instances of non-compliance or inadequate recordings, none reported significant issues or regular non-compliance by any component.

Case Reviews Performed to Assess Compliance with the e-Recording Policy

To assess the law enforcement components' compliance with the e-Recording Policy, we judgmentally selected and visited four sites per component for a total of 16 sites across the United States. At each site, we judgmentally selected a sample of cases that closed between 2018 and 2022.³ From our sample of closed cases, we reviewed Reports of Investigation (ROI) and, when appropriate, evidence

² While the USMS does not have Special-Agents-in-Charge and conducts very few custodial interviews, a USMS official explained that the Chief Deputy United States Marshal, Regional Fugitive Task Force Commander, or Chief Inspector is the equivalent of a Special Agent-in-Charge for purposes of this policy.

³ The number of cases that we selected for review varied slightly depending on the: (1) number of closed cases that included a custodial interview and (2) component's ability to filter their respective case management system (CMS) for cases with custodial interviews. None of the components' CMSs had the same filtering options and each lacked the functionality to retrieve only the cases with custodial interviews. We accounted for this in our methodology, by using available filter options to maximize the likelihood of identifying a case that included a custodial interview. Nevertheless, we could not ensure that all cases in the sample had a custodial interview.

disposition forms. We also reviewed a sample of the associated recordings when the recording was available.⁴

In total, we reviewed 81 closed cases that included custodial interviews, and we found 17 instances of what appeared to

primarily be administrative non-compliance with either the e-Recording Policy or the components' internal policy.

Table 1 provides a breakdown of our findings.

Table 1
Errors Identified in Closed Cases Containing Custodial Interviews

Component	Closed Cases with Custodial Interviews Reviewed	Number of Reviewed Cases with an Issue Identified	Description of the Issues
ATF	17	3	The ROIs stated that a custodial interview was done. However, there was not a record of recordings in ATF's evidence management system for two cases, there was not a physical recording for another case, and the ROIs for these cases did not cite an exception to recording.
DEA	24	6	Two case files indicated that physical recording evidence was returned to the case file, but the case files did not contain physical recordings. Four case files indicated that recording evidence was destroyed in accordance with DEA's Records and Information Management policy. However, the evidence disposition form for each of these cases was missing the evidence custodian's authorization signature.
FBI	36	5	For one case, the recorded statements were inaudible. For a second case, the recording did not include a date and time stamp. For a third case, the electronic surveillance evidence envelope was mislabeled as a non-custodial interview. For a fourth case, there was a recording in the case file; however, the ROI did not include a summary of the custodial interview, as required. For the fifth case, the recording started after the arrestee was in the room and ended prior to the conclusion of the interview and exit of the arrestee from the interview room.
USMS	4	3	The ROIs stated that there was a custodial interview completed, however, the case file did not contain evidence of a physical recording or disposition form noting the approved timeframe for the destruction of the recording. Moreover, no exceptions to the e-Recording Policy were cited.

Source: OIG analysis of a sample of closed DOJ law enforcement component cases

Overview of Components and Recording Equipment

The e-Recording Policy defines a POD as any structure where persons: (1) are held in connection with federal criminal charges and (2) can be interviewed. It should be noted that the Policy's definition of PODs expressly identifies holding cells as PODs. We asked each law enforcement component to provide the number of PODs it controls and identify which of these PODs have suitable recording equipment that is functional and accessible (with a description of the recording equipment), as required by the e-Recording Policy. Based on the information provided

by the components, both ATF and DEA stated that each of its PODs had suitable recording equipment, the FBI noted that it assessed its equipment needs and continues to purchase equipment as its budget allows, and USMS personnel stated that USMS conducts very few custodial interviews. We noted that USMS had not completed an assessment to determine what, if any, recording equipment is needed to achieve compliance with the e-Recording Policy. Table 2 provides a summary of the information received from the components as of January 2024.

⁴ The DEA's internal policy requires the destruction of custodial interview recordings after the completion of judicial proceedings. Because the scope of our case review was limited to closed cases,

the number of DEA custodial interviews that we were able to review was limited.

Table 2

Component-Reported Places of Detention with Suitable Recording Equipment as of January 2024

Component	Reported Number of Applicable PODs Owned or Controlled	Reported Number of Applicable PODs with Suitable Recording Equipment	Explanation of Results
ATF	163	163	Of the 163 PODs, ATF reported that 113 have integrated digital video recording systems, 26 have standalone cameras with audio and video capabilities, and 46 have audio-only recorders. ^b During our site visits at a sample of ATF locations, we confirmed that each location had suitable recording equipment that was functional and accessible.
DEA	198	198	Of the 198, DEA reported various types of suitable recording equipment including camera and tripods, audio video recorders, and hard-wired systems. During our site visits at a sample of DEA locations, we confirmed that each location had suitable recording equipment that was functional and accessible. ^c
FBI	380	187 ^a	According to the FBI, funding issues have impacted its ability to outfit its PODs. During our visits to a sample of FBI locations, we confirmed that each sampled location had suitable recording equipment that was functional and accessible.
USMS ^d	USMS unable to confirm ^d	USMS unable to confirm ^d	In FY 2014, USMS made an initial purchase of recording equipment, including camcorders, tripods, and accessories, in response to the issuance of the e-Recording Policy. In response to our request for current recording equipment at USMS PODs, USMS stated that it had 209 pieces of inventoried equipment for use at its PODs. However, a USMS official told us that this was not a comprehensive record and did not include all 94 judicial districts in which the USMS operates. Notably, we reviewed the equipment at the four USMS locations in our sample and confirmed that each inspected location had suitable recording equipment that was functional and accessible; however, the catalog of inventoried equipment provided by the USMS did not include this equipment. ^d

Source: DOJ Law Enforcement Components and OIG Analysis

^a Of the FBI's 187 PODs, 121 have integrated digital video recording systems and 66 are integrated systems that, while not connected to a server, do connect to a hard-wired recorder located in a central control room.

^b The total number of recording systems exceeds the ATF's reported total of 163 because some PODs can have multiple types of recording equipment available. For the purposes of our information request, we defined an integrated digital video recording system as a system in which the video recording equipment is connected to a computer and a server.

^c Prior to January 2024, DEA reported that, of its 237 offices, 188 offices had an interview room with suitable recording equipment, 14 offices had an interview room but lacked component-defined suitable recording equipment and 35 did not have an interview room. In November 2023, we alerted DEA to the 14 offices that did not have equipment and in January 2024 DEA reported it obtained suitable recording equipment and updated its records. The DEA records then showed out of 238 owned or controlled DEA offices, 198 had an interview room with suitable recording equipment and 40 did not have an interview room.

^d In August 2024, in response to the issuance of a draft of this report, USMS was able to provide evidence that each of its PODs had sufficient recording equipment, which is discussed in further detail in Appendix 6 of this report.

FBI officials explained that budgetary constraints have prevented the procurement of what it considers suitable recording equipment. However, with over 200 rooms in

need of equipment nearly 10 years after the policy's implementation, we recommend that the FBI devise and implement a plan to meet, with appropriate urgency, the

requirements of the e-Recording Policy. In addition, the USMS's listing of PODs and the inventory of equipment that USMS provided us in October 2023 was not comprehensive, demonstrating that the USMS was not actively managing its responsibilities related to the e-Recording Policy. Therefore, we recommended that the USMS should identify the number of its domestic PODs that necessitate recording equipment and effectuate a plan for ensuring those locations are sufficiently equipped.⁵

To further assess the law enforcement components' compliance with the e-Recording Policy, we checked equipment used to record custodial interviews and the interview rooms at each of the 16 component sites inspected. Specifically, we: (1) observed the equipment used to record custodial interviews, (2) reviewed information on the features and capabilities of the recording equipment, (3) received a demonstration of the recording equipment via a sample recording, (4) observed how a recording may be used as evidence and secured appropriately, and (5) performed a walk-through of each interview room. We found that each of the 16 sites had accessible and functional recording equipment and an appropriate space to conduct and record custodial interviews.

Components Need to Refresh Personnel on the DOJ's e-Recording Policy and Component-Level Internal Policies

Shortly after the May 2014 issuance of the e-Recording Policy, the law enforcement components communicated the e-Recording Policy to field sites and established new internal policies for implementation. The USAO also held a multi-day training in Washington D.C. open to all DOJ personnel.

Although we found that the law enforcement components trained their personnel on the e-Recording Policy to ensure widespread awareness of the presumption-to-electronically record custodial interviews, we found that many personnel did not fully understand the policy's exceptions.

In fact, while most personnel from the sites that we visited reported that they considered the e-Recording Policy standard practice and understand that they are expected to record custodial interviews, many personnel did not have a complete understanding of the exceptions available under the presumption-to-record while others did not know that the e-Recording Policy contained exceptions at all. This may have occurred because the need to use the policy exceptions is infrequent or merely because law enforcement components do not provide their personnel with subsequent refresher training about the e-Recording Policy. We did not find that individuals' lack of knowledge of the permissible exceptions to the recording policy increased

the number of instances in which exceptions to the e-Recording Policy were used or that the exceptions were relied on improperly. However, in order to implement the policy effectively, it is important for the components to be familiar with the exceptions to the policy as well as the presumption to record.

Also, in our review of closed cases across all components, we found instances of non-compliance as detailed in Table 1. These included personnel not initiating the electronic recording as soon as the subject entered the interview area and not continuing to record until the interview concluded. Additionally, we found some cases where the ROI reported a custodial interview occurred, but the office was unable to provide a recording, documentation of its disposition, or documentation of an exception to the recording policy.

Without personnel having fulsome knowledge of the e-Recording Policy's provisions and requirements, the law enforcement components risk non-compliance, such as not recording an interview when it should be recorded, incomplete recordings, and insufficient supporting documents, which may ultimately compromise investigative and legal outcomes, as well as the increased public confidence intended by the e-Recording Policy. In response to a draft of this report, the DEA provided evidence that it addressed the issues we identified in this audit through updating its policy and providing training to Special Agents and TFOs.

The DEA and FBI Need to Train Task Force Officers on the e-Recording Policy

Each law enforcement component works with state and local TFOs who act as deputized federal agents for the purposes of joint law enforcement operations. While the e-Recording Policy does not explicitly state that components are required to train TFOs on the policy, the components' policies related to TFOs state that these individuals must comply with and abide by the particular component's policies and procedures. Therefore, it is incumbent on the components to train TFOs accordingly, to include training on the e-Recording Policy.

Both ATF and USMS provide training to task force participants on the e-Recording Policy. However, we found that, despite applicable internal policies and requirements for TFOs, neither the DEA nor FBI train their TFOs on how to implement and follow the e-Recording Policy. Without specific training on the e-Recording Policy in its respective TFO trainings, the DEA and FBI risk their TFOs lacking awareness and understanding of the presumption-to-record custodial interviews, as well as other e-Recording Policy requirements and provisions. In addition, this lack of awareness and training could jeopardize an investigation due to unfamiliarity with the e-Recording Policy purpose, requirements, and exceptions. As part of its response to a

⁵ As discussed in Appendix 6, in response to a draft of this report the USMS was able to provide an accurate listing of PODs and

inventory.

draft of this report, the DEA provided its updated curricula of training to TFOs, which addresses our concerns.

Conclusion and Recommendations

The law enforcement components have generally integrated the e-Recording Policy into their policies, procedures, and best practices. Specifically, throughout the components we found widespread knowledge of the basic e-Recording Policy and the DOJ's presumption-to-record standard. In addition, each component defined suitable recording equipment according to its needs, and the components have made efforts to provide their offices suitable recording equipment. Moreover, our site visits to 16 offices found that each office had access to a suitable space to perform a custodial interview and had functional suitable recording equipment.

However, while the components have worked to equip their offices with recording equipment, the FBI and USMS need to ensure domestic PODs have sufficient suitable recording equipment. Additionally, all components need to provide refresher training on the e-Recording Policy and their related internal policies for personnel to address gaps in

knowledge, including allowable exceptions to recording. The DEA and FBI also need to include discussion of the e-Recording Policy in their TFO training curricula to ensure TFOs are fully knowledgeable of the e-Recording Policy requirements.⁶

We made four recommendations for the law enforcement components. We recommended that: (1) the FBI devise and implement a plan to ensure that it meets all of the requirements of the e-Recording Policy; (2) the USMS identify the number of its domestic PODs that necessitate recording equipment and effectuate a plan for ensuring those locations are sufficiently equipped; (3) the DEA and FBI include discussion of the e-Recording Policy in the curricula of trainings provided to TFOs; and (4) ATF, DEA, FBI, and USMS provide their personnel refresher training on the e-Recording Policy, including the policy's allowable exceptions to recording. The law enforcement components concurred with our recommendations and provided responses to our draft report, which can be found in Appendices 2 through 5. Appendix 6 contains our analysis of the law enforcement components responses and actions necessary to close the audit report.

⁶ After a draft of this report was issued, USMS provided evidence that its domestic PODs have sufficient suitable recording equipment. Further, the DEA provided sufficient

evidence that it newly implemented training on the e-Recording Policy for its employees and TFOs. Appendix 6 discusses this in more detail.

APPENDIX 1: Audit Scope and Methodology

Scope and Methodology

The scope of our audit focused on activities from May 2014, the date that the Attorney General announced the e-Recording Policy, to the end of our fieldwork in November 2023. To accomplish our objective, we: (1) interviewed 88 officials from the Office of the Deputy Attorney General, Executive Office of United States Attorneys, United State Attorney's Offices, and law enforcement components; (2) assessed law enforcement component policies and procedures on the electronic recording of custodial interviews and their compliance with the related policy; (3) evaluated implementation and subsequent monitoring for compliance with the e-Recording Policy; and (4) performed site visits at 16 judgmentally-selected ATF, DEA, FBI, and USMS sites.

Statement on Compliance with Generally Accepted Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Internal Controls

We performed testing of internal controls significant within the context of our audit objective. We did not evaluate the internal controls of the law enforcement components to provide assurance on their internal control structures as a whole. The law enforcement components' management are responsible for the establishment and maintenance of internal controls in accordance with the e-Recording Policy. Because we do not express an opinion on the law enforcement components' internal control structures as a whole, we offer this statement solely for their information and use.⁷

The internal control deficiencies we found are discussed in the Audit Results section of this report. However, because our review was limited to those internal control components and underlying principles that we found significant to the objective of this audit, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Sample-Based Testing

To accomplish our audit objective, we performed sample-based testing to observe suitable recording equipment and interview rooms, as well as review closed case files. In this effort, we employed a judgmental sampling design to obtain broad exposure to numerous facets of the areas we reviewed. We judgmentally selected and visited four sites per component (16 sites total) geographically disbursed across the United States.

During our site visits, we received a demonstration of the recording equipment and reviewed information on the features and capabilities of the recording equipment, as well as observed how a recording may be used as evidence and secured appropriately. In addition, we reviewed a total of 129 closed cases. The number of cases that we selected for each component varied slightly depending on the component's ability to identify cases with custodial interviews and the number of closed cases. None of the components' case management systems had the functionality to retrieve only the cases with custodial interviews and we therefore accounted for this by using the available filter options to try to maximize the likelihood of identifying a case that included a custodial interview. Nevertheless, we could not ensure that the cases in the sample all had a custodial interview.

For the cases we reviewed, we requested that the component office personnel provide the case files that included the following items, where applicable: (a) Reports of Investigation associated with the case, (b) evidence disposition forms, and (c) custodial interview recordings. We reviewed a sample of the custodial interview recordings that the components were able to provide for indications of incomplete content. Specifically, we observed whether the arrestee: (1) entered the room after the recording started and (2) left the room before the recording ended. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected.

Computer-Processed Data

We obtained information from the law enforcement components' case management and property systems. We did not test the reliability of those systems as a whole, therefore any findings identified involving information from those systems were verified with documents from other sources.

⁷ This restriction is not intended to limit the distribution of

this report, which is a matter of public record.

APPENDIX 2: The Bureau of Alcohol, Tobacco, Firearms and Explosives' Response to the Draft Audit Report



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

[Assistant Director]

Washington, DC 20226

www.atf.gov

700000:RAM
8310

MEMORANDUM TO: Assistant Director (Office of Professional Responsibility and Security Operations)

FROM: Assistant Director (Office of Field Operations)

SUBJECT: OIG Draft Report, "Audit of the Department of Justice's Implementation of its Policy to Electronically Record Statements of Arrestees in Custody"

This memorandum responds to the recommendations contained in the Office of the Inspector General's (OIG) draft report titled "Audit of the Department of Justice's Implementation of its Policy to Electronically Record Statements of Arrestees in Custody." We welcome OIG's constructive comments and appreciate the opportunity to respond.

Recommendation 4. ATF, DEA, FBI, and USMS provide their personnel refresher training on the e-Recording Policy, including the policy's allowable exceptions to recording.

ATF concurs with this recommendation. ATF will develop and deliver refresher training for all Special Agents by the end of the calendar year.

Please let me know if I can be of further assistance on this or any other matter.

MATTHEW
VARISCO
Digitally signed by
MATTHEW VARISCO
Date: 2024.07.17
12:03:14 -04'00'
Matthew Varisco

APPENDIX 3: The Drug Enforcement Administration's Response to the Draft Audit Report



U.S. Department of Justice
Drug Enforcement Administration
Office of Compliance
8701 Morrisette Drive
Springfield, Virginia 22152

www.dea.gov

July 17, 2024

MEMORANDUM

TO: Jason R. Malmstorm
Assistant Inspector General for Audit
Department of Justice
Office of the Inspector General

FROM: Edward J. Kovacs
Acting Chief of Compliance
Office of Compliance

EDWARD
KOVACS

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EDWARD KOVACS
Date: 2024.07.17
12:28:03 -04'00'

SUBJECT: Drug Enforcement Administration Response to the Office of the Inspector General Audit of the Department of Justice's Implementation of its Policy to Electronically Record Statements of Arrestees in Custody Draft Audit Report

The Office of the Inspector General (OIG), Washington Division Audit Office, conducted an audit of the Department of Justice's (DOJ) Implementation of its policy to electronically record statements of arrestees/defendants in custody. As a result of this audit, the Drug Enforcement Administration (DEA) took proactive steps to address the concerns raised by OIG prior to the conclusion of this audit. In November 2023, DEA updated its Electronic Recording (e-Recording) of Statements Policy and established requirements for Special Agents (SA) and Task Force Officers (TFO) to take mandatory training and integrate the e-Recording Policy into agency policy, procedures, and operations.

OIG made 4 Recommendations to DOJ law enforcement components in this report. Recommendations 3 and 4 require a response from DEA regarding training of the implementation of the e-Recording of Statements Policy (DOJ Policy 9-13.001). DEA provides the below response to the specific DEA recommendations.

Recommendation 3: The DEA and FBI include discussion of the e-Recording Policy in the curricula of trainings provided to TFOs.

DEA Response

Concur. DEA has addressed this concern by updating its TFO training. A segment in the TFO training, titled *Overview of Select Federal Rules and Procedures*, includes instruction on the custodial interview recording requirement. This section of the training instructs TFOs on the DOJ

Policy 9-13.001. Documentation that addresses this recommendation was previously provided to OIG by DEA under separate cover memorandum.

DEA has met the requirements of this recommendation and requests closure by OIG.

Recommendation 4: ATF, DEA, FBI, and USMS provide their personnel refresher training on the e-Recording Policy, including the policy's allowable exceptions to recording.

DEA Response

Concur. Electronic Recording Policy Refresher Training is required for DEA SAs and TFOs every three years. The three-year training requirement was added to Agents Manual Subsection 6141.32, *Interviewing (Adults)/Electronic Records of Statements or Interviews*. The mandatory training is conducted through the DEA's Learning System (DEALS). The training outlines the DOJ policy requirement that interviews of federally detained persons will be electronically recorded and covers the policy's allowable exceptions to recording. Documentation to address this recommendation was previously provided to OIG under a separate cover memorandum.

DEA has met the requirements of this recommendation and requests closure by OIG.

If you have any questions or concerns regarding DEA's response, please contact Janice Swygert, Program Manager, External Audit Liaison Section, at (571) 776-3119.

APPENDIX 4: The Federal Bureau of Investigation's Response to the Draft Audit Report



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

July 22, 2024

The Honorable Michael E. Horowitz
Inspector General
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Mr. Horowitz:

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and respond to your office's report entitled, Audit of the Department of Justice's Implementation of its Policy to Electronically Record Statements of Arrestees in Custody.

FBI's Training Division looks forward to addressing concerns and recommendations provided in the report. The FBI recognizes the importance of the aforementioned DOJ policy and will eagerly update our procedures to ensure they match agency policy. We appreciate your feedback as we continue this effort.

Should you have any questions, feel free to contact me. We greatly appreciate the professionalism of your audit staff throughout this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacqueline Maguire".

Jacqueline Maguire
Assistant Director
Training Division
Federal Bureau of Investigation

Recommendation 1: “The FBI devise and implement a plan to ensure that it meets all of the requirements of the e-Recording policy”

FBI Response: The FBI concurs with the recommendation and is currently administering a plan of action to include the digitization and itemization of products, prioritization of equipment access where needed, procurement and installation of newly acquired equipment, and any cost mitigation efforts.

Recommendation 3: “The DEA and FBI include discussion of the e-Recording Policy in the curricula of trainings provided to TFOs”

FBI Response: The FBI concurs with the recommendation. The FBI’s Training Division (TD), in coordination with other FBI divisions, will review the training currently provided to Task Force Officers (TFOs) and determine how to include or increase discussion of the DOJ Electronic Recording Policy in the curricula.

Recommendation 4: “ATF, DEA, FBI, and USMS provide their personnel refresher training on the e-Recording Policy, including the policy’s allowable exceptions to recording.”

FBI Response: The FBI concurs with the recommendation. The FBI’s Training Division, in coordination with other FBI divisions, will review current training on DOJ Electronic Recording Policy to determine the status of refresher training and what further actions can be taken responsive to this recommendation.

APPENDIX 5: The United States Marshals Service's Response to the Draft Audit Report



U.S. Department of Justice
United States Marshals Service
Office of Professional Responsibility

Washington, DC 20530-0001

July 25, 2024

MEMORANDUM TO: Jason R. Malmstrom
Assistant Inspector General for Audit
Office of the Inspector General

FROM: Geoffrey S. Deas JOHNNY WILLIAMS
Assistant Director

Digitally signed by
JOHNNY WILLIAMS
Date: 2024.07.25
12:45:08 -05'00'

SUBJECT: Response to Draft Audit Report: Audit of the Department of Justice's Implementation of Its Policy to Electronically Record Statements of Arrestees in Custody

This is in response to correspondence from the Office of the Inspector General (OIG) requesting comment on the recommendations associated with the subject draft audit report. The United States Marshals Service (USMS) appreciates the opportunity to review the Report and concurs with the recommendations therein. Actions planned by the USMS with respect to OIG's recommendations are outlined in the attached response.

Should you have any questions or concerns regarding this response, please contact External Audit Liaison Krista Eck, Office of Professional Responsibility, at 202-819-4371.

Attachments

cc: Shenika N. Cox
Regional Audit Manager
Office of the Inspector General

Louise Duhamel
Assistant Director, Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

Michelle Hamilton
Acting Chief of Staff
United States Marshals Service

Recommendation 2: OIG recommends that USMS identify the number of domestic PODs that necessitate recording equipment and effectuate a plan for ensuring those locations are sufficiently equipped.

USMS Response (Concur): The USMS has identified the number of domestic places of detention that necessitate recording equipment. Recording equipment is tracked in the USMS inventory system, PACES. The attached PACES report shows that the USMS has 422 pieces of recording equipment and details their exact locations within the district, office, and address. Further, the report shows the four pieces of equipment that were reviewed during the OIG site visits was catalogued appropriately and accurately. Upon submission of this evidence, the USMS requests the closure of this recommendation.

Recommendation 4: OIG recommends that USMS provide their personnel refresher training on the e-Recording Policy, including the policy's allowable exceptions to recording.

USMS Response (Concur): The USMS concurs with the recommendation and will assign periodic refresher training on the e-Recording Policy through our learning management system on a rolling 3-year basis.

APPENDIX 6: Office of the Inspector General Analysis and Summary of Actions Necessary to Close the Report

The Office of the Inspector General (OIG) provided a draft of this audit report to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the United States Marshals Service (USMS) — referred to as the DOJ law enforcement components. The law enforcement components' responses are incorporated in Appendices 2 through 5 of this final report. In response to our audit report, the law enforcement components concurred with all our recommendations and discussed the actions they will implement in response to our findings. As a result, the status of the audit report is resolved. The following provides the OIG analysis of the responses and summarizes the actions necessary to close the report.

Recommendations for the DOJ law enforcement components:

1. The FBI devise and implement a plan to ensure that it meets all of the requirements of the e-Recording Policy.

Resolved. The FBI concurred with our recommendation. The FBI stated in its response that it is currently administering a plan of action, which includes: (1) digitizing and itemizing purchased products, (2) prioritizing equipment access (where needed), (3) procuring and installing newly acquired equipment, and (4) cost mitigation efforts. As a result, this recommendation is resolved.

This recommendation can be closed when we receive evidence that the FBI devised and implemented a plan to ensure that it met all the requirements of the e-Recording Policy.

2. The USMS identify the number of its domestic PODs that necessitate recording equipment and effectuate a plan for ensuring those locations are sufficiently equipped.

Closed. The USMS concurred with the recommendation and provided new evidence with its formal response to the report that appropriately addressed this recommendation. After receiving a draft of this audit report, USMS was able to generate a report out of its inventory system that provided evidence that each POD was assigned sufficient e-Recording equipment. We reviewed the information provided by the USMS and determined that the documentation provided adequately addresses our recommendation; therefore, this recommendation is closed.

3. The DEA and FBI include discussion of the e-Recording Policy in the curricula of trainings provided to TFOs.

DEA - Closed. The DEA concurred with the recommendation and provided evidence of the e-Recording Policy discussion in its updated curricula of training to TFOs. The DEA also provided evidence of the segment that included instructions on the custodial interview recording requirement. The DEA evidence demonstrates that it has included discussion of the e-Recording Policy in the curricula of trainings provided to TFOs.

We reviewed the evidence and determined these actions adequately address our recommendation; therefore, this recommendation is closed.

FBI - Resolved. The FBI concurred with our recommendation. The FBI stated in its response that its Training Division, in coordination with other FBI Divisions, will review the current TFO curricula and determine how to include or increase discussion of the DOJ e-Recording Policy.

This recommendation can be closed when we receive evidence that the FBI has included discussion of the e-Recording Policy in its training curricula for TFOs.

4. The ATF, DEA, FBI, and USMS provide their personnel refresher training on the e-Recording Policy, including the policy's allowable exceptions to recording.

ATF - Resolved. ATF concurred with our recommendation. ATF stated in its response that it will deliver refresher training for all Special Agents by the end of the calendar year.

This recommendation can be closed when we receive evidence that ATF has instituted controls to ensure e-Recording Policy refresher training is provided to its personnel, including the policy's allowable exceptions to recording.

DEA - Closed. The DEA concurred with the recommendation and provided evidence of its updated policy, which requires e-Recording Policy training for Special Agents and TFOs every 3 years. The DEA also provided evidence that it updated its Agents' Manual, Subsection 6141.32, *Interviewing (Adults) Electronic Records of Statements* to include the 3-year training requirement. Additionally, the DEA provided evidence that Special Agents and TFOs completed e-Recording Policy training through its learning system.

We reviewed evidence and determined these actions adequately address our recommendation; therefore, this recommendation is closed.

FBI - Resolved. The FBI concurred with our recommendation. The FBI stated in its response that its Training Division, in coordination with other FBI divisions, will review current training on the DOJ e-Recording Policy to determine what further actions can be taken to address this recommendation.

This recommendation can be closed when we receive evidence that the FBI has instituted controls to ensure e-Recording Policy refresher training is provided to its personnel, including the policy's allowable exceptions to recording.

USMS - Resolved. The USMS concurred with our recommendation. The USMS stated in its response that it will assign periodic refresher training on the e-Recording Policy through its learning management system on a rolling 3-year basis.

This recommendation can be closed when we receive evidence that the USMS has instituted controls to ensure e-Recording Policy refresher training is provided to its personnel, including the policy's allowable exceptions to recording, through its learning management system on a rolling 3-year basis.