



**U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division**

Review of the Department of Justice's Use of Less- Lethal Weapons

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EXECUTIVE DIGEST

INTRODUCTION

Department of Justice (Department) Special Agents, Deputy Marshals, and correctional personnel may use less-lethal weapons when circumstances require use of some force, but use of deadly force would not be appropriate.¹ Use of these weapons can also enhance the safety of law enforcement officers and the public during law enforcement operations. However, while less-lethal weapons are less likely to cause serious injury or death than firearms, significant injuries and fatalities can result from their use.

The Department's law enforcement components – the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); Federal Bureau of Prisons (BOP); and United States Marshals Service (USMS) – use several types of less-lethal weapons. The only less-lethal weapons provided to FBI and DEA Special Agents are batons and pepper spray. In addition to batons and pepper spray, ATF, BOP, and USMS personnel can use less-lethal weapons that include “bean bag” shotgun rounds (bean bag rounds), baton launchers, and rubber projectiles. Also in 2002, after successful pilot testing at its facilities, the BOP approved the PepperBall system, which involves firing projectiles containing highly irritating pepper powder. In addition, ATF and the USMS have approved the use of the Taser, a conducted energy device that is a more sophisticated less-lethal weapon.² The Taser delivers an electric charge intended to cause temporary loss of muscle control. ATF began providing Tasers to its Special Agents in January 2006 after completing a year of pilot testing. In April 2006, the USMS approved the use of Tasers by Deputy Marshals.³

¹ “Use of force” is defined as the amount of effort required by law enforcement personnel to compel compliance by an unwilling subject. “Deadly force” is defined as an amount of force that is likely to cause either serious bodily injury or death to another person.

² Although the term “Taser” is commonly used to refer to all types of conducted energy devices, Tasers are specific weapons made by Taser International Inc. Taser International is the market leader in conducted energy devices and sells several models to law enforcement agencies and individuals for personal use. Stinger Systems is another manufacturer of conducted energy devices. In this report, we use the term “Taser” when referring to devices made only by Taser International and “conducted energy devices” to mean all such devices. See Appendix I for descriptions of all the less-lethal weapons discussed in this report.

³ The USMS's Special Operations Group had been using Tasers since 2000.

There have been no reported fatalities resulting from the use of less-lethal weapons by Department components. However, fatalities have occurred at the state and local level, particularly following the use of conducted energy devices. For example, one recent study reported that over the last 8 years 334 people have died after being subjected to a Taser discharge by state or local law enforcement officers. Medical examiners concluded that the use of a Taser contributed to or caused at least 50 of these fatalities. The remaining 284 fatalities were largely attributed to other factors such as drug intoxication.⁴

In addition to the less-lethal weapons already being used by the Department, the Office of the Inspector General (OIG) learned of several emerging weapon technologies that could be implemented by the Department in the future. These newer less-lethal weapon technologies are either under development or in use by other law enforcement agencies and the military. Some of these weapons will present new challenges concerning deployment and oversight to ensure proper use, particularly since some of these weapons leave no marks or residue when used. For example, the long-range acoustic device – currently used by the New York Police Department – is a weapon that incapacitates individuals using high-energy sound waves aimed at a specific target.

The OIG conducted this review to determine the types of less-lethal weapons used by the Department’s law enforcement components; the extent to which the components are using these weapons; whether training and controls have been implemented to ensure the weapons are used properly; whether Department components have identified the impact of using these weapons on their missions; and whether the Department assesses, deploys, and oversees new and emerging less-lethal weapon technologies.

In addition, the OIG examined research related to less-lethal weapons conducted or funded by the Department’s National Institute of Justice (NIJ). We also reviewed the Civil Rights Division’s investigations of less-lethal weapon usage by Department law enforcement components and state and local law enforcement agencies.

⁴ Amnesty International, “*Less Than Lethal?*” *The Use of Stun Weapons in US Law Enforcement* (December 16, 2008), www.amnesty.org/en/news-and-updates/report/tasers-potentially-lethal-and-easy-abuse-20081216 (accessed April 8, 2009). The report stated it was difficult to determine through autopsy alone whether a Taser caused or contributed to a fatal arrhythmia as there are often no direct pathological signs. However, the autopsy findings highlight risk factors similar to those cited in a National Institute of Justice report discussed in the Background section of this OIG report.

RESULTS IN BRIEF

As shown in Table 1 on page vi, all the Department components we reviewed authorize and train some of their personnel to use specific less-lethal weapons in the performance of their duties. However, the extent of use of less-lethal weapons varies widely by component: the DEA reported no use; the FBI reported limited use; ATF's and the USMS's statistics reported moderate but increasing use; and the BOP's data showed the most use.

The Department's "deadly force" policy addresses the use of *deadly* force, but does not specifically address the use of less-lethal weapons. Therefore, in the absence of a Department-wide policy on the use of less-lethal weapons, Department components have developed individual policies to guide their personnel in the use of these weapons. The components' less-lethal weapons policies are based on reasonableness, which is the standard set forth in the Department's deadly force policy. Specifically, according to the Department's deadly force policy, the force used by a Department law enforcement employee must be reasonable under the circumstances and is considered to be appropriate when "the officer has a reasonable belief" that such force is necessary.⁵

Although Department components have established policies for their personnel's use of less-lethal weapons, only ATF mandates that state and local members of its task forces abide by its less-lethal weapons policies, including ATF's Taser policy. Conversely, the USMS, through its memoranda of understanding with state and local law enforcement agencies, allows task force officers to follow their home agencies' less-lethal weapons policies. The use of less-lethal weapons by state and local law enforcement officers participating on FBI and DEA task forces is subject to the FBI's and DEA's general use of force policies. For the DEA, state and local officers participating on DEA task forces must also follow the DEA's policies concerning the baton and pepper spray. For the FBI, the specific guidance concerning the use of all less-lethal weapons by task force officers is provided by their home agencies' less-lethal weapons policies. Because the DEA's and FBI's policies only address those weapons issued to their personnel, which do not include conducted energy devices, both agencies rely on the state and local task force officers' home agencies to provide guidance on the use of conducted energy devices if they carry these weapons while participating on FBI and DEA task forces.

⁵ The Department of Justice's Deadly Force Policy (July 1, 2004) provides general principles concerning the use of deadly force by Department law enforcement and correctional officers and when their use of deadly force is appropriate.

All of the components' policies require that Special Agents, Deputy Marshals, and correctional staff report all incidents in which they use less-lethal weapons through the components' use of force reporting procedures. However, we found that the components did not adequately compile or assess their less-lethal weapons usage data to identify trends in, or benefits from, their use of these weapons.

The USMS maintained the most detailed data related to its use of less-lethal weapons and produced annual reports quantifying its use. However, the USMS had not assessed the weapons' impact on its operations. ATF provided data on its increasing use of less-lethal weapons at our request, and included data on shootings and other use of force incidents in annual internal agency reports beginning in FY 2006, but had never formally analyzed the data. The FBI had statistics on annual use of less-lethal weapons, but had not analyzed the data because its use of less-lethal weapons was very limited. The BOP also provided data it had collected on its personnel's use of less-lethal weapons, but analysis of this data was difficult because the BOP only recorded use of less-lethal weapons as text in database comment fields. The DEA reported that it had no statistics because its Special Agents had not used the less-lethal weapons the DEA provides to them (baton and pepper spray).

No component has reported any fatalities or significant injuries resulting from the use of any type of less-lethal weapon. Additionally, we found only isolated incidents of reported misuse of less-lethal weapons.

ATF, the BOP, and the USMS have obtained new less-lethal weapons in the last several years. However, we found no coordinated Department-wide assessment of new less-lethal weapon technologies or development of use policies and training materials. Instead, the Department components are performing these functions independently. As a result, the components are not informed of, or guided by, work done elsewhere in the Department.

The NIJ funds research and the Civil Rights Division conducts investigations that yield detailed information about law enforcement policies and practices, some involving use of less-lethal weapons, at the state and local levels. We believe that the Department's law enforcement components could benefit from similar information when developing or reconsidering their policies and practices, but no formal mechanism exists for sharing the information. For example, in 2008 the Civil Rights Division completed an extensive review of a local law enforcement agency that identified deficiencies in that agency's use of and policies on conducted energy devices. However, of the officials we interviewed from ATF and the USMS, only one was aware of the findings.

In sum, we found no coordinated Department efforts either to develop coordinated policies and training on the use of less-lethal weapons or to assess the efficacy of new less-lethal weapon technologies. In addition, the components have not adequately assessed trends in, or results from, their use of less-lethal weapons. Further, the components rely on state and local agencies' policies for use of less-lethal weapons by state and local task force officers on Department task forces. We believe that Department components' use of less-lethal weapons, coupled with the rising incidence of deaths associated with their use by state and local law enforcement, particularly conducted energy devices, highlights a need for more coordinated Department policy, guidance, and communication on the use of less-lethal weapons. Additionally, a coordinated Department policy would help ensure the appropriate use of less-lethal weapons by state and local law enforcement officers participating on all of the different Department task forces.

The following sections provide a more detailed discussion of the OIG's findings.

The Department's law enforcement components are expanding their use of less-lethal weapons and are continuing to acquire new less-lethal technologies.

All five of the Department's law enforcement components authorize the use of some form of less-lethal weapons, such as batons, bean bag rounds, rubber projectiles, or pepper spray. In addition to these weapons, ATF and the USMS provide their Special Agents and Deputy Marshals with the Taser device. The BOP provides its correctional officers with access to the PepperBall system and electronic custody control belts. As shown in Table 1, FBI and DEA Special Agents only use batons and pepper spray.

Table 1: Less-Lethal Weapons Used by Department Components

Type of Less-Lethal Weapon	Component				
<i>Impact Weapons</i>	ATF	BOP	DEA	FBI	USMS
Baton	✓	✓	✓	✓	✓
Bean Bag Shotgun Rounds	✓	✓			✓
Baton Launcher	✓				✓
Rubber Projectiles, Pellets		✓			
<i>Chemical Agents</i>					
CS Gas (Tear Gas)	✓ ^a	✓		✓ ^a	
Pepper Spray	✓	✓	✓	✓	✓
PepperBall System		✓			
StingBall		✓			
<i>Conducted Energy Devices</i>					
Electronic Custody Control Belt, Stun Belt, or “Band-It” Electronic Restraint		✓			✓
Taser	✓				✓
Ultron II Contact Stun Device					✓
<i>Sound Weapon</i>					
Aerial Dispersion Shotgun Round		✓			

^a Only ATF’s Special Response Teams and the FBI’s Special Weapons and Tactics teams have access to tear gas.

Source: OIG survey of ATF, BOP, DEA, FBI, and USMS.

ATF and USMS personnel are increasing their use of less-lethal weapons to perform their duties. At ATF, the Taser was the most used weapon in FY 2007 and FY 2008, and use of other less-lethal weapons, including the baton launcher, increased as well. Use by USMS personnel increased from 27 instances in FY 2003 to 156 instances in FY 2008. According to ATF officials, ATF’s use has expanded because it has handled an increasing amount of street-level crime. USMS officials said their acquisition and use of less-lethal weapons has increased because they believe these weapons help support the

USMS's mission.⁶ ATF Special Agents and USMS Deputy Marshals often must obtain compliance from subjects in situations that would justify the use of deadly force. However, in some situations, less-lethal weapons would be useful. For example, if a subject or fugitive refuses to obey verbal commands and physically resists being placed in custody, less-lethal weapons such as the Taser allow law enforcement officers to avoid engaging in hand-to-hand scuffles with subjects. Use of less-lethal weapons in these circumstances reduces the risk that subjects may wrest a firearm away from the Special Agent or Deputy Marshal.

Of all Department components, the BOP has made the most use of less-lethal weapons in each of the past 5 years, from FY 2004 through FY 2008. Additionally, BOP personnel increased their use of less-lethal weapons from 192 instances in FY 2004 to 476 instances in FY 2007.⁷ According to BOP officials, the BOP uses less-lethal weapons to obtain inmate compliance and quell potential disturbances, which helps balance the BOP's responsibilities to maintain order and protect the safety of inmates and correctional officers. In addition to batons and pepper spray, the BOP uses aerial dispersion rounds, the PepperBall system, rubber projectiles, StingBalls, tear gas, bean bag rounds, and electronic custody control belts. Unlike ATF and the USMS, the BOP does not use Tasers because inmates could gain control of a device and use it as a weapon against BOP staff or other inmates.

In contrast, historically, the DEA and FBI have had few incidents in which less-lethal weapons were used. The only less-lethal weapons these agencies provide their Special Agents are batons and pepper spray.⁸ DEA officials told the OIG that DEA Special Agents had not reported any use of less-lethal weapons during the period we reviewed (FY 2002 through FY 2008). According to DEA officials, when its Special Agents arrest the targets of long-term and undercover investigations, they usually do so with maximum force

⁶ The USMS's mission includes arresting violent fugitives; providing federal courthouse security; protecting judges, witnesses, jurors, and members of the public; and transporting and detaining federal prisoners.

⁷ We compared FY 2004 to FY 2007 because the BOP did not track the use of less-lethal weapons in separate categories prior to spring 2004, and we were able to obtain only partial year data for FY 2008.

⁸ The exception is that FBI Special Weapons and Tactics (SWAT) teams, which are specially trained teams of Special Agents at each of the FBI's 56 field offices. SWAT teams are equipped with tear gas, a less-lethal weapon not made available to ordinary FBI Special Agents. SWAT teams are trained to intervene in high-risk events, such as hostage or barricade situations. From FY 2003 through FY 2008, FBI SWAT teams used tear gas in 12 different operations.

under conditions that are not conducive to the use of less-lethal technologies.⁹ According to the FBI, there are Special Agents who always carry less-lethal weapons, but its personnel use pepper spray no more than five times a year and many of those instances involve spraying dogs. FBI officials also said that FBI Special Agents often choose not to carry less-lethal weapons because their daily activities do not lend themselves to the use of that type of weapon.¹⁰

No Department policy specifically governs the use of less-lethal weapons by its law enforcement components or the state and local law enforcement personnel serving on Department task forces.

The only use of force policy issued by the Department relates to the use of deadly force. This policy does not specifically address the use of less-lethal weapons. As a result, the Department's policy governing the use of less-lethal weapons can be inferred from its deadly force policy:

Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.¹¹

In the absence of a Department policy on the use of non-deadly force, or on the use of less-lethal weapons, all of the components that use less-lethal weapons have developed their own policies controlling use of these weapons. The components' policies are based on an "objective reasonableness" standard, which is the standard set forth in the Department's deadly force policy. Specifically, according to the Department's deadly force policy and previously issued commentary that provided "practical guidance" to the components, the force used must be reasonable under the circumstances and is appropriate when "the officer has a reasonable belief" that such force is necessary.¹² For example, the USMS policy for use of less-lethal weapons states that Deputy

⁹ DEA officials said that when Special Agents apprehend suspects, they often do so wearing full protective gear and with firearms drawn in case deadly force becomes necessary.

¹⁰ While we were told that FBI Special Agents often do not carry the less-lethal weapons, FBI policy states that Special Agents must use alternative methods and tactics when the use of deadly force is not authorized under the deadly force policy.

¹¹ Department of Justice, Deadly Force Policy, July 1, 2004.

¹² When the Department issued its current policy in 2004, it did not include commentary that was provided when the Department's Policy Statement on the Use of Deadly Force was approved by the Attorney General on October 17, 1995. www.usdoj.gov/ag/readingroom/resolution14c.htm (accessed April 8, 2009).

Marshals may use “non-lethal” force when they have reasonable grounds to believe that such force is necessary to:

1. protect themselves or others from physical harm,
2. restrain or subdue a resistant prisoner or suspect,
3. make an arrest, or
4. prevent a prisoner from escaping.

The USMS policy further states that a Deputy Marshal using an authorized non-lethal device should use only the minimum force necessary to control a subject and then should stop using the device.¹³

Although Department components have established policies for their personnel’s use of less-lethal weapons, only ATF mandates that state and local members of its task forces abide by its less-lethal weapons policies, including ATF’s Taser policy. Conversely, the USMS, through its memoranda of understanding with state and local law enforcement agencies, allows task force officers to follow their home agencies’ less-lethal weapons policies. The use of less-lethal weapons by state and local law enforcement officers participating on FBI and DEA task forces is subject to the FBI’s and DEA’s general use of force policies. For the DEA, state and local officers participating on DEA task forces must also follow the DEA’s policies concerning the baton and pepper spray. For the FBI, the specific guidance concerning the use of all less-lethal weapons by task force officers is provided by their home agencies’ less-lethal weapons policies. Because the DEA’s and FBI’s policies only address those weapons issued to their personnel, which do not include conducted energy devices, both agencies rely on the state and local task force officers’ home agencies to provide guidance on the use of conducted energy devices if they carry these weapons while participating on FBI and DEA task forces.

The Department’s components operate hundreds of task forces that involve thousands of state and local law enforcement officers across the country.¹⁴ Without a specific policy to the contrary, state and local law enforcement officers participating on DEA, FBI, and USMS task forces may carry and use less-lethal weapons in accordance with their home agencies’ policies. State and local law enforcement agencies increasingly equip their officers with less-lethal weapons, particularly conducted energy devices, and we

¹³ USMS Directive 8.31, Use of Force, June 29, 2005.

¹⁴ See, for instance, U.S. Department of Justice Office of the Inspector General, *Coordination of Investigations by Department of Justice Violent Crime Task Forces*, Evaluation and Inspections Report I-2007-004 (May 2007), and *The Department of Justice’s Terrorism Task Forces*, Evaluation and Inspections Report I-2005-007 (June 2005).

determined that state and local officers have used Tasers at least 18 times since FY 2005 while serving on ATF and USMS task forces.

Department components' reliance on state and local agencies' policies for use of less-lethal weapons by state and local task force officers may not be adequate to protect the Department's interests in the event a subject is seriously injured or killed by the use of a less-lethal weapon.

Finally, we found that guidance regarding the appropriate use of less-lethal weapons is often provided as a part of the components' initial and re-certification training programs for Special Agents, Deputy Marshals, and correctional facility personnel. However, similar guidance is not contained in the components' formal policies. In addition, the information on use of less-lethal weapons found in training materials is generally considered advisory, not mandatory policy that the task force officers (or the components' own personnel) would be required to follow. For example, ATF's Taser training curriculum describes situations in which employing a Taser would be an appropriate use of force. In contrast, ATF's Taser Policy states only that "the [Taser] is classified as an intermediate weapon and is an alternative to impact weapons and chemical sprays." Thus, even if state and local task force officers were provided with components' less-lethal weapons policies, they would not receive specific guidance on reasonable and appropriate use contained in the components' training materials. However, state and local law enforcement officers serving on ATF task forces for an extended duration participate in ATF's quarterly tactical training, which addresses the use of less-lethal weapons, including Tasers.

All components require their personnel to report any use of less-lethal weapons, but the components do not adequately compile and analyze the resulting reports.

All components have policies that require Special Agents, Deputy Marshals, and correctional personnel to report, through their use of force reporting procedures, all incidents in which they use less-lethal weapons. Despite these reporting requirements, we found that the components did not have complete data on their personnel's use of less-lethal weapons during the 7-year period covered by the OIG's review. Also, the components generally did not evaluate their use statistics to determine trends in, or benefits from, their use of less-lethal weapons.

We found that the USMS maintained the most detailed use of force data related to less-lethal weapons of the five Department components and produced annual reports detailing the number of such uses. However, the USMS had not assessed the weapons' impact on USMS operations. For example, the USMS had not attempted to quantify whether its increased use of the Taser had

resulted in any reduction in subject or officer injuries. Further, we found that the USMS's methodology for generating summary tables for use of force statistics was inconsistent.

The BOP began collecting data related to the use of less-lethal weapons in spring 2004. However, we identified problems with the BOP's method of recording information about its use of less-lethal weapons that reduce the data's utility for compiling statistics or analyzing trends. First, although the BOP provided statistical data for pepper spray and bean bag round usage, it was unable to provide total usage data for several other less-lethal weapons. For these other less-lethal weapons, the BOP records their use as text in a database comment field. This manner of record keeping makes producing aggregate data on the use of less-lethal weapons onerous and prone to error.¹⁵ Second, the BOP's database is designed to track information by *inmate* rather than by each *use* of a weapon. Because one use of a weapon such as tear gas or the PepperBall system may affect multiple inmates, the database contains many duplicate entries, overstating the reported uses of less-lethal weapons.

The other three components' record keeping practices for uses of less-lethal weapons varied. ATF was able to provide data showing its increasing use of less-lethal weapons, but had not analyzed the data in any formal manner. The FBI had compiled some annual use statistics, but had not analyzed the data because its use of less-lethal weapons was limited. The DEA stated that it had no statistics because its Special Agents had not used less-lethal weapons.

None of the components reported any fatalities or significant injuries from their personnel's use of less-lethal weapons.

When Special Agents, Deputy Marshals, and correctional staff report their use of less-lethal weapons, these reports and any subsequent after-action assessments must also identify any injuries or fatalities that occurred. During the period of this review, FY 2002 through FY 2008, Department components reported no fatalities or significant injuries to subjects or inmates resulting from the use of less-lethal weapons. This stands in contrast to the fatalities and significant injuries associated with the use of less-lethal weapons by state and local law enforcement during the same period.¹⁶

According to component officials whose personnel use the Taser, their personnel were less likely than state and local law enforcement officers to

¹⁵ In fact, the OIG had to manually search the documentation provided by the BOP to compile the statistics shown on page 24.

¹⁶ Amnesty International, 2008.

confront the types of situations that may increase the risk of serious injuries and fatalities associated with the use of conducted energy devices. They said that state and local agencies are more likely to encounter individuals under the influence of drugs or alcohol, or individuals suffering from mental illness. Some studies of conducted energy devices have indicated that the presence of drugs, alcohol, and mental illness may raise the risk of injury and fatality resulting from the use of such weapons. Component officials also said training programs provided to Special Agents and Deputy Marshals on the use of Tasers have helped prevent fatalities and serious injuries.

While the components did not report any fatalities or serious injuries during our review period, our review of BOP data for 203 incidents of the PepperBall system's use from FY 2004 through June 2008 showed that the weapon caused minor to moderate injuries to inmates in 65 of those incidents (33 percent). The injuries described in the BOP's records appeared moderate in 8 instances and minor in 57 others. Injuries recorded in the BOP's database for the remaining 138 instances did not appear related to the PepperBall system's use.

We also found several reports of isolated incidents of misuse of less-lethal weapons by component personnel. The BOP identified eight incidents of substantiated misconduct involving BOP employees' use of less-lethal weapons from FY 2002 through FY 2007. ATF identified one instance of the misuse of a Taser by one of its Special Agents.

One of the eight BOP incidents occurred when two correctional officers deployed a PepperBall system without authorization in response to a fight between two inmates. Further, a supervisor failed to ensure the inmates were medically assessed and decontaminated following the incident. As a result of the misuse of the PepperBall system, the two correctional officers were suspended for 14 days, and the supervisor was demoted.

All uses of force by BOP correctional staff require after-action reports. However, the use of a less-lethal weapon is investigated only if an allegation of inmate abuse is made. According to officials from the BOP Office of Internal Affairs, if they receive allegations that an inmate was abused with a less-lethal weapon, the complaint is forwarded to the OIG Investigations Division and the Department's Civil Rights Division. If the OIG and the Civil Rights Division decline to pursue the allegation, the BOP Office of Internal Affairs either handles the investigation as a misconduct case or assigns the complaint to the institution where the incident occurred for investigation. In conducting these investigations, BOP officials said they examine whether the use of force was authorized and whether it was exercised properly. All eight of the incidents referenced above were declined for prosecution by the Civil Rights Division's

Criminal Section, and the cases were returned to the BOP for consideration of discipline.

The incident involving an ATF Special Agent occurred when he used a Taser belonging to a local law enforcement officer against a subject without proper justification. Pursuant to ATF policies, the Special Agent's field division reported the use of the Taser to ATF's Shooting Review Coordinator, who forwarded the matter to the integrity section of ATF's Internal Affairs Division, due to the nature of the incident. Following an investigation, ATF concluded that the Special Agent had exercised poor judgment in using the Taser on the subject. The Special Agent received a 14-day suspension.¹⁷

The DEA, FBI, and USMS did not identify any instances of misuse of a less-lethal weapon by a Special Agent or Deputy Marshal during the period of our review.

In reviewing the use of less-lethal weapons, including Tasers, ATF and the USMS do not always perform the same type of review as would occur for firearms discharges. For both components, uses of force, including uses of less-lethal weapons, are investigated if a subject is seriously injured or killed or if non-frivolous allegations of misconduct are made against the Special Agent or Deputy Marshal involved in the incident. For ATF, a non-frivolous allegation of excessive use of force would be investigated by the Integrity Section of ATF's Internal Affairs Division. For the USMS, an allegation of excessive force would be investigated by the USMS Office of Inspections. For both ATF and the USMS, in cases where no significant injury occurred or there was no indication of improper use of force, the field office involved conducts a review and produces a factual record of the incident and submits the report to the appropriate entity – either ATF's Internal Affairs Division or the USMS Office of Inspections.¹⁸

The components independently assess new less-lethal weapons and have separately developed policy and training materials for these weapons.

The components that acquired new less-lethal weapon technologies during the period we reviewed – ATF, the BOP, and the USMS – conducted independent research and testing of the weapons prior to acquiring them, developed policies, and trained new and existing personnel on the use of the

¹⁷ The Civil Rights Division had no involvement in this case.

¹⁸ Upon receipt of the factual record produced by the field office, ATF's Internal Affairs Division reviews the incident's documentation.

weapons.¹⁹ As part of their research, ATF and the BOP independently initiated pilot testing to evaluate prospective weapons.²⁰ We found that the Department and its components did not coordinate their efforts to identify emerging less-lethal technologies (see text box, page 44) or to develop policies and procedures to ensure the consistent and appropriate use of existing weapon systems.

In addition, we identified two Department entities that fund research or conduct oversight of less-lethal weapon technology – the National Institute of Justice (NIJ) and the Civil Rights Division. The NIJ funds and performs research related to state and local law enforcement, including the feasibility and impact of less-lethal weapons. The Department’s Civil Rights Division conducts investigations of state and local law enforcement agencies pursuant to 42 U.S.C. 14141 to determine whether law enforcement officers are engaged in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.²¹

Although the lessons learned at the state and local level may be applicable at the federal level, no formal mechanism exists for the NIJ or the Civil Rights Division to provide information to the Department’s own law enforcement components about their work related to the use of less-lethal weapons.²² For example, several recent NIJ-funded studies assessed the Taser’s medical impact and the effects of different use policies adopted by the state and local agencies. Further, as of April 2009, the Civil Rights Division was continuing an extensive review of a local law enforcement agency that identified deficiencies in that agency’s use of and policies on conducted energy devices. As part of that review, the Civil Rights Division issued a technical assistance

¹⁹ The OIG examined only components’ assessments of less-lethal weapon technologies that were newly acquired during the review period. We did not consider the acquisition of different types of munitions (e.g., foam baton, rubber bullets) or a change in a munitions’ delivery system (e.g., size or manufacturer) to be a “new” less-lethal weapon.

²⁰ The USMS did not perform a pilot test; however, its Special Operations Group had been using Tasers since 2000.

²¹ Within the Civil Rights Division, the Criminal Section prosecutes law enforcement personnel. The Special Litigation Section investigates individual law enforcement agencies where there is a cause to believe that an agency is engaged in a pattern or practice of violating federal law. This Section seeks civil remedies, in the form of injunctive relief that range from informal agreements to consent decrees.

²² The components provided some examples of informal information sharing through working groups and informal discussions with other governmental entities, but not directly with each other.

letter to the agency that provided detailed recommendations for improving the agency's Taser policies and training curriculum.

As part of our review, the OIG discussed the NIJ-funded studies and the Civil Rights Division's technical assistance with the law enforcement components' staff responsible for developing less-lethal weapons policies.²³ These officials stated that the results of the NIJ's and Civil Rights Division's work would be useful to them in designing operational and training policies. In developing their Taser policies, component officials expressed a desire to avoid the problems encountered by their state and local counterparts with this weapon. We believe that the Department would benefit from enhanced information sharing among the NIJ, the Civil Rights Division, and the Department's law enforcement components concerning less-lethal weapons.

CONCLUSION AND RECOMMENDATIONS

Although several of the Department's law enforcement components are expanding their use of less-lethal weapons and have added new less-lethal technologies, the Department and its components do not coordinate the assessment of these technologies or the development of use and training policies. Moreover, the Department's deadly force policy does not specifically address the use of less-lethal weapons. While the components that use less-lethal weapons have individually developed policies to govern these weapons used by their personnel, the FBI and DEA do not have policies to address the use of Tasers by state and local members of their task forces. Further, the USMS, unlike ATF, does not mandate that state and local task force officers abide by its less-lethal weapons policies, including the USMS's Taser policy.

The fatalities that have occurred following the use of conducted energy devices by state and local agencies, coupled with greater use of these weapons by the Department's law enforcement components, lead us to recommend that the Department coordinate and ensure that the components have appropriate and consistent less-lethal weapons policies that include conducted energy devices. These less-lethal weapons policies should include sufficient detail to provide meaningful guidance on appropriate use of existing and emerging less-lethal weapons.

We also believe that the Department's components can improve their tracking and assessment of their use of less-lethal weapons. While all components require uses of less-lethal weapons to be reported, we found that the components did not maintain complete data and the components generally

²³ Of the USMS and ATF officials we interviewed, only one from the USMS Training Academy was aware of the Civil Rights Division's investigation and technical assistance letter.

did not evaluate their use statistics to determine trends in or benefits or drawbacks from their use of less-lethal weapons. There have also been isolated reports of misuse of these weapons by component personnel. Because these weapons have the potential to cause serious injury or death, we believe that more consistent reporting on the use of less-lethal weapons should be required to ensure that use trends and misuse are identified.

Finally, the Department should consider coordinating efforts by the law enforcement components, the NIJ, and the Civil Rights Division concerning emerging less-lethal weapons. We believe that coordinated efforts would assist the components in identifying new less-lethal weapons, developing use policies and training curriculum, and proper use of these weapons.

Therefore, we recommend that:

1. The Department coordinate and ensure that its components develop appropriate and consistent policies to specifically address the use of less-lethal weapons, including conducted energy devices, by Department personnel and state and local law enforcement officers serving on Department task forces.
2. The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.
3. The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.
4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

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INTRODUCTION

In some arrest situations and other law enforcement activities, the use of force may be required to protect the safety of the officer or the public.²⁴ Occasionally, the threat to an officer or the public justifies the use of deadly force – an amount of force that is likely to cause either serious bodily injury or death to another person.

When use of force is required, but deadly force may not be appropriate, law enforcement officers may employ less-lethal weapons to gain control of a subject. Less-lethal weapons are designed to induce a subject to submit or to comply with directions. These weapons give law enforcement officers the ability to protect the safety of officers, subjects, and the public by temporarily incapacitating subjects. While less-lethal weapons are intended to avoid causing any serious harm or injury to a subject, significant injuries and death can occur from their use. However, the death of a subject is significantly less likely to occur from the discharge of a less-lethal weapon than from the discharge of a firearm.

Traditional less-lethal weapons used by law enforcement agencies and correctional facility personnel include pepper spray, rubber projectiles, “bean bag” shotgun rounds (bean bag rounds), and batons. Newer more sophisticated weapons include conducted energy devices (such as Tasers), which are designed to deliver an electric charge that can cause temporary loss of muscle control.²⁵ The Department of Justice’s (Department) law enforcement components – the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); Federal Bureau of Prisons (BOP); and United States Marshals Service (USMS) – use several types of less-lethal weapons.

²⁴ The International Association of Chiefs of Police (IACP) defines use of force as “the amount of effort required by police to compel compliance by an unwilling subject.” IACP study, *Police Use of Force in America 2001*, October 2001, p. 1, www.theiacp.org/Portals/0/pdfs/Publications/2001useofforce.pdf (accessed April 8, 2009).

²⁵ Although the term “Taser” is commonly used to refer to all types of conducted energy devices, Tasers are specific weapons made by Taser International, Inc. Taser International is the market leader in conducted energy devices and sells several models to law enforcement agencies and individuals for personal use. Stinger Systems is another manufacturer of conducted energy devices. In this report, we use the term “Taser” when referring to devices made only by Taser International and “conducted energy devices” to mean all such devices. See Appendix I for descriptions of all the less-lethal weapons discussed in this report.

During the period covered by this review – fiscal years (FY) 2002 to 2008 – the number of state and local law enforcement agencies that have initiated or expanded their use of less-lethal weapons (especially conducted energy devices) has increased.²⁶ The Department’s law enforcement and correction components have similarly expanded their use of less-lethal weapons. For example, the BOP has acquired the PepperBall system, which fires projectiles containing highly irritating pepper powder, and ATF and the USMS have acquired Tasers. In addition, local law enforcement personnel participating in task forces led by the Department may carry less-lethal weapons if they have been authorized to do so by their local agencies.

Although there have been no reported fatalities from the use of less-lethal weapons by Department components, as state and local law enforcement’s use of less-lethal weapons has increased, the number of fatalities associated with the weapons’ use also has increased. That has been particularly true for conducted energy devices.²⁷

The Office of the Inspector General (OIG) conducted this review to determine the extent to which the Department’s components are using less-lethal weapons, whether controls have been implemented to ensure the weapons are used appropriately, and to assess the results of the acquisition and use of less-lethal weapons by Department components. The review also examined the efforts of the Department’s National Institute of Justice (NIJ) and Civil Rights Division related to the use of less-lethal weapons by the Department.²⁸

²⁶ More than two-thirds of U.S. law enforcement agencies now use conducted energy devices. See William P. Bozeman, William E. Hauda, Joseph J. Heck, Derrel D. Graham, Brian P. Martin, James E. Winslow, “Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects Corrected Proof,” *Annals of Emergency Medicine*, (January 22, 2009), [www.annemergmed.com/article/S0196-0644\(08\)02061-1/abstract](http://www.annemergmed.com/article/S0196-0644(08)02061-1/abstract) (accessed April 15, 2009).

²⁷ Amnesty International reported that between 2001 and 2008, 334 deaths have been associated with local law enforcement agencies’ use of the Taser. Amnesty International, “*Less Than Lethal?*” *The Use of Stun Weapons in US Law Enforcement* (December 16, 2008), www.amnesty.org/en/news-and-updates/report/tasers-potentially-lethal-and-easy-abuse-20081216 (accessed April 8, 2009).

²⁸ The NIJ is a sub-component of the Department’s Office of Justice Programs, which funds research, development, and evaluation of crime control and justice issues. According to the NIJ’s website, it also provides information and tools to support local and state law enforcement, and assesses programs, policies, and technologies related to criminal justice issues.

BACKGROUND

In this Background section, we identify the less-lethal weapons used by the Department's law enforcement components, describe the Department's use of force policies, discuss the potential risks associated with less-lethal weapons, and present a summary of previous studies on the use of less-lethal weapons.

Department Users of Less-Lethal Technology

All of the Department's law enforcement components authorize at least some of their personnel to use less-lethal weapons in the performance of their duties. All use some form of impact weapon (such as baton, bean bag rounds, and rubber projectiles) as well as chemical agents (such as pepper spray). ATF, BOP, and USMS also equip some of their personnel with a conducted energy device. ATF and the USMS use Tasers, and the BOP uses an electronic custody control belt for escorting the highest security risk inmates.²⁹

Table 1 shows the less-lethal weapons available for each of the five components' personnel to use.³⁰ (See Appendix I for a description of each of these types of weapons.)

²⁹ The electronic custody control belt is placed around the inmate's waist and can be activated by an officer to deliver an electrical shock to the inmate.

³⁰ While the weapons listed in Table 1 have been acquired and are available for use, only some are used on a routine basis by any of the components' personnel.

Table 1: Less-Lethal Weapons Used by Department Components

Type of Less-Lethal Weapon	Component				
<i>Impact Weapons</i>	ATF	BOP	DEA	FBI	USMS
Baton	✓	✓	✓	✓	✓
Bean Bag Shotgun Rounds	✓	✓			✓
Baton Launcher	✓				✓
Rubber Projectiles, Pellets		✓			
<i>Chemical Agents</i>					
CS Gas (Tear Gas)	✓ ^a	✓		✓ ^a	
Pepper Spray	✓	✓	✓	✓	✓
PepperBall System		✓			
StingBall		✓			
<i>Conducted Energy Devices</i>					
Electronic Custody Control Belt, Stun Belt, or “Band-It” Electronic Restraint		✓			✓
Taser	✓				✓
Ultron II Contact Stun Device					✓
<i>Sound Weapon</i>					
Aerial Dispersion Shotgun Round		✓			

^a Only ATF’s Special Response Teams and the FBI’s Special Weapons and Tactics teams have access to tear gas.

Source: OIG Survey of ATF, BOP, DEA, FBI, and USMS.

Use of Force Policies in the Department

The use of force by the Department’s law enforcement and correctional officers is governed by the components’ use of force policies, and the Department’s deadly force policy. These policies, which describe how various levels of force may be used during law enforcement operations, are designed to protect the public’s civil rights and to provide clear guidance to officers so that they can effectively perform their duties. The components’ use of less-lethal weapons, like any other use of force, is subject to these policies.

The Department's deadly force policy states:

Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.³¹

Consistent with the Department's deadly force policy, the components have established use of force policies and have trained their Special Agents, Deputy Marshals, and BOP personnel that any use of force, both deadly and non-deadly, must be reasonable in the specific circumstance that the force is used. For example, the USMS use of force policy states that:

1. Personnel must always use the minimum force reasonably necessary to protect themselves or others from bodily harm, to restrain or subdue a resistant prisoner or suspect, to make an arrest, or to prevent a prisoner from escaping. Use of a higher level of force is permitted only when it is warranted by the subject's actions, apparent intentions, and apparent capabilities.
2. The use of force must be objectively reasonable under all the circumstances known to the deputy at the time and may range from verbal coercion to the use of firearms. (If means other than deadly force appear to be sufficient to accomplish the objective, deadly force should not be used.)
3. All incidents involving the use of firearms or non-lethal devices will be reported according to established procedures.³²

³¹ Department of Justice, Policy Statement: Use of Deadly Force, July 1, 2004. The components' policies are based on the commentary to an earlier version of the Department's policy, referred to as Resolution 14, approved by the Attorney General on October 17, 1995. The 2004 policy does not include a commentary.

³² USMS Directive 8.31, Use of Force, June 29, 2005. Other components' training materials contain similar language regarding reasonableness.

Risks Posed by Less-Lethal Weapons

While less-lethal weapons are intended to provide an alternative to the use of deadly force, they nonetheless have the potential to cause significant bodily injury or death. Fatalities have occurred at the state and local level from less-lethal weapons, particularly following the use of conducted energy devices. For example, one recent study reported that over the last 8 years, 334 people died after being subjected to a Taser discharge by state or local law enforcement officers. Medical examiners concluded that the use of a Taser contributed to or caused at least 50 of these fatalities. The remaining 284 fatalities were largely attributed to other factors such as drug intoxication.³³

The predominant injury associated with the use of less-lethal weapons is blunt trauma. The impact of weapons such as the baton, bean bag round, and the PepperBall system can be significant, especially when the weapons are fired at close range or when the subject is struck in sensitive areas like the head or groin.

For conducted energy devices, an identified risk is that an individual could go into cardiac arrest from a Taser discharge. Also, burns to the subject or the officer are another serious injury that the law enforcement community has identified to be associated with using conducted energy devices, specifically when used in conjunction with an alcohol-based pepper spray or near other flammable liquids.

Prior Studies and Reviews of Less-Lethal Weapons

NIJ-Funded Studies and Reports

The NIJ has funded studies to assess the role that the Taser may have played when individuals who were “Tased” subsequently died in police custody. The NIJ has also funded several recent studies conducted by universities on the effect of emerging less-lethal technologies on state and local law enforcement officers’ use of force. Some of these studies, including one about the effect of Taser use, are still ongoing, but preliminary findings were presented at the 2008 NIJ Conference.

- National Institute of Justice, *Study of Deaths Following Electro Muscular Disruption: Interim Report*, June 2008. This study found

³³ Amnesty International, 2008. The report stated that it is difficult to determine through autopsy alone whether a Taser caused or contributed to a fatal arrhythmia as there are often no direct pathological signs. However, the autopsy findings highlight risk factors similar to those cited in an NIJ report discussed on the next page.

that “there is no conclusive medical evidence that indicates a high risk of serious injury or death from the direct effects of conducted energy device exposure [Tasers].” Also, “there is no medical evidence to suggest that exposure to a conducted energy device produces sufficient metabolic or physiologic effects to produce abnormal cardiac rhythms in normal, healthy adults.” However, the study cautioned, “preliminary review of deaths following conducted energy exposure indicates that many are associated with continuous or repeated discharge of the device.”³⁴

- Three studies that were funded by the NIJ assessed the effects of Tasers or other conducted energy weapons on use of force outcomes and their medical effects on subjects. The researchers presented their findings at the 2008 NIJ Conference and stated the following:
 - William P. Bozeman, William E. Hauda, Joseph J. Heck, Derrel D. Graham, Brian P. Martin, James E. Winslow, “Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects Corrected Proof,” *Annals of Emergency Medicine*, January 22, 2009. During the 36-month period covered by the study, conducted electrical weapons were used against 1,201 suspects to see what, if any, injuries would occur. The study found that only mild or no injuries were observed after conducted electrical weapons were used on 1,198 subjects (99.75 percent). Of the mild injuries, 83 percent were superficial puncture wounds from conducted electrical weapon probes. Significant injuries occurred in three subjects (0.25 percent), and two subjects died in police custody. Medical examiners did not find conducted electrical weapon use to have caused or contributed to either of the two deaths.³⁵
 - Charlie Mesloh, Mark Henych, and Ross Wolf, *Less Lethal Weapons Effectiveness, Use of Force and Suspect and Officer Injuries: A Five-Year Analysis*, a report to the National Institute of Justice, September 2008. This study found that the Taser had substantially changed the manner in which law enforcement officers apply force. The study also found that the Taser enabled officers to disable and control a subject from a safe distance and caused fewer injuries when compared with use of other less-lethal

³⁴ See www.ojp.usdoj.gov/nij/pubs-sum/222981.htm (accessed April 8, 2009).

³⁵ DOI: 10.1016/j.annemergmed.2008.11.021, [www.annemergmed.com/article/S0196-0644\(08\)02061-1/abstract](http://www.annemergmed.com/article/S0196-0644(08)02061-1/abstract) (accessed April 15, 2009).

weapons. The study also found that the likelihood of injury to the officer and the subject increased as the duration of the interaction between them increased, regardless of the type of less-lethal weapon used.³⁶

- Michael R. Smith, Geoffrey P. Alpert, Robert J. Kaminski, Lorie Fridell, and John MacDonald, *A Multi-Method Evaluation of Police Use-of-Force Outcomes*, summer 2008. These researchers found that the use of Tasers was associated with significantly reduced injuries to both officers and citizens. The study found that the risk of injury to subjects and officers increased when the use of physical force employed by the officers consisted of hard-hand control (e.g., punching, kicking). The study also showed that the use of pepper spray resulted in reduced incidence of injury to subjects and was neutral to slightly increasing the risk of officer injury.
- Sarah V. Hart, Director, National Institute of Justice, before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, U.S. House of Representatives, concerning “Less-Than-Lethal Weapons,” May 2, 2002. In 2001, the *Aviation and Transportation Security Act* (Pub. L. No. 107-71, Section 126(a)) required the NIJ to assess whether less-lethal weapons could be used by commercial airline flight deck crew members to temporarily incapacitate individuals who presented a clear and present danger to the safety of the aircraft, its passengers, or individuals on the ground. In April 2002, the NIJ concluded that the use of electric stun devices in accordance with appropriate policies and training may be an effective means for flight deck crews to thwart an attack, but should not be deployed without further testing.³⁷

Government Accountability Office Reports

Reviews conducted by the Government Accountability Office (GAO) have identified the types of less-lethal weapons used by state and local law enforcement agencies and the U.S. military. The efforts of the GAO also addressed the feasibility of using the Taser in aviation security.

- GAO, *Taser Weapons: Use of Tasers by Selected Law Enforcement Agencies*, GAO-05-464, May 2005. The GAO reviewed the protocols

³⁶ See www.ncjrs.gov/pdffiles1/nij/grants/222769.pdf (accessed April 8, 2009).

³⁷ NCJ 205293, www.ojp.usdoj.gov/nij/speeches/aviation.htm (accessed April 8, 2009).

and procedures of seven local law enforcement agencies that had the largest and longest use of the Taser device.³⁸ The GAO found that all seven of the agencies it reviewed had established use of force policies, training requirements, operational protocols, and safety procedures to help ensure the proper use of Tasers. Although none of the agencies had separate use of force policies that specifically addressed Tasers, all seven agencies included the use of Tasers in their broader policies.³⁹ Taser training was required for officers who used the weapons, and safety procedures required that Tasers not be used on children or pregnant subjects, near bystanders, or in proximity to flammable liquids. The procedures also required that subjects struck by the Taser barbs in the neck, face, or other specific, sensitive body areas be examined by a physician. The GAO did not assess which protocols or procedures demonstrated best practices, nor did it focus on use of Tasers by federal officials, other than the potential use by the Transportation Security Administration on airplanes.

- As of March 2009, the GAO was conducting a review of the Department of Defense's less-lethal weapons programs. The review was focusing on military development or application of less-lethal weapons.

Reviews and Studies by Other Organizations

Other organizations, such as the International Association of Chiefs of Police (IACP) and the Royal Canadian Mounted Police (RCMP), have completed assessments of less-lethal weapon technologies, including conducted energy devices. IACP and the RCMP have issued reports providing guidance to law enforcement agencies using such weapons or considering acquiring them. The reports provide insight into the potential pitfalls of deploying less-lethal weapons without appropriately completed acquisition strategies and use and reporting policies.

- Royal Canadian Mounted Police, *RCMP Use of the Conducted Energy Weapon (CEW): Final Report*, June 2008. The RCMP report identified

³⁸ See www.gao.gov/new.items/d05464.pdf (accessed April 8, 2009).

³⁹ The agency the GAO identified as having the least restrictive policy was the Orange County (Florida) Sheriff's Office, which authorized the use of Tasers even in situations where the suspect was only passively resisting. The other six agencies the GAO reviewed required: (1) the suspect to demonstrate behavior that created a risk of physical injury to others or (2) situations that the officer perceived as volatile. As of April 2009, the Orange County Sheriff's Office was the subject of an ongoing investigation conducted by the Civil Rights Division's Special Litigation Section concerning its personnel's use of Tasers.

that its conducted energy weapon policy had become less restrictive without appropriate justifications and noted that the instances of the weapon's use were under-reported due to lax reporting structures.⁴⁰

- IACP, *Electro-Muscular Disruption Technology: A Nine-Step Strategy for Effective Deployment* (April 2005). This report recommended that agencies follow a nine-step deployment strategy when acquiring conducted energy weapons to ensure management accountability and guidelines for appropriate use.⁴¹

Other studies and reports concerning less-lethal weapons include:

- Byron K. Lee, Eric Vittinghoff, Dean Whiteman, Minna Park, Linda L. Lau, Zian H. Tseng, "Relation of Taser (Electrical Stun Gun) Deployment to Increase in In-Custody Sudden Deaths," *American Journal of Cardiology*, January 22, 2009. These researchers examined the effect of Taser acquisition on rates of (1) in-custody sudden deaths in the absence of lethal force, (2) lethal force (firearm) deaths, and (3) officer injuries requiring emergency room visits for 126 police and sheriff departments in California. The study found that the rate of in-custody sudden deaths increased 6.4 times and the rate of firearm deaths increased 2.3 times in the first full year after agencies' Taser acquisitions compared with the average rates 5 years before Tasers were acquired. In the second through fifth years after Taser acquisition, the in-custody death and firearm death rates decreased to pre-acquisition of Taser levels. The researchers observed no significant change in the rate of serious officer injuries after agencies acquired Tasers.⁴²
- City of Houston, *Conducted Energy Device Program Performance Audit*, Report No. 2009-09, September 8, 2008. This audit, conducted by an accounting firm and two universities, found that the Houston Police Department used Tasers disproportionately against minority groups.⁴³ Specifically, the audit team found that the officers were using the Tasers more often against minority groups instead of implementing

⁴⁰ See www.cpc-cpp.gc.ca/af-fr/PDF/FinalCEWReport_e.pdf (accessed April 8, 2009).

⁴¹ See www.theiacp.org/LinkClick.aspx?fileticket=Jk7o%2b4Ai2hE%3d&tabid=87 (accessed April 8, 2009).

⁴² DOI: 10.1016/j.amjcard.2008.11.046, [www.ajconline.org/article/%20S0002-9149\(08\)02113-9/abstract](http://www.ajconline.org/article/%20S0002-9149(08)02113-9/abstract) (accessed April 8, 2009).

⁴³ See www.houstontx.gov/controller/auditmain.html (accessed April 8, 2009).

other defensive tactics or compliance methods (such as physical controls and verbal instruction) where the use of deadly force would be unreasonable.

- University of Bradford, *Non-Lethal Weapons Research Project*, January 2006, citing studies conducted by the United Kingdom Ministry of Defence's Science and Technology Laboratory (Dstl). This report indicated that research may not have been adequate to assess the potential harms of the Taser. Based on its prior studies, the Dstl had concluded that the Taser's electrical discharge was unlikely to have an adverse effect on the heart in healthy individuals. However, the Dstl stated that an increased risk of heart failure among individuals with existing heart problems and those under the influence of recreational drugs, including alcohol, "could not be excluded" in assessing the risk of fatalities associated with the use of a Taser.⁴⁴

⁴⁴ During a year-long trial of the weapon in the United Kingdom, over 50 percent of those subjected to Taser discharges were under the influence of drugs or alcohol. www.bradford.ac.uk/acad/nlw (accessed April 8, 2009).

PURPOSE, SCOPE, AND METHODOLOGY OF THE OIG REVIEW

Purpose

We conducted this review to: (1) determine the types of less-lethal weapons used by the Department's law enforcement components; (2) the extent to which they are using these weapons; (3) whether training and controls have been implemented to ensure the weapons are used properly; (4) whether Department components have identified the impact of using these weapons on their missions; and (5) whether the Department assesses, deploys, and oversees new and emerging less-lethal weapon technologies. In addition, the review examined research related to less-lethal weapons conducted or funded by the NIJ. We also reviewed the Civil Rights Division's investigations of less-lethal weapon usage by Department law enforcement components and state and local law enforcement agencies.

Scope

The OIG's review focused on the five law enforcement components that use less-lethal weapons (ATF, DEA, FBI, BOP, and USMS) and on two components that are involved in researching or reviewing the use and alleged misuse of these weapons by federal, state, and local law enforcement personnel (NIJ and Civil Rights Division). Our review examined the components' use of, and the Department's efforts concerning, less-lethal weapons from FY 2002 through FY 2008.

Methodology

The methodology used in this review consisted of interviews with officials from the Department's components, document review, data analysis, and observation of component training. Through these activities, we:

- identified the types of less-lethal weapons used by Department components, as well as the number of weapons acquired and their utilization;
- identified Department or component-specific policies governing the use of less-lethal weapons, including acquisition and training curricula, as well as reporting and investigation procedures when less-lethal weapons are used;
- identified Department research concerning less-lethal weapons, including development efforts and the promotion or adoption of best practices, and determined whether there are any ongoing or planned

-
- studies to assess the advantages or detriments from the components' using less-lethal weapons; and
- determined whether any deaths or significant injuries have resulted from Department components' use of less-lethal weapons.

Interviews

To obtain an overview of components' acquisition and use of less-lethal weapons and of policies governing those weapons, we interviewed more than 30 officials from ATF, DEA, FBI, BOP, USMS, NIJ, and the Civil Rights Division. We interviewed officials from the law enforcement and correctional components who were principally responsible for determining the weapons the components would acquire and those officials responsible for establishing the policies related to use of weapons, including development of training curricula. We met with NIJ officials who oversaw the selection and grant funding to universities to perform studies or analyses of the use of less-lethal weapons and agencies' policies regarding such use. We also met with Civil Rights Division officials to determine the extent to which the Division reviews the components' use of force and less-lethal weapons policies. Finally, we discussed with Civil Rights Division officials whether they had conducted investigations into alleged misuse of less-lethal weapons by Department law enforcement officers and correctional personnel or by state and local law enforcement agencies.

Document Review

We reviewed component policies that pertained to the authorization and acquisition of less-lethal weapons. Our review focused on the activities the components performed prior to and after the acquisition of the weapons. The OIG assessed whether there was evidence that the components had a sound basis for their decisions (that they acquired weapons for which there was a demonstrated need or, conversely, that they declined to acquire a weapon which would not have been beneficial or cost effective).

We also reviewed the Department's and the components' policies on less-lethal weapons and use of force. We included in our review any policies applicable to the use of less-lethal weapons by state and local police officers participating on a federal task force with a Department law enforcement component. To identify existing best practices and whether they had been considered by the components, we evaluated policy statements and guidance issued by law enforcement trade associations, such as the International

Association of Chiefs of Police, and examined NIJ (and other) studies on the safety of Taser and other less-lethal weapons.⁴⁵

We also reviewed several recent reports related to the use of less-lethal weapons, including those detailing possible safety concerns and studies that documented the potential for the weapons' misuse. Additionally, we examined NIJ's efforts concerning less-lethal weapons to determine if it was assisting the Department's law enforcement components either in acquiring or in evaluating their use of these weapons.

Data Analysis

To ascertain the less-lethal weapons acquired by the Department's law enforcement components, we requested data identifying the total number of weapons (units). Additionally, the OIG requested that each of the five components provide data on the number of instances of actual use of less-lethal weapons by their personnel since FY 2003.⁴⁶ We also requested data concerning the number of deaths or significant injuries to subjects that have resulted from the use of less-lethal weapons by Department components over the past 7 years. In addition, we asked the components for any analyses they have performed on the advantages or disadvantages of their use of less-lethal weapons.

Site Visits

To determine if the Department's law enforcement components established training curriculum; set standards for the issuance, storage, and maintenance of the weapons; and have procedures for reporting and investigating the use (or discharge) of such weapons, OIG staff attended use of force training and instruction for Special Agents at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. During the classroom scenarios and physical training sessions, OIG staff observed, among other things, instruction on the methods by which Special Agents are taught to use various less-lethal weapons and the appropriate circumstances in which they should be used.

⁴⁵ The OIG observed the presentation of preliminary findings from several of these studies at the 2008 NIJ Conference. OIG staff also discussed the research findings with the presenters, which included the effects on officers' decisions to use force when they carry Tasers and assessments of the likelihood that a Taser was a direct or indirect cause of an in-custody death.

⁴⁶ Based on the validity and availability of the components' less-lethal weapons use statistics, we limited the review of the data to the period FY 2003 through FY 2008.

RESULTS OF THE REVIEW

The Department's law enforcement components are expanding their use of less-lethal weapons and are continuing to acquire new less-lethal technologies. No Department policy specifically governs the use of less-lethal weapons by its law enforcement components or the state and local law enforcement personnel serving on Department task forces. In addition, the components independently assess new less-lethal weapons and have separately developed policy and training materials for these weapons. All components require their personnel to report any use of less-lethal weapons, but the components do not adequately compile and analyze the resulting reports. None of the components reported any fatalities or significant injuries from their personnel's use of less-lethal weapons.

The Department's law enforcement components are expanding their use of less-lethal weapons and are continuing to acquire new less-lethal technologies.

All five of the Department's law enforcement components provide several types of less-lethal weapons to their personnel. The only less-lethal weapons provided to FBI and DEA Special Agents are batons and pepper spray. In addition to batons and pepper spray, ATF, BOP, and USMS personnel can use less-lethal weapons that include bean bag rounds, baton launchers, and rubber projectiles. Also, in 2002, after successful pilot testing at its facilities, the BOP approved the PepperBall system, which involves firing projectiles containing highly irritating pepper powder. In addition, ATF and the USMS have approved the use of the Taser. ATF began providing Tasers to its Special Agents in January 2006 after completing a year of pilot testing. In April 2006, the USMS approved the use of Tasers by Deputy Marshals.⁴⁷

The extent of use of less-lethal weapons varies widely by component: the DEA reported no use; the FBI reported limited use; ATF's and the USMS's statistics reported moderate but increasing use, especially the USMS's use of the Taser; and the BOP's data showed the most use. The components' less-lethal weapons use statistics are presented later in this report.

⁴⁷ The USMS did not perform pilot testing prior to its approval of the Taser for use by its Deputy Marshals during general operations. The USMS's Special Operations Group had been using Tasers since 2000.

Officials from the three components that use less-lethal weapons to a significant degree – ATF, USMS, and BOP – stated that the daily interactions their personnel have with street-level criminals and inmates are the driving force behind their increasing use of less-lethal weapons. These components have acquired more technologically advanced less-lethal weapons, such as the Taser and the PepperBall system, and use of those weapons has increased with their distribution to agency personnel. Component officials stated that the primary justification for equipping Department law enforcement personnel with less-lethal weapons is to provide an “intermediate weapon” that can be used in appropriate situations to place a subject in custody or regain control of a subject without significant injury or death. The intent is to simultaneously protect the officer’s safety and minimize the risk of harm to the subject.

In contrast, DEA and FBI officials told us that their Special Agents do not often carry or otherwise use less-lethal weapons because the daily activities of their Special Agents do not routinely place them in situations likely to require use of less-lethal weapons.⁴⁸

ATF and the USMS are increasing their use of less-lethal weapons to perform their duties.

Over the past 6 years, ATF personnel have increased their use of less-lethal weapons, that is, Tasers, baton launchers, bean bag rounds, and pepper spray. In FY 2007 and FY 2008, the Taser was the weapon most used by ATF personnel, supplanting firearms, which in previous years had been the most used weapon. At the USMS, the number of times its personnel used less-lethal weapons increased from 27 incidents in FY 2003 to 156 incidents in FY 2008.⁴⁹ The weapons used were chemical agents (pepper spray), impact weapons (bean bag round and baton), and conducted energy devices (Taser and Stun Belt).

ATF and the USMS officials stated that they have acquired less-lethal devices, including the Taser, based on their assessments that the activities of their Special Agents and Deputy Marshals include situations in which using the weapons would be advantageous in confronting violent individuals. According to ATF officials, ATF’s use of less-lethal weapons has expanded because ATF increasingly addresses street-level crime, including firearms

⁴⁸ According to the FBI, those Special Agents that work on high-risk assignments such as Violent Crime Task Forces and Gang Task Forces do carry less-lethal weapons on a regular basis.

⁴⁹ Further, the total number of uses of the Taser by USMS personnel for FY 2008 was significantly higher than the projection provided to the OIG by the USMS during summer 2008. Therefore, there appears to have been a marked increase in the use of the Taser by USMS personnel in the fourth quarter of FY 2008.

trafficking. USMS officials believe less-lethal weapons help support its mission and their acquisition and use of these weapons has increased.⁵⁰

ATF Special Agents and USMS Deputy Marshals often must obtain compliance from subjects in situations that would justify the use of deadly force. However, in some situations, less-lethal weapons would be useful. For example, if a subject or fugitive refuses to obey verbal commands and physically resists being placed in custody, less-lethal weapons such as the Taser allow law enforcement officers to avoid engaging in hand-to-hand scuffles with subjects. Use of less-lethal weapons in these circumstances reduces the risk that subjects may wrest a firearm away from the Special Agent or Deputy Marshal.

ATF and the USMS are the only two components that currently use Tasers. Both agencies decided independent of each other to acquire Tasers several years ago and believe the Taser is an effective alternative to baton and pepper spray. Officials of both components told us that they expanded their Taser acquisitions because they have found that the Taser enables officers to achieve control while minimizing the risk of significant injury or death to both the subject and the officer. Specifically, ATF officials said the Taser “levels the playing field,” especially in situations where a Special Agent is confronting a subject who is physically much larger than the Special Agent.

ATF provides Tasers to its Criminal Enforcement Field Offices and not to individual Special Agents. Special Agents can sign out Tasers as they do shotguns or rifles. However, an ATF Special Agent must be certified to use the Taser to carry it. ATF has 700 Tasers for use by its 2,270 Special Agents. Approximately 1,800 to 2,000 Special Agents are certified to use the Taser. The USMS stated that it has provided approximately 1,000 Tasers to its field divisions for use by approximately 3,000 Deputy Marshals operating at its field offices. The USMS plans to purchase additional Tasers, which may be used by Deputy Marshals who have been certified by the USMS to use the weapon.

Our analysis of ATF and USMS use of force data shows that their personnel are increasingly using less-lethal weapons, especially the Taser. Table 2 presents ATF’s data on the number of incidents in which less-lethal weapons were deployed from FY 2003 through FY 2008. As shown in the table, ATF’s use of less-lethal weapons, including the Taser, has increased, while its use of firearms has remained largely consistent during the same period. In FY 2008, less-lethal weapons accounted for 79 percent of ATF’s use of force.

⁵⁰ The USMS’s mission includes arresting violent fugitives; providing federal courthouse security; protecting judges, witnesses, jurors, and members of the public; and transporting and detaining federal prisoners.

Additionally, the Taser accounted for nearly 50 percent of ATF's uses of force in FY 2008.

**Table 2: ATF Use of Force
FY 2003 – FY 2008**

Type of Force Used	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Pepper Spray	0	0	0	0	1	1 ^a
Tasers	0 ^b	0 ^b	2 ^c	9 ^d	14 ^e	21 ^f
Baton Launcher	2	2	4	0	5	11
Bean Bag Gun	1	1	5	1	0	1
Baton	0	0	0	0	0	0
Firearms	7	2	9	4	12	8
Physical Control ^g	3	1	2	1	1	1
Total	13	6	22	15	33	43
Percentage of Use of Force, Using Less-Lethal Weapons	23% ^b	50% ^b	50% ^c	67%	61%	79%

^a One use by an ATF task force officer.

^b These figures do not factor in 21 Taser uses that occurred during ATF's pilot test. ATF's Internal Affairs Division did not receive use of force reports for these 21 Taser uses. ATF estimates that 7 of these uses occurred in FY 2003 and 14 in 2004. If those uses are included, less-lethal weapons would account for 68 percent of ATF's reported instances of use of force over the 2-year period of FY 2003 and FY 2004.

^c ATF officials stated that FY 2005 figures for Taser use are likely to be inaccurate as consistent reporting procedures were not implemented until FY 2006.

^d Includes one use on a canine, two uses by a task force officer, and one use by a local officer on an ATF operation.

^e Includes one use by a task force officer and one use by a local officer on an ATF operation.

^f Includes two uses on canines.

^g Only those incidents in which physical control results in significant injury to or the death of the subject are reported to ATF's Internal Affairs Division. Prior to FY 2006, these incidents may not have been reported to ATF's Shooting Review Coordinator, but instead were processed by ATF's Integrity Section and reviewed for potential misconduct. Since FY 2006, incidents in which physical control resulted in significant injury or death have been reviewed in a manner similar to firearm discharges but are not subject to ATF's Shooting Review Board.

Source: ATF Internal Affairs Division.

Table 3 presents the USMS's data on the number of incidents in which force of some kind was used from FY 2003 through FY 2008. As shown in the table, the USMS is significantly increasing its use of less-lethal weapons. In FY 2008, the USMS's use of less-lethal weapons (chemical munitions, Taser, and baton) accounted for 61 percent of all reported uses of force. This is a

marked increase from 31 percent in FY 2004.⁵¹ As shown in Table 3, the Taser has become the USMS's most used weapon and the primary method for applying force. USMS Office of Inspections officials told us they believe Deputy Marshals are using the Taser as a substitute for pepper spray. The data supports that conclusion as the use of pepper spray in FY 2008 was 59 percent less than the average number of pepper spray uses during the period of FY 2003 through FY 2007. Additionally, over the last 4 years the USMS's use of firearms has generally remained consistent, including during the period of significantly expanded use of the Taser (FY 2007 and FY 2008).⁵² USMS Inspections officials stated that the Taser is not a substitute for firearms in those situations where deadly force would be warranted.

⁵¹ The OIG compared FY 2008 to FY 2004 as the FY 2003 data for physical control appeared low given its consistency across FY 2004 through FY 2008. According to USMS Office of Inspections officials, supervisor training seminars, which began in 2003, included a block of instruction on the importance of reporting instances of physical control.

⁵² However, the average number of firearm discharges over the last 4 years shows a 53 percent increase versus the average number of discharges during FY 2003 and FY 2004.

**Table 3: USMS Use of Force
FY 2003 – FY 2008**

Type of Force Used	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Chemical Munitions/Irritants	22	22	33	20	13	9
Taser X26 & Taser M-25	0	1	7	8	77	138
Stun Belt (Band-It)	2	1	4	4	0	0
Ultron II	0	0	0	0	0	0
Expandable Baton	3	6	8	8	6	9
Baton Launcher	0	0	0	0	0	0
Bean Bag Shotgun Rounds	0	0	0	0	0	0
Firearm Discharge	13	18	24	22	25	24
Physical Control	8	42	50	50	66	72
Other ^a	5	8	2	3	3	3
Total	53	98	128	115	190	255
Percentage of Use of Force, Using Less-Lethal Weapons	51%	31%	41%	35%	51%	61%

Note 1: According to the USMS Office of Inspections, many of the Taser deployments also included the application of physical force. If a Deputy Marshal or USMS task force officer uses more than one type of weapon or applies physical control in addition to a weapon during the same encounter, all uses of force would be included in their respective categories in the table. Thus, the table likely includes double-counting of applications of force.

Note 2: The totals include uses of force by USMS task force officers from state or local law enforcement agencies, including seven uses of the Taser in FY 2008.

^a An example of “Other”: A Deputy Marshal used a handgun (but did not discharge it) as a blunt object to break a window of a vehicle driven by a fugitive.

Source: USMS Office of Inspections’ FY 2007 and 2008 Annual Reports.

Of the Department’s law enforcement components, the BOP has made the most use of less-lethal weapons over the last 4 years.

While the BOP’s statistics for less-lethal weapons show fluctuations in the use of specific less-lethal weapons during the review period, these statistics demonstrate it has had the most uses of less-lethal weapons within the Department in each of the past 5 years, from FY 2004 through FY 2008. In addition to batons and pepper spray, the BOP utilizes aerial dispersion rounds, the PepperBall system, rubber projectiles, StingBalls, tear gas, bean bag rounds, and electronic custody control belts. According to BOP officials, the BOP uses less-lethal weapons to obtain compliance and quell potential

disturbances, which helps balance its responsibilities to maintain order and protect the safety of inmates and correctional officers.

The BOP's mission requires it to ensure that federal offenders serve their sentences in facilities that are safe, humane, cost-efficient, and appropriately secure. These considerations limit the types of less-lethal weapons that the BOP authorizes in its facilities. The BOP approved the use of the PepperBall system after concluding that it could safely deliver the chemical agent in pepper spray with less risk of exposing BOP personnel to it. While the BOP uses an electronic custody control belt, a type of conducted energy device, it does not use the Taser. Correctional officials use the custody control belt when transporting particularly violent inmates, within or outside of BOP facilities, or if an inmate engages in inappropriate behavior. The BOP does not use Tasers because of the risk that an inmate could disarm the correctional officer, gain control of the Taser, and use it as a weapon against staff or other inmates.

BOP officials told us that correctional facility staff often inquire about the BOP obtaining Tasers. BOP Office of Science and Technology (BOP OST) officials stated that in-custody deaths associated with the Taser and the limited number of rounds that can be fired from the weapon are two additional reasons the BOP has not moved to obtain Tasers for operational use. Therefore, the BOP's evaluations of the Taser's suitability for its operations have not advanced past these preliminary assessments.

BOP personnel do not routinely carry less-lethal weapons in the cell block areas of BOP institutions. Rather, the weapons are stored in the institution's armory or at other approved locations, such as officer posts in the facility's towers. Use of the weapons must be approved by the Warden or designated official in response to a disturbance or to transport a maximum custody inmate. The BOP's use of force statistics are presented below in Table 4.

**Table 4: Bureau of Prisons Use of Less-Lethal Weapons
FY 2004 – FY 2008**

Type of Force Used	FY 2004^a	FY 2005	FY 2006	FY 2007	FY 2008^b
Baton	23	90	85	66	15
Pepper Spray	125	208	121	313	63
PepperBall System	26	29	64	44	40
Aerial Dispersion Shotgun Round	1	4	15	39	30
Bean Bag Round/Stun Gun	6	4	4	6	5
CS Gas (Tear Gas)	0	1	0	1	4
StingBall	11	12	11	8	10
Rubber Projectiles, Pellets ^c	3	18	11	15	27
Electronic Custody Control Device	0	0	0	0	0
Total	195	366	311	492	194

^a With the exception of baton use, there was no reportable data for FY 2003 and only partial data for FY 2004. According to BOP officials, the BOP did not track the use of less-lethal weapons in separate categories prior to spring 2004. In approximately April 2004, the BOP implemented its current tracking procedures.

^b FY 2008 data is through June 30, 2008.

^c Pepper spray projectiles are excluded, while “Foam Batons” are included, in this category.

Source: BOP.

The BOP’s FY 2008 total of 194 uses of less-lethal weapons through June 30, 2008, in Table 4 projects to a total of 259 over a full-year period. The OIG’s review of the pepper spray totals for all years in the table suggests that there are duplicative entries in the data. While the annual use of pepper spray has fluctuated, the BOP’s total use of other less-lethal weapons in its arsenal has remained largely consistent. Specifically, the 3-year average for the BOP’s use of less-lethal weapons (other than pepper spray) from FY 2005 through FY 2007 is 176. This average is nearly identical to the projected total for FY 2008, which is 175. Table 4 also shows increases in the use of rubber projectiles and the aerial dispersion shotgun, and decreasing use of the baton.

The DEA and the FBI make minimal use of less-lethal weapons.

The only less-lethal weapons provided to FBI and DEA Special Agents are batons and pepper spray.⁵³ FBI and DEA officials told us that their Special Agents often choose not to carry these weapons because of their respective missions and operating environments. The result is infrequent use of these less-lethal weapons by their Special Agents. FBI and DEA Special Agents are required to carry only the standard-issue firearm when performing their duties. However, FBI policy states that Special Agents must use alternative methods and tactics when the use of deadly force is not authorized under the deadly force policy.

DEA officials told the OIG that its Special Agents have not made a single use of the less-lethal weapons provided to them. DEA Inspections Division officials stated they had never heard of a DEA Special Agent using a baton or pepper spray, and the DEA does not seek to compile statistical data on its personnel's use of less-lethal weapons. DEA officials said that most of the DEA's enforcement work involves long-term investigations and significant undercover operations. According to DEA officials, therefore, when DEA Special Agents apprehend the targets of their investigations, they do so with maximum force under conditions that are not conducive to the use of less-lethal alternatives.⁵⁴

According to the FBI, there are Special Agents operating on high-risk assignments, such as on Violent Crime Task Forces and Gang Task Forces, who always carry less-lethal weapons, but its personnel use pepper spray no more than five times a year, and many instances of use involve spraying dogs. FBI officials also said that FBI Special Agents often choose not to carry less-lethal weapons because their daily activities do not lend themselves to the use of that type of weapon. According to FBI officials, its focus on international and domestic terrorism and on more than 200 other federal offenses – including cyber crime, organized and white collar crime, public corruption, and civil rights violations – is not likely to place FBI Special Agents in situations where use of a less-lethal weapon would be warranted. Accordingly, officials said that FBI Special Agents are not typically equipped with weapons other than the standard-issue firearm.

⁵³ The exception is FBI Special Weapons and Tactics (SWAT) teams, which are specially trained teams of Special Agents at each of the FBI's 56 field offices. SWAT teams are equipped with tear gas, a less-lethal weapon not made available to ordinary FBI Special Agents. SWAT teams are trained to intervene in high-risk events, such as hostage or barricade situations. From FY 2003 through FY 2008, FBI SWAT teams used tear gas in 12 different operations.

⁵⁴ DEA officials said that when Special Agents apprehend suspects, they often do so wearing full protective gear and with firearms drawn in case deadly force is necessary.

In addition to its Special Agents, the FBI also has its own police force, which provides protective security for FBI personnel, including the FBI Director, and performs law enforcement duties at and around FBI facilities.⁵⁵ FBI Police officials stated that very few confrontations with citizens would warrant the use of any type of force. Typically, in providing building security, FBI Police personnel direct citizens away from prohibited areas with stern voice commands or occasionally use hands-on techniques to achieve compliance. FBI Police officials said that their personnel have had success using these techniques and believe they can complete their duties with the less-lethal weapons currently approved for their use (baton and pepper spray). They said that the use of the baton or pepper spray was extremely infrequent.

DEA officials stated they considered acquiring other less-lethal weapons such as the Taser but decided not to do so. The officials told us that the DEA concluded that the limited number of scenarios in which Special Agents would be likely to use these weapons did not justify their acquisition and annual training on their use.⁵⁶ FBI officials also said the minimal potential advantages of Tasers were outweighed by the acquisition costs and the resources that would be necessary to ensure proper training and certifications.

No Department policy specifically governs the use of less-lethal weapons by its law enforcement components or the state and local law enforcement personnel serving on Department task forces.

The only use of force policy issued by the Department relates to the use of deadly force. This policy does not specifically address the use of less-lethal weapons. When the deadly force policy was clarified in July 2004, the revisions removed reference to the use of non-deadly force. As a result, the Department's policy governing the use of less-lethal weapons can be inferred from its deadly force policy.

According to a July 7, 2004, FBI electronic communication, the language in the Department's deadly force policy was modified to restate the policy in a more clear and succinct manner because the prior version of the policy was confusing. Specifically, the previous policy stated that deadly force was not necessary if non-deadly force "reasonably appear[ed] sufficient to accomplish"

⁵⁵ The primary mission of FBI police officers is to deter or respond to a terrorist attack, or other criminal acts, at and around FBI facilities. FBI police officers perform duties such as identification checks, roving patrols, and unscheduled perimeter and internal patrols. Officers also monitor electronic intrusion and communications systems.

⁵⁶ A Taser costs approximately \$800 a unit. Including the holster and cartridges, the total cost is approximately \$1,000.

the arrest or other law enforcement objective.⁵⁷ The new deadly force policy states:

Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.⁵⁸

All of the components developed and implemented separate policies on their personnel's use of less-lethal weapons.

In the absence of a Department policy, we found that all of the components have created separate policies to guide their personnel in the use of less-lethal weapons. The components' less-lethal weapons policies are based on an "objective reasonableness" standard, which is the standard set forth in the Department's deadly force policy. Specifically, according to the Department's deadly force policy and previously issued commentary that provided "practical guidance" to the components, the force used must be reasonable under the circumstances and is appropriate when "the officer has a reasonable belief" that such force is necessary.

For example, the USMS revised its use of force policy to reflect the changes made to the Department's deadly force policy. In a June 29, 2005, memorandum, Deputy Marshals were provided with the revised use of force Directive, which states that Deputy Marshals may use "non-lethal" force when they have reasonable grounds to believe that such force is necessary to:

1. protect themselves or others from physical harm,
2. restrain or subdue a resistant prisoner or suspect,
3. make an arrest, or
4. prevent a prisoner from escaping.

⁵⁷ FBI electronic communication, Revisions To The Department Of Justice Deadly Force Policy, July 7, 2004.

⁵⁸ The Department of Justice's Deadly Force Policy (July 1, 2004) is designed to protect the public's civil rights and to provide guidance to officers so that they can effectively perform their duties. The policy provides general principles concerning the use of deadly force by Department law enforcement and correctional officers and when their use of deadly force is appropriate. However, the policy does not include commentary which was provided when the Department's Policy Statement on the Use of Deadly Force was approved by the Attorney General on October 17, 1995. www.usdoj.gov/ag/readingroom/resolution14c.htm (accessed April 8, 2009).

The Directive further states that a Deputy Marshal using an authorized non-lethal device should use only the minimum force necessary to control a subject and then should stop using the device.⁵⁹

BOP personnel must adhere to the guidance contained within the BOP's *Correctional Services Manual*. The manual contains the rules governing the use of less-lethal weapons by BOP personnel. For example, the use of chemical agents shall be restricted to instances when an inmate is armed or barricaded and cannot be approached without danger to personnel or self or when delay in restoring order would result in a larger disturbance or loss of control.⁶⁰

DEA Special Agents must follow Section 6123.1 of the agency's *Special Agents Manual*, "Other Defensive Equipment," which contains the DEA's less-lethal weapons policies. For example, Special Agents may use batons to subdue a resisting or attacking individual and may use pepper spray as necessary for self-defense, or in defense of another person, when they believe they or another person are in danger of bodily harm. Special Agents may use pepper spray to eliminate the threat posed by subjects who are combative or who physically resist their own arrest or the arrest of someone else. The use of pepper spray does not preclude any subsequent, justifiable use of a higher level of force.⁶¹

FBI Special Agents are required to adhere to the policies and training standards outlined in the FBI's *Manual of Investigative Operations and Guidelines* (MIOG) when using a less-lethal weapon, such as baton or pepper spray. Similarly, the FBI Police policy on batons states that an officer shall use a baton only according to the use of force continuum and use of force guidelines, only until the threat is neutralized, and must report the incident to their supervisor and file a report.⁶² All FBI Police Officers who carry a baton

⁵⁹ USMS Directive 8.31, Use of Force, June 29, 2005.

⁶⁰ Bureau of Prisons Program Statement 5500.11 (October 2003), *Correctional Services Manual*, Chapter 1, Section 103.

⁶¹ *DEA Agents Manual*, Section 6123.1 (March 1999).

⁶² A use of force continuum provides law enforcement officers with an escalating series of options available in response to a suspect's behavior. The officer is permitted to increase the use of force as the suspect becomes increasingly combative and the threat posed by the subject escalates. *FBI Law Enforcement Bulletin*, Volume 76, Number 9 (September 2007), www.fbi.gov/publications/leb/2007/sept2007/september2007.htm (accessed April 8, 2009).

must have completed training and be accredited as being satisfactorily proficient in its use.⁶³

ATF revised its use of force policy in fall 2008 using the “objective reasonableness” standard for any use of force, which would include the use of less-lethal weapons. ATF’s Taser policy is contained in both memoranda and training curriculum. For example, ATF classifies the Taser as an intermediate weapon and in the same category as impact weapons (e.g., baton) and chemical agents (e.g., pepper spray), and states that, “the primary purpose of employing the [Taser] is to save lives.”⁶⁴ For ATF officials, one of the foremost concerns in crafting the Taser policy was where to place the weapon on ATF’s use of force continuum. ATF officials said they wanted to be very conservative in the weapon’s application, especially in light of the issues that the Orange County (Florida) Sheriff’s Office was having with its Taser policy.⁶⁵ Therefore, ATF decided that the weapon could not be deployed in response to a subject’s noncompliance with ATF personnel’s verbal commands.

In creating their Taser policies, ATF and the USMS both consulted with state and local law enforcement agencies as well as independent organizations to identify best practices. However, the OIG found that ATF and the USMS did not coordinate with each other in constructing their policies.

Not all of the components have specifically addressed the use of less-lethal weapons on their task forces by state and local law enforcement officers.

The Department’s components operate hundreds of task forces that involve thousands of state and local law enforcement officers across the country.⁶⁶ Further, during its May 2007 review of the coordination of Department task force investigations, the OIG reported that the Department had increased its use of different types of task forces to assist state and local

⁶³ *FBI Manual of Police Operations*, Section 10.11, Use of the Collapsible Baton (September 2007).

⁶⁴ ATF Policy for Bureau Issued X-26 Taser, issued in a Memorandum from Assistant Director, Training and Professional Development, to All Special Agents In Charge on March 7, 2007.

⁶⁵ The Orange County (Florida) Sheriff’s Office incurred media scrutiny and community complaints following several highly publicized uses of Tasers during incidents in which their use appeared questionable.

⁶⁶ See, for instance, U.S. Department of Justice Office of the Inspector General, *Coordination of Investigations by Department of Justice Violent Crime Task Forces*, Evaluation and Inspections Report I-2007-004 (May 2007), and *The Department of Justice’s Terrorism Task Forces*, Evaluation and Inspections Report I-2005-007 (June 2005).

law enforcement in reducing violent crime.⁶⁷ Given the expanded number of Department-sponsored task forces and state and local law enforcement officers serving on them, there is a significant likelihood that task force officers will be carrying less-lethal devices while operating under the auspices of a Department component.

Additionally, state and local law enforcement agencies increasingly equip their officers with less-lethal weapons, particularly conducted energy devices. For example, the New York City Police Department recently increased its acquisition of Tasers, and its Taser-certified officers are members of DEA task forces. Further, we determined that state and local officers have used Tasers at least 18 times since FY 2005 while serving on ATF and USMS task forces.

Although Department components have established policies for their personnel's use of less-lethal weapons, only ATF directs that state and local task force members abide by its less-lethal weapons policies, including ATF's Taser policy. Other Department components' reliance on state and local agencies' policies for use of less-lethal weapons by state and local task force officers may not be adequate to protect the Department's interests in the event a subject is significantly injured or killed by the use of a less-lethal weapon.

ATF has recognized that its task forces include non-ATF personnel that may be authorized by their home agencies to carry Tasers. As a result, ATF has implemented policies to address the use of less-lethal weapons by non-ATF task force members. Specifically, ATF has issued guidance that only ATF Special Agents may use ATF-issued Tasers. Thus, state and local officers serving on ATF task forces may use their own agency-issued Tasers provided they are certified to do so and provided they adhere to ATF's Taser policy.

According to USMS officials, its memoranda of understanding (MOU) with state and local law enforcement agencies do not mandate that those agencies' officers serving on USMS task forces abide by the USMS's less-lethal weapons policies. The MOUs allow task force officers to follow their respective state and local agencies' less-lethal weapons policies.

The use of less-lethal weapons by state and local law enforcement officers participating on FBI and DEA task forces is subject to the FBI's and DEA's general use of force policies. For the DEA, state and local officers participating on DEA task forces must also follow the DEA's policies concerning the baton and pepper spray. For the FBI, the specific guidance concerning the use of all less-lethal weapons by task force officers is provided by their home

⁶⁷ *Review of Coordination of Investigations by Department of Justice Violent Crime Task Forces, I-2003-004 (May 2007).*

agencies' less-lethal weapons policies. Because the DEA's and FBI's policies only address those weapons issued to their personnel, which do not include conducted energy devices, both agencies rely on the state and local task force officers' home agencies to provide guidance on the use of conducted energy devices if they carry these weapons while participating on the components' task forces.

Further, even for ATF and the USMS, which have Taser policies, we found that guidance regarding the appropriate use of less-lethal weapons is often provided as a part of the components' initial and re-certification training programs for Special Agents, Deputy Marshals, and correctional facility personnel. However, similar guidance is not contained in the components' formal policies that would be available to task force officers. The information on use of less-lethal weapons found in training materials is generally considered advisory and not mandatory policy.

For example, ATF's Taser training curriculum describes situations in which employing a Taser would be an appropriate use of force. In contrast, ATF's Taser Policy only states that "the [Taser] is classified as an intermediate weapon and is an alternative to impact weapons and chemical sprays." Thus, even if state and local task force officers were provided with components' less-lethal weapons policies, they would not receive specific guidance on reasonable and appropriate use contained in the components' training materials. However, state and local law enforcement officers serving for an extended duration do participate in ATF's quarterly tactical training, which addresses the use of less-lethal weapons, including Tasers. Task force officers must be initially certified on the Taser by their home agencies, but if their home agencies allow, may participate in ATF's annual Taser recertification class. The class consists of a written policy test, scenario-based training, and a review of the functionality of the weapon.

In furtherance of their less-lethal weapon policies, the components provide training on less-lethal weapons to their personnel.

In addition to providing instruction on the components' use of force policies, the components also provide tactical instruction on each of the less-lethal weapons the components have acquired for their personnel to use. The components have established training policies to certify trainers and provide Special Agents, Deputy Marshals, and BOP personnel with required training. We found that the components provided training to ensure that less-lethal devices are used appropriately. However, in crafting their respective Taser training curricula, ATF and the USMS did not coordinate with each other.⁶⁸

The OIG found that the components' training on the use of force now focuses on the "reasonableness" of the force applied rather than the previous "use of force continuum" model (see footnote 62, above).⁶⁹ As it applies to the application of use of force, including deadly force, "reasonableness" is determined by reference to the facts and circumstances confronting the law enforcement officer at the time of the encounter. Accordingly, officers' conduct in making split-second decisions in tense, unpredictable, or rapidly evolving situations is judged by how a "reasonable officer" would respond.

In sum, the components' use of less-lethal weapons, coupled with the rising incidence of deaths associated with their use by state and local law enforcement, particularly conducted energy devices, highlights a need for more coordinated Department policy, guidance, and communication. Additionally, a coordinated Department policy would help ensure the appropriate use of less-lethal weapons by state and local law enforcement officers participating on all of the different Department task forces.

An expanded discussion of the components' efforts to train their personnel on the use of less-lethal weapons is contained in Appendix II.

⁶⁸ During this review, the OIG suggested that ATF Training Academy officials consider meeting with USMS Training Academy officials to assist ATF in its initiation of Taser training at its Training Academy in FY 2009. USMS Training Academy officials stated they would be receptive to providing such assistance.

⁶⁹ The law enforcement components made this change in focus to allow officers to react more instinctively. However, the continuum model is still referenced in training materials. Additionally, statements by BOP officials indicate that the BOP has not made the transition to the "objective reasonableness" standard to the same extent as the other four components.

Recommendation

We recommend that:

1. The Department coordinate and ensure that its components develop appropriate and consistent policies to specifically address the use of less-lethal weapons, including conducted energy devices, by Department personnel and state and local law enforcement officers serving on Department task forces.
2. The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.

All components require their personnel to report any use of less-lethal weapons, but the components do not adequately compile and analyze the resulting reports.

All components have policies that require Special Agents, Deputy Marshals, and correctional staff to report all incidents in which they use less-lethal weapons.⁷⁰ Despite these reporting requirements, we found that the components did not have complete data on their personnel's use of less-lethal weapons during the period covered by of the OIG's review.

Some components compiled less-lethal weapon use statistics but did not use consistent or appropriate methodologies that would enable accurate data analysis and the identification of trends in the use of less-lethal weapons. Additionally, those components that had more than minimal use of less-lethal weapons had not performed any quantitative or qualitative analyses to determine whether and to what extent benefits resulted from the use of less-lethal weapons.

All of the components' policies require personnel to complete use of force reports, including the use of less-lethal weapons. The reports are forwarded through the components' use of force reporting procedures. FBI policy requires that deployment of the baton be documented and reviewed at the local level by the squad supervisor and that the use of pepper spray be reported through FBI Headquarters. ATF's Internal Affairs Division currently receives use of force reports detailing all Taser and other less-lethal weapon use (baton, pepper spray, bean bag round). According to USMS directives, it is imperative that all

⁷⁰ Brandishing (merely drawing) a less-lethal weapon does not constitute use under any of the components' reporting requirements.

use of force incidents be documented and reported in a timely manner for statistical analysis, training purposes, policy compliance, and excessive use of force claims.⁷¹

While component personnel are required to produce these reports, the data compilation on less-lethal weapons use and the sophistication of the components' data vary significantly. Further, the components' efforts to determine trends in, or evaluate the benefits from, their use of less-lethal weapons is inadequate.

USMS

We found that the USMS maintained the most detailed data related to the use of less-lethal weapons and produced annual reports quantifying its use. The USMS Office of Inspections' FY 2007 and FY 2008 annual reports provide a detailed breakout of use of force incidents, including those incidents involving task force officers. However, the OIG found that the USMS's methodology for generating summary tables for use of force statistics was inconsistent. Specifically, the USMS included unintentional firearm discharges in the use of force summary table for 4 of the 6 years (FY 2003 through FY 2008).⁷² Also, there were instances when the summary data tables did not match the itemized supporting tables.

BOP

The BOP began collecting data related to the use of less-lethal weapons in spring 2004. However, we identified problems with the BOP's method of recording information about its use of less-lethal weapons that reduce the data's utility for compiling statistics or analyzing trends. First, although the BOP provided statistical data for pepper spray and bean bag round usage, it was unable to provide total usage data for several other less-lethal weapons. For these other less-lethal weapons, the BOP only recorded use as text in database comment fields. This manner of record keeping makes producing aggregate data on the use of less-lethal weapons onerous and prone to error. In fact, the OIG had to manually search the documentation provided by the BOP to compile the statistics shown above on page 24. Second, the BOP's database is designed to track information by *inmate* rather than by each *use* of a weapon. Because one use of a weapon such as tear gas or the PepperBall

⁷¹ USMS Directives 2.1, Law Enforcement Response, and 2.2, Critical Reporting Requirements.

⁷² For those years in which unintentional firearm discharges were included, the data is distorted and could lead to skewed usage trends.

system may affect multiple inmates, the database contains many duplicate entries, overstating the reported uses of less-lethal weapons.

During the course of the OIG's review, the BOP recognized its problem of identifying how many uses of a weapon occurred during a particular incident. Specifically, the BOP identified that the statistics initially provided to the OIG overstated the number of uses by BOP personnel of the bean bag round. After purging the duplicate entries, the BOP re-calculated the data and provided the OIG with what it believed to be a more accurate use total.⁷³ The BOP is currently in the process of constructing a database that will automate its use of force reports, thereby allowing the BOP to analyze all use of less-lethal weapons. The OIG suggested that the BOP construct the database so that it could both associate all involved inmates affected by use of less-lethal weapons, while simultaneously identifying duplicative instances.

ATF

ATF's Internal Affairs Division was able to provide readily analyzable data on its increasing use of less-lethal weapons upon request. ATF stated that the data was not entirely accurate for FY 2003 through FY 2005 because its less-lethal weapons reporting procedures had not yet been standardized. For example, ATF officials stated that the 21 uses of the Taser that occurred during ATF's pilot testing that spanned from FY 2003 into FY 2004 were not reported to the Internal Affairs Division.⁷⁴ Further, there were only two reported uses of the Taser by ATF personnel during all of FY 2005, which seems abnormally low in view of the fact that ATF personnel had used the Taser 21 times during the 12-month pilot test.⁷⁵

According to ATF Internal Affairs Division officials, prior to FY 2006 not all use of force incidents were reported to the Division.⁷⁶ However, "any non-frivolous allegation of misconduct" would have been reported to the Internal Affairs Division. At the beginning of FY 2006, ATF formalized its reporting procedures involving "intermediate weapons" (baton, pepper spray, Taser, bean

⁷³ The OIG had to perform a similar methodology to calculate the utilization data for the PepperBall system and aerial dispersion shotgun.

⁷⁴ The uses of the Taser by ATF Special Agents during the pilot testing were reported to those ATF officials overseeing the program.

⁷⁵ Following the completion of the pilot project, the Tasers were still available for use to the same personnel that were provided the weapons during the pilot.

⁷⁶ While not reported to the Internal Affairs Division, all uses of force were expected to be reviewed within the appropriate field office.

bag round, and baton launcher) or any use of force resulting in significant injury or death. All such instances were thereafter required to be reported to ATF's Internal Affairs Division and were subsequently included in its internal agency use of force reports. However, the OIG found that no entity within ATF had been directed to analyze the use statistics in any formal manner.⁷⁷

DEA and FBI

According to DEA officials, the DEA had no less-lethal weapons use statistics because its Special Agents had not used such weapons. As stated previously, DEA officials said their Special Agents operate under conditions that are not conducive to the use of less-lethal weapons.

The FBI had compiled some annual use statistics, but had not analyzed the data because its use of less-lethal weapons was very limited. The FBI had no mandatory requirement that use of the baton be reported to FBI Headquarters. However, any Special Agent who deployed a chemical agent (including pepper spray) in any form was required to inform FBI Headquarters by electronic communication within 5 working days of the incident, describing the use and providing detailed results of the exposure.⁷⁸ These records were forwarded to and maintained by the FBI's chemical munitions program manager.⁷⁹

No Assessment of the Benefits of Less-Lethal Weapons Use

In addition to the deficiencies in the data and the methodology used to compile the statistics, we found that the components are not analyzing the data from these reports to assess the benefits of their use of less-lethal weapons and any emerging trends. For example, the USMS had not attempted to quantify the positive impacts (if any) from its increased use of the Taser, specifically, whether subject or officer injuries had decreased because Deputy Marshals deployed the Taser instead of using physical force.

As part of this review, the OIG requested Deputy Marshal injury data from the USMS. The USMS injury data is separated into two categories:

⁷⁷ The OIG suggested that the ATF Inspections Division contact USMS officials to discuss the USMS's statistical data analysis. Also, the OIG discussed with USMS Inspections officials the modification of the USMS use of force database to permit the cross-referencing with allegations of misuse for reporting and analysis purposes.

⁷⁸ 12-14.1 Chemical Agents Policy (see MIOG, Part 2, 11-4.5.4, 30-3.8).

⁷⁹ The chemical weapons program manager is a member of the FBI's Critical Incident Response Group, which is stationed at Quantico, Virginia.

(1) injuries resulting in Deputy Marshals' missing time on the job and
 (2) injuries that did not result in Deputy Marshals' missing time on the job.
 Table 5 shows the number of instances in which Deputy Marshals reported
 suffering injuries while on duty.

**Table 5: USMS Deputy Marshal Injury Data
 FY 2002 – FY 2008**

Year	Instances Where Deputy Marshals Reported Suffering Injuries While On Duty	
	Lost Time	No Lost Time
FY 2002	128	352
FY 2003	121	340
FY 2004	159	440
FY 2005	144	337
FY 2006	144	342
FY 2007	132	254
FY 2008	192	314

Source: USMS Human Resources Division.

The USMS significantly expanded its use of the Taser beginning in FY 2007.⁸⁰ The USMS data shows that the average number of injuries that resulted in lost time over the 2-year period FY 2007 and FY 2008 versus the average over the prior 5-year period (FY 2002 through FY 2006) increased by 16 percent, and the FY 2008 figure represents a 39-percent increase over the prior 6-year average. However, the same analysis shows a 22-percent decrease in the number of instances in which Deputy Marshals incurred injuries but did not miss time on duty beginning in FY 2007.⁸¹ While there are likely to be several factors that caused these percentage increases and decreases, it is noteworthy that they coincide with the USMS's expanded use of the Taser.

Absent changes in other factors, the data in Table 5 indicates that the USMS's use of the Taser may not have resulted in one of the principal benefits that the Taser was supposed to provide – reduction in significant officer injuries. However, the USMS has not attempted to determine whether there is a cause and effect relationship between its expanded use of the Taser and the increase in injuries. Additionally, when reviewing the significant increase in use of force by Deputy Marshals (as shown in Table 3 on page 22), it appears that the Taser is not being used by Deputy Marshals as a substitute for other types of force. Instead of being used in place of physical control or other less-lethal weapons (baton or pepper spray), the Taser appears to be used in

⁸⁰ See USMS Taser use statistics, page 22.

⁸¹ However, the marked increase in FY 2008 was not consistent with this trend.

situations where Deputy Marshals previously reported no use of force. In addition to having not assessed whether this is occurring, the USMS also has not identified whether qualitative information, such as interviews with Deputy Marshals and reviews of use of force reports, would explain the Deputy Marshals' current practice concerning the use of Tasers.⁸²

Because of the deficiencies in data management and analysis discussed above, the components and the Department cannot reliably identify trends, emerging problems, or benefits associated with the use of less-lethal weapons. While the accuracy of the reporting data has improved since FY 2006, we believe that better analysis is needed to identify trends in the components' use of less-lethal weapons, as well as to assess both positive and negative impacts.

Recommendation

We recommend that:

3. The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.

None of the components reported any fatalities or significant injuries from their personnel's use of less-lethal weapons.

When Special Agents, Deputy Marshals, and correctional staff report their use of less-lethal weapons, these reports and any subsequent after-action assessments must identify any injuries or fatalities that occurred. During the period of the OIG's review, FY 2002 through FY 2008, Department components reported no fatalities or significant injuries to subjects or inmates stemming from the use of less-lethal weapons. This contrasts with the fatalities and significant injuries associated with the use of less-lethal weapons at the state and local level during the same period.⁸³

According to officials from the components whose personnel use the Taser, their personnel were less likely than state and local law enforcement officers to confront the types of situations that may increase the risk of serious injuries and fatalities associated with the use of conducted energy devices.

⁸² These types of activities could be performed by the USMS Office of Inspections during its inspections of field office operations.

⁸³ Amnesty International, 2008.

State and local law enforcement agencies are more likely to encounter individuals under the influence of drugs, alcohol, or who are suffering from mental illness. As discussed in the Background section of this report, some studies of conducted energy devices have indicated that the presence of drugs, alcohol, and mental illness may raise the risk of injury and fatality resulting from the use of such weapons. Component officials also said training programs provided to Special Agents and Deputy Marshals on the use of Tasers have helped prevent fatalities and serious injuries.

While the components did not report any fatalities or serious injuries during our review period, our review of BOP data for 203 incidents of the PepperBall system's use from FY 2004 through June 2008 showed that the weapon caused minor to moderate injuries to inmates in 65 of those incidents (33 percent). The injuries described in the BOP's records appeared moderate in 8 instances and minor in 57 others. Injuries recorded in the BOP's database for the remaining 138 instances did not appear related to the PepperBall system's use.

The components reported isolated incidents of misuse of less-lethal weapons.

We also found several reports of misuse of less-lethal weapons by component personnel. The BOP identified eight incidents of substantiated misconduct involving its employees' use of less-lethal weapons from FY 2002 through FY 2007. ATF identified one instance of the misuse of a Taser by one of its Special Agents.

One of the eight BOP incidents occurred when two correctional officers deployed a PepperBall system without authorization in response to a fight between two inmates. Further, a supervisor failed to ensure the inmates were medically assessed and decontaminated following the incident. As a result of the misuse of the PepperBall system, the two correctional officers were suspended for 14 days, and the supervisor was demoted.

All uses of force by BOP correctional staff require after-action reports. However, the use of a less-lethal weapon is investigated only if an allegation of inmate abuse is made. According to officials from the BOP Office of Internal Affairs, if they receive allegations that an inmate was abused with a less-lethal weapon, the complaint is forwarded to the OIG Investigations Division and the Department's Civil Rights Division. If the OIG and the Civil Rights Division decline to pursue the allegation, the BOP Office of Internal Affairs either handles the investigation as a misconduct case or assigns the complaint to the institution where the incident occurred for investigation. In conducting these investigations, BOP officials said they examine whether the use of force was authorized and whether it was exercised properly. All eight of the incidents

referenced above were declined for prosecution by the Civil Rights Division's Criminal Section, and the cases were returned to the BOP for consideration of discipline.

The incident involving an ATF Special Agent's misuse of a Taser occurred when he used a Taser belonging to a local law enforcement officer against a subject without proper justification. Pursuant to ATF policies, the Special Agent's field division reported the use of the Taser to ATF's Shooting Review Coordinator, who forwarded the matter to the integrity section of ATF's Internal Affairs Division, due to the nature of the incident. The Shooting Review Coordinator determined that there was sufficient reason to believe that the deployment demonstrated an improper use of force and forwarded the matter to ATF's integrity section of the Internal Affairs Division. Following an investigation by the integrity section, the matter went before ATF's Professional Review Board, and the Bureau Deciding Official subsequently determined that the Special Agent had exercised poor judgment in using the Taser on the subject. The Special Agent received a 14-day suspension.⁸⁴

The DEA, FBI, and USMS did not identify any instances of misuse of a less-lethal weapon by a Special Agent or Deputy Marshal during the period of our review.

In reviewing the use of less-lethal weapons, including Tasers, ATF and the USMS do not always perform the same type of review as would occur for firearms discharges. For both components, uses of force, including uses of less-lethal weapons, are investigated if a subject is seriously injured or killed or if non-frivolous allegations of misconduct are made against the Special Agent or Deputy Marshal involved in the incident. For ATF, a non-frivolous allegation of excessive use of force would be investigated by the Integrity Section of ATF's Internal Affairs Division. For the USMS, an allegation of excessive force would be investigated by the USMS Office of Inspections. For both ATF and the USMS, in cases where no significant injury occurred or there was no indication of improper use of force, the field office involved conducts a review, produces a factual record of the incident, and submits the report to the appropriate entity – either ATF's Internal Affairs Division or the USMS Office of Inspections.

⁸⁴ The Civil Rights Division had no involvement in this case.

The components independently assess new less-lethal weapons and have separately developed policy and training materials for these weapons.

ATF, the BOP, and the USMS have obtained new less-lethal weapons in the last several years. Our review found that these components independently tested and evaluated the less-lethal weapons they acquired. We found no coordinated effort by the components or at the Department level to identify new and emerging less-lethal technologies or to assist the components in developing policies and procedures to ensure the consistent and appropriate use of weapon systems already acquired. As a result, their efforts generally are not informed by work done elsewhere in the Department.

In addition, we identified two Department entities that fund research or conduct oversight of less-lethal weapon technology – the National Institute of Justice (NIJ) and the Civil Rights Division. The NIJ funds and performs research related to state and local law enforcement, including the feasibility and impact of less-lethal weapons. The Department’s Civil Rights Division conducts investigations of state and local law enforcement agencies pursuant to 42 U.S.C. 14141 to determine whether law enforcement officers are engaged in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.⁸⁵

Although the lessons learned at the state and local level may be applicable at the federal level, no formal mechanism exists for the NIJ or the Civil Rights Division to provide information to the Department’s own law enforcement components about their work related to the use of less-lethal weapons.⁸⁶

Components conducted research, testing, and evaluation before approving and acquiring new less-lethal weapon technologies.

We examined the steps that ATF, the BOP, and the USMS took once they identified weapon technologies that appeared promising. We also assessed whether the components acquired weapons for which there was a

⁸⁵ Within the Civil Rights Division, the Criminal Section prosecutes law enforcement personnel. The Special Litigation Section investigates individual law enforcement agencies where there is a cause to believe that an agency is engaged in a pattern or practice of violating federal law. This Section seeks civil remedies, in the form of injunctive relief that range from informal agreements to consent decrees.

⁸⁶ The components provided some examples of informal information sharing through various working groups and informal discussions with other governmental entities, but not directly with each other.

demonstrated need that the new weapons would address. Specifically, we reviewed whether the components completed research, testing, and evaluation to verify that the new weapons would perform in a manner that would aid the components' personnel in performing their daily duties. Our assessments were limited to those components that acquired new less-lethal weapons during the period covered by the OIG's review, FY 2002 through FY 2008.⁸⁷

Our review found that each of the three components performed independent assessments of the less-lethal weapons they acquired, including pre-acquisition research and testing of the less-lethal weapons. These activities included evaluating the weapons through pilot testing, developing use policies, and training new and existing personnel on the use of such weapons.⁸⁸ We found that the Department and its components did not coordinate the effort to identify emerging less-lethal technologies (see text box, page 44), or to develop policies and procedures to ensure the consistent and appropriate use of existing weapon systems.

In evaluating the Taser, ATF officials attended demonstrations, evaluated state and local law enforcement agency policies, and reviewed materials from independent organizations. In addition, ATF officials met with representatives from Taser International Inc. to ensure ATF had best practices in place prior to initiating a pilot test to determine whether the Taser would be an effective less-lethal weapon for its Special Agents. Based on its assessment of the testing, ATF officials decided that the Taser would further ATF's mission. The officials briefed the agency's senior leaders on the test results and supported obtaining Tasers for wider use by ATF.

In assessing the PepperBall system, the BOP's Office of Science and Technology (OST) researched the system and proposed pilot testing at BOP facilities. Following the OST's consultations with BOP medical staff and the General Counsel, the BOP's Executive Staff approved the testing program. The OST worked with the PepperBall system vendor, trained BOP trainers, and certified staff to use the weapon. Following the completion of the pilot testing, the OST prepared an after-action report, which concluded that the PepperBall

⁸⁷ The OIG examined only components' assessments of less-lethal weapon technologies that were newly acquired during the review period. We did not consider the acquisition of different types of munitions (e.g., foam baton, rubber bullets) or a change in a munitions' delivery system (e.g., size or manufacturer) to be a "new" less-lethal weapon.

⁸⁸ Although all of the law enforcement components stated that they kept abreast of the developing less-lethal technologies, they had identified only a handful of technologies that had piqued their interest as potential weapons that may further the mission of their respective organizations. These include a Taser "wireless" shotgun (ATF, USMS); a limited magazine PepperBall system (BOP); and a Taser designed specifically for cell block use (BOP).

system's accuracy and accompanying blunt trauma impact made it an ideal chemical dispensing system. The report recommended that the PepperBall system be approved for the BOP's medium- and high-security facilities.

In examining the Taser, USMS Training Academy officials researched the weapon and contacted state and local law enforcement agencies as well as other Department components, including ATF, for more information regarding its use. Officials reviewed information from Taser International Inc. and other sources, including safety evaluations by independent organizations, and attended a Taser instructor certification program. Thereafter, officials drafted a Taser policy directive and developed Taser training and use policies, which were reviewed by the USMS Office of the General Counsel. As a result, the USMS's Research and Evaluations Committee, the entity responsible for deciding whether to acquire new equipment, including less-lethal weapons, for Deputy Marshals, recommended to the USMS Director that Tasers be provided to Deputy Marshals.

An expanded discussion of the three components' efforts before obtaining new less-lethal weapons is contained in Appendix III.

The National Institute of Justice's less-lethal weapons research focuses on the use of new technologies by state and local law enforcement agencies.

The NIJ's charter mandates that it focus on assisting law enforcement and correctional agencies at the state and local level. Consequently, the efforts that it funds must have a significant impact on state and local law enforcement efforts. Hence, while the NIJ has funded projects that have a potential benefit for federal law enforcement efforts, the research had to have a demonstrated likely positive impact on state and local law enforcement efforts.

Nevertheless, some of the projects the NIJ funds on less-lethal weapons could potentially benefit the Department's law enforcement components. For example, several recent NIJ-funded studies on state and local law enforcement agencies' Taser use assessed the medical impact of the Taser device and the effects of varying use policies adopted by the state and local law enforcement agencies. These research studies were presented at the 2008 NIJ Conference, and they may be useful to the Department's law enforcement components in designing training and operational policies provided to Special Agents and Deputy Marshals. Specifically, the components could address potential

problems identified by state and local law enforcement agencies when adopting or modifying their own less-lethal technology policies.⁸⁹

In addition to the research that the NIJ funds, the NIJ has its own ongoing less-lethal research initiatives, including blunt trauma studies that focus on impact weapons' capabilities and their associated medical risks.⁹⁰ According to NIJ officials, the blunt trauma studies examine a device's capabilities and the medical effects of its use. Specifically, through collection of data from actual incidents and a review by medical personnel, the studies assess the force of impact and risk of injury to the subject from each less-lethal device.

NIJ officials also informed the OIG of several emerging weapon technologies that demonstrated potential for future implementation. The "T-Rad" (Remote Area Denial), which is an in-place device that discharges Tasers if individuals enter a restricted area, may have application in a prison environment. Additionally, less-lethal weapons utilizing directed energy based upon infrared and radio frequency waves are in the development phase. These weapons can penetrate windows and other light building material without damaging property. Further, these weapons do not result in environmental contamination as pepper spray does, and the infrared and radio frequency

Emerging Less-Lethal Weapon Technologies

Long Range Acoustic Device (LRAD) – A weapon that incapacitates using high-energy sound waves focused in a 15- to 30-degree "beam," allowing the LRAD to be aimed at a specific target. Used by the New York Police Department.

Electrolaser – An electroshock weapon that forms an electrically conductive laser-induced plasma channel. A powerful electric current can be sent down the channel to incapacitate subjects. Developed for the U.S. military.

Dazzler – Employs intense visible light usually generated by a laser to cause temporary blindness or disorientation. Used by the U.S. military in Iraq.

Sticky Foam Gun – Shoots sticky material that entangles and impairs individuals. Used by the U.S. Marine Corps in Operation United Shield.

Active Denial System – Emits electromagnetic radiation that deters individuals by causing a painful burning sensation without actually burning the skin. Developed by the Department of Defense's Joint Non-Lethal Weapons Directorate.

LED Incapacitator – A light emitting diode (LED) flashlight generates lights at several specific frequencies with multiple colors and random pulses that the brain cannot process. The result is that the subject becomes physically ill. In development for the U.S. Department of Homeland Security.

These technologies are discussed further in Appendix I.

⁸⁹ The OIG forwarded synopses to the component officials the OIG had interviewed to apprise them of the studies' findings of the impact of Taser acquisition on use of force decisions by state and local officers.

⁹⁰ The weapons include batons, rubber projectiles, StingBalls, and bean bag rounds.

waves have limited negative medical consequences because their effects are mostly superficial. The OIG identified other new less-lethal weapon technologies that are under development or are in use by other law enforcement agencies and the military (see text box above).

The Department's law enforcement components have not sought the assistance of the Civil Rights Division in the development of their less-lethal weapons policies.

The Civil Rights Division has a limited role in the Department's use of less-lethal weapons. Civil Rights Division officials stated that they do not formulate or review the law enforcement components' use of force policies generally or specific policies related to the components' use of less-lethal weapons.⁹¹ However, the Civil Rights Division's Criminal Section is responsible for investigating and prosecuting individual cases of alleged excessive use of force by law enforcement or correctional officers. These cases could include the misuse of less-lethal weapons.⁹² In addition, the Civil Rights Division's Special Litigation Section investigates state and local law enforcement agencies' patterns of conduct to determine possible misuse of force, including less-lethal weapons. These investigations can identify underlying problems that Department components may also confront.

For example, as of April 2009, the Special Litigation Section was continuing an extensive review of a local law enforcement agency that identified deficiencies in that agency's use of and policies on conducted energy devices. The Special Litigation Section initiated the review of the Orange County (Florida) Sheriff's Office based on complaints it received and on media scrutiny

Taser Investigation Procedures

We met with a Supervisory Special Agent (SSA) within the FBI's Civil Rights Division who discussed her ongoing research into Taser use by state and local law enforcement agencies. The goal of the SSA's research is to construct an investigator's manual for FBI Special Agents investigating alleged violations of citizens' civil rights stemming from improper use of the Taser by state and local law enforcement officers. The manual would allow FBI Special Agents to quickly obtain basic information about the weapon so that they could focus predominantly on determining if the use of the weapon was proper under the circumstances or whether the officer applied excessive force. Following our discussion, the OIG referred the FBI SSA to the ATF Internal Affairs Division as it had just completed a similar effort when crafting ATF's policies.

⁹¹ When the OIG initiated this review, we included the Civil Rights Division in the scope to identify activities that the Division engaged in that might have an impact on the law enforcement components' use of less-lethal weapons.

⁹² During the period we reviewed, the Civil Rights Division did not initiate any prosecutions against the components' personnel for alleged misuse of a less-lethal weapon.

of the sheriff's office's policies and practices concerning use of Tasers. According to ATF's and the USMS's websites, this local agency participates on existing Department task forces.⁹³ Additionally, according to the Special Litigation Section, an officer from the Orange County Sheriff's Office carries a Taser issued by Orange County while operating on a FBI task force. Thus, the FBI and USMS are relying on this local agency's deficient policies when officers from this agency are carrying Tasers while operating under the auspices of the Department.

The review of the Orange County Sheriff's Office was the Special Litigation Section's first investigation of a state or local law enforcement agency's alleged misuse of conducted energy devices. As part of that review, in August 2008, the Special Litigation Section issued a technical assistance letter to the agency that identified deficiencies and provided detailed recommendations for improving the sheriff's office's Taser policies and training curriculum.⁹⁴

Some of the recommendations included in the Special Litigation Section's technical assistance letter to Orange County Sheriff's Office included the following:

- Use policies should include reference to the Fourth Amendment, which mandates that conducted energy device uses be reasonable in light of the surrounding facts and circumstances.
- Although the use of the device against a fleeing subject may be reasonable under certain circumstances, the mere act of fleeing the presence of law enforcement, without more, does not create circumstances under which an officer's deployment of a conducted energy device would be considered a reasonable use of force.
- Agencies should create their own training materials, scenario-based use and arrest drills, and testing procedures and not just rely on the manufacturer's materials.

After reviewing the technical assistance letter, we discussed it with officials from both the Special Litigation Section and the Department's law

⁹³ See www.atf.gov/field/tampa/vcit-orlando_info.htm and www.usmarshals.gov/district/fl-m/taskforces/index.html (accessed April 8, 2009).

⁹⁴ Shanetta Y. Cutlar, Chief, Special Litigation Section, U.S. Department of Justice Civil Rights Division, to Kevin Beary, Orange County Sheriff, SYC:DHW:GG:WEN DJ 207-17M-4 (August 20, 2008), www.usdoj.gov/crt/split/documents/orangecty_ta_ltr.pdf (accessed April 8, 2009).

enforcement components. The Department law enforcement component officials stated that they would consider incorporating similar language into their respective training curricula. Officials from both the Civil Rights Division and the law enforcement components stated that they would be interested in exchanging information in the future to ensure that all were abreast of current findings and best practices related to less-lethal weapons. We believe that the Department would benefit from enhanced information sharing between the Civil Rights Division and the law enforcement components when circumstances warrant.⁹⁵

Recommendation

We recommend that:

4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

⁹⁵ Although USMS Training Academy staff had previously reviewed the guidance letter as part of their collaboration with FLETC, other law enforcement component officials were unaware of the letter's issuance. The Civil Rights Division also failed to apprise the OIG of the letter's existence despite several OIG requests for information. The OIG discovered the letter while researching concerns about the Orange County Sheriff's Office's use of Tasers.

CONCLUSION AND RECOMMENDATIONS

Although several of the Department's law enforcement components are expanding their use of less-lethal weapons and have added new less-lethal technologies, the Department and its components do not coordinate the assessment of these technologies or the development of use and training policies. Moreover, the Department's deadly force policy does not specifically address the use of less-lethal weapons.

While the components that use less-lethal weapons have individually developed policies to govern their personnel's use of the weapons, the FBI and DEA do not have policies to address the use of Tasers by state and local members of their task forces. Further, the USMS, unlike ATF, does not mandate that state and local task force officers abide by its less-lethal weapons policies, including the USMS's Taser policy.

The fatalities that have occurred following the use of conducted energy devices by state and local agencies, coupled with greater use of these weapons by the Department's law enforcement components, lead us to recommend that the Department coordinate and ensure that the components have appropriate and consistent less-lethal weapons policies that include conducted energy devices. These less-lethal weapons policies should include sufficient detail to provide meaningful guidance on appropriate use of existing and emerging less-lethal weapons.




We also believe that the Department's components can improve their tracking and assessment of their use of less-lethal weapons. While all components require uses of less-lethal weapons to be reported, we found that the components did not maintain complete data and generally did not evaluate their use statistics to determine trends in, or benefits or drawbacks from, their use of less-lethal weapons. There have also been isolated reports of misuse of these weapons by component personnel. Because these weapons have the potential to cause serious injury or death, we believe that more consistent reporting on the use of less-lethal weapons should be required to ensure that use trends and misuse are identified.






Finally, the Department should consider coordinating efforts by the law enforcement components, the NIJ, and the Civil Rights Division concerning emerging less-lethal weapons. We believe that coordinated efforts would assist the components in identifying new less-lethal weapons, developing use policies and training curriculum, and ensuring proper use of these weapons.


Therefore, we recommend that:

1. The Department coordinate and ensure that its components develop appropriate and consistent policies to specifically address the use of less-lethal weapons, including conducted energy devices, by Department personnel and state and local law enforcement officers serving on Department task forces.
2. The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.
3. The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.
4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

APPENDIX I: TYPES OF LESS-LETHAL WEAPONS

Type of Less-Lethal Weapon	Description	Photo
Impact Weapons		
Baton	A round stick of various lengths made of hardwood, aluminum, or plastic composite materials.	
Bean Bag Shotgun Rounds	Bean bag rounds are heavy nylon cloth squares about the size of a tea bag filled with an ounce of lead birdshot and loaded into a standard-size shotgun shell. They are deployed through a munitions delivery system, usually a standard shotgun adapted to fire bean bag rounds.	Picture not available
Baton Launcher	A munitions delivery system, usually a standard shotgun or grenade launcher, adapted to fire baton rounds. A baton launcher can fire one long baton or several shorter batons (as shown in the picture). ATF, for example, uses a 37 millimeter baton launcher.	
Rubber Projectiles, Pellets	Rubber projectiles are encased in a shotgun shell and usually fired from a 12-gauge shotgun.	

Chemical Agents		
CS Gas (“Tear Gas”)	CS Gas, typically referred to as tear gas, is a gas that causes tears and painful breathing. The gas is deployed through a munitions delivery system, usually a standard shotgun or grenade launcher, adapted to fire gas grenades or tear gas cartridges. A gas gun can fire single-shot rounds or multi-shot rounds of chemical agents.	
Pepper Spray	Canisters of oleoresin capsicum (OC), OC gas, or capsicum spray disperse a chemical compound that irritates the eyes to cause tears, pain, and even temporary blindness.	
PepperBall System	A munitions delivery system that launches up to four projectiles with 20 foot-pounds of force that release hot pepper powder (capsaicin II).	
StingBall	A small, soft rubber container that includes a bursting charge that distributes a payload of over 100 soft rubber balls. When it explodes, the outer casing bursts and ejects the rubber balls outward in a radial pattern at a velocity of several hundred feet a second. This device may also emit oleoresin capsicum.	Picture not available
Conducted Energy Devices		
Electronic Custody Control Belt, Stun Belt, or “Band-It,” Electronic Restraint	A system of bands put on a subject to deliver an incapacitating electric shock if the subject attempts to flee or attack. The shock can be set to go off automatically on movement (Band-It; shown in picture) or can be delivered by an operator up to 150 feet away through a wireless remote.	
Taser	Deploys electrical energy sufficient to cause uncontrolled muscle contractions and override an individual’s voluntary motor responses.	

Ultron II Contact Stun Device	Similar to the Taser described above, the device deploys electrical energy sufficient to temporarily incapacitate an individual.	
Sound Weapon		
Aerial Dispersion Shotgun Round	A CO ₂ or compressed air round (typically a blank round) fired into the air, usually by a standard shotgun, to cause a loud “bang” sound similar to a warning shot.	Picture not available
<i>Emerging Less-Lethal Technologies</i>		
Long Range Acoustic Device (LRAD)	Emits a concentrated, 150-decibel [dB] high-energy acoustic wave that retains a level of 100dB over distances of 500 meters. The wave is focused within a 15- to 30-degree “beam,” allowing the LRAD to be aimed at a specific target. Used by the New York Police Department.	
Electrolaser	An electroshock weapon that forms an electrically conductive laser-induced plasma channel. A powerful electric current is sent down the plasma channel to incapacitated subjects. The weapon functions as a long-distance version of the Taser. Developed for the U.S. military.	
Dazzler	Employs intense visible light usually generated by a laser to cause temporary blindness or disorientation. Used by the U.S. military in Iraq.	
Active Denial System	Emits electromagnetic radiation at a frequency of 95 GHz toward the subject. The waves deter individuals by causing an intense painful burning sensation without actually burning the skin. Developed by the Department of Defense’s Joint Non-Lethal Weapons Directorate.	
Sticky Foam Gun	Fires multiple shots of sticky material that entangles and impairs individuals. Provided to the U.S. Marine Corps for Operation United Shield.	
LED Incapacitator	Resembling a large flashlight, this weapon uses light emitting diode (LED) lights flashed at several frequencies with multiple colors and random pulses that the brain cannot process. The result is that the suspect becomes physically ill. Developed for the U.S. Department of Homeland Security.	
Sources: Compiled from multiple documents provided to the OIG by the components, as well as OIG research from public source documents.		

APPENDIX II: Less-Lethal Weapons Training

This appendix presents a discussion of the less-lethal weapons training and certification programs provided by each of the Department's law enforcement components, including location and frequency of training. This appendix does not address training on less-lethal weapons provided only to the components' special operations units such as ATF's Special Response Teams, the BOP's Special Operation Response Teams, the FBI's Special Weapons and Tactics teams, and the USMS's Special Operations Groups. Members of these entities receive instruction on additional less-lethal weapons through participation in special weapons and tactics training.

DEA and FBI

Both the DEA and the FBI provide their Special Agents with training on the use of the baton and pepper spray. The DEA and FBI Training Academies provide instruction on both of these devices as part of new Special Agent training.⁹⁶ Existing Special Agents participate in quarterly defensive tactics training courses at their respective field offices. The use of the less-lethal devices is part of such quarterly defensive tactics training. However, neither agency has a mandatory re-certification program for use of either the baton or pepper spray, nor do they have specific requirements for how often the defensive tactics classes must address the use of these weapons.

ATF and USMS

All ATF Special Agents and USMS Deputy Marshals receive training on use of the baton, pepper spray, and Tasers.⁹⁷ ATF's and the USMS's training programs for use of the baton and pepper spray are similar to those employed by the DEA and FBI. ATF Special Agents and USMS Deputy Marshals receive training on the baton and pepper spray at the Federal Law Enforcement Training Center (FLETC) and additional training on the use of these devices is presented at ATF's and the USMS's Training Academies. Both ATF and the USMS have annual recertification programs for their respective operational personnel on the use of the baton and pepper spray.

⁹⁶ New Special Agents are exposed to pepper spray during the training. Existing Special Agents are not exposed to pepper spray as part of the defensive tactics classes.

⁹⁷ Deputy Marshals may also have access to the Ultron II stun gun and the Band-It System. However, as shown in Table 3, USMS personnel have not applied force using the Band-It System in FY 2007 or FY 2008. The Ultron II has not been used in at least the past 6 years and has been largely phased out as a result of the USMS's acquisition of the Taser.

In addition, ATF and the USMS require mandatory training on the use of the Taser for both instructors and end-users. Taser instructors and trainers must be re-certified every 2 years, and end-users (Special Agents and Deputy Marshals) must be re-certified annually.⁹⁸

ATF uses the most current version of Taser International Inc.'s Taser training curriculum.⁹⁹ Through FY 2008, ATF provided Taser training only at selected field offices. In FY 2009, according to ATF Training Academy officials, ATF began including Taser training as part of its new Special Agent training curriculum at the ATF Training Academy.

The USMS Training Academy provides Taser training to new Deputy Marshals along with defensive tactics and use of force scenarios. Additionally, the USMS has transition drills that train Deputy Marshals on situations that escalate from using less-lethal weapons, including the Taser, to the use of deadly force. Further, as part of the USMS's overall less-lethal weapons and defensive tactics training program, the USMS Training Academy oversees less-lethal weapon instructor training and program development.¹⁰⁰

BOP

BOP personnel receive training on use of the baton, pepper spray, the PepperBall system, bean bag shotgun rounds, StingBall, rubber projectiles, and the aerial dispersion shotgun round.¹⁰¹ The BOP's correctional officers receive their initial training on the proper use of less-lethal weapons through classroom instruction and drills at FLETC. BOP staff subsequently receive annual training on the use of these weapons at their correctional facilities. The training is provided by instructors who are trained and certified annually. While the annual staff training is not part of a re-certification program, it provides a review on how to use the baton, chemical agents (including pepper

⁹⁸ Master Taser Instructors (i.e., trainers of other Taser instructors) must be trained and certified through Taser International Inc.

⁹⁹ The USMS's Taser lesson plan is similarly based on the Taser International's training program. However, both ATF and the USMS ensure that their Taser training curriculum is consistent with their respective use of force policies.

¹⁰⁰ The USMS Academy trains trainers from each division, and those trainers provide instruction to local personnel.

¹⁰¹ BOP correctional personnel also have access to tear gas and an electronic custody control device. However, as shown in Table 4, the BOP's personnel have not applied force using the custody control belt in the past 5 years.

spray), and a classroom discussion covering the BOP's use of force policies.¹⁰² However, the annual use of force classes do not address all of the less-lethal weapons utilized at BOP facilities, such as the PepperBall system.

At a minimum, the BOP's Disturbance Control Team and Special Operations Response Team members, shift lieutenants, and security officers are trained to use the PepperBall system.¹⁰³ Additionally, the facility's Warden can select other correctional facility staff to be trained and authorized to use the PepperBall system. According to BOP officials, security officers are typically the personnel sent to the PepperBall system vendor to receive the training and complete the one-time training certification. Upon their return to their facilities, the certified instructors are responsible for training other staff on the use of the weapon. Staff designated by the Warden to use the PepperBall system must re-certify their proficiency on use of the weapon annually. The certified instructors at the facility must renew their certification annually.

The annual firearms curriculum that all facility staff must complete covers the aerial dispersion and bean bag rounds because all BOP correctional facility staff are trained to fire a standard shotgun, which is the munitions delivery system for these two less-lethal weapons. Training on the munitions delivery system that deploys chemical agents (pepper spray and tear gas), as well as training on deploying the StingBall, is provided to all staff as part of the annual firearms curriculum.

BOP correctional facilities provide supplemental less-lethal weapons training to staff stationed in the facilities' towers. Correctional officers assigned to an armed post must be certified as having received training on use of the weapons assigned to that post, such as rubber projectiles, prior to their assignment. These officers must also be re-certified on a quarterly basis. The certification process includes reviewing the range capabilities of the weapons and distances to areas within the facility to ensure that the officer does not use a less-lethal round at a distance that would result in a fatal injury. In addition to the certification process, the towers maintain written post orders that provide instructions on the weapons assigned to the post.

¹⁰² Additionally, pepper spray is included in the annual firearms and munitions training.

¹⁰³ Disturbance Control Teams (DCT) provide BOP institutions with a calculated response to emergency situations utilizing crowd control techniques and less lethal munitions. DCTs are activated under the direct authority of the Warden or the Warden's designee. Special Operation Response Teams (SORT) are extensively trained, armed tactical teams that respond to disturbances and hostage situations, and perform other high-risk operations. SORTs are activated under the direct authority of the Warden or the Warden's designee. Not all BOP facilities have a SORT.

APPENDIX III: THE DEPARTMENT COMPONENTS' ASSESSMENT PROCESSES FOR ACQUIRING NEW LESS-LETHAL WEAPONS

The OIG examined the steps that the components took when they identified weapon technologies for prospective acquisition and use. We reviewed whether the components completed research, testing, and evaluation to verify that the prospective new weapons would perform in a manner that would aid the components' personnel in performing their daily duties. Further, the OIG identified whether the components developed policies and training governing new weapons prior to providing them to their personnel. The material in this appendix is limited to those components that acquired new less-lethal weapons during the period covered by the OIG's review, FY 2002 through FY 2008 – ATF, the BOP, and the USMS.¹⁰⁴

ATF

The Taser is the only new less-lethal weapon ATF tested, approved, and acquired during the period covered by the OIG's review. ATF's Office of Training and Professional Development (TPD) is responsible for testing and evaluating the weapons carried by its Special Agents. The decision to acquire Tasers stemmed from a review of ATF's use of pepper spray and a rejection of other alternatives.¹⁰⁵

In 2002, the TPD performed an internal review to determine if pepper spray was providing ATF Special Agents with an effective option to achieve control of subjects. The TPD found that difficulties associated with using pepper spray, such as exposure of Special Agents to the effects of the chemical, caused Special Agents to use the weapon infrequently. Further, because only three uses of pepper spray were reported in 2001, the TPD concluded the reporting of pepper spray use may not be accurate. Regardless of the exact number of pepper spray uses, the TPD staff determined that the infrequent use of pepper spray warranted identifying other alternative less-lethal weapons that

¹⁰⁴ The OIG examined only components' assessments of less-lethal weapon technologies that were newly acquired during the review period. We did not consider the acquisition of different types of munitions (e.g., foam baton, rubber bullets) or a change in a munitions delivery system (e.g., size or manufacturer) to be a "new" less-lethal weapon.

¹⁰⁵ The TPD considered providing ATF's Special Agents with bean bag rounds. However, the TPD decided those devices would not serve Special Agents well because Special Agents could confuse the shotgun and a bean bag shotgun and mistakenly select and use the wrong weapon in a given circumstance. Further, plainclothes Special Agents would have difficulty concealing the weapon because of its size.

ATF personnel would be more likely to use in situations in which deadly force would not be authorized.

The TPD took a number of steps in considering whether to acquire the Taser. TPD officials first observed a Taser presentation at an International Association of Law Enforcement Firearms Instructors Conference in September 2002. They also attended demonstrations at other conferences. ATF then purchased five Tasers for testing and evaluation, and subsequently purchased a newer model for further testing.

In developing its Taser policy, ATF officials told the OIG that they wanted to ensure ATF had best practices in place so that its use of the weapon would not be subject to criticism. The TPD evaluated state and local law enforcement agencies' policies and reviewed less-lethal weapon materials from the Department of Defense. The TPD then adopted recommendations from the Police Executive Research Forum and the International Association of Chiefs of Police regarding use of the Taser. ATF officials also met with representatives from Taser International. ATF executives approved the first ATF Taser user groups and proceeded to further evaluate the weapon.

In the spring of 2003, ATF implemented its Taser pilot testing to determine whether it would be an effective less-lethal weapon for its Special Agents. Under the program, ATF trained selected personnel and provided that group with access to 54 Tasers. Three Tasers were assigned to ATF's training staff. Four ATF Special Response Teams received 2 Tasers each as did the offices within each of ATF's 23 field divisions that had active violent crime investigations.¹⁰⁶ ATF trained 145 Special Response Team members and approximately 10 Special Agents in each active field office that received the Tasers. At the same time, ATF began certifying personnel as Taser instructors and, by September 2003, had certified approximately 35 Taser instructors.

ATF completed its Taser pilot testing in the spring of 2004. During this period, there were 21 reported uses of the Taser by ATF Special Agents. ATF officials stated that in several of those 21 instances, Special Agents would have been justified in using their standard-issue firearms because the subject had been holding a weapon or had ready access to a weapon. ATF officials concluded that the Taser enabled Special Agents to safely arrest armed subjects without resorting to deadly force.

¹⁰⁶ ATF's Special Response Teams confront violent criminals and protect the Bureau's agents, the public, other law enforcement officers, and the subjects during the course of criminal investigations. The teams respond to high-risk operations that involve arrest and search warrants, home invasion, robberies, undercover, and protection operations.

Based on their assessment of the pilot testing, the TPD officials determined that the Taser would be an effective less-lethal weapon in furtherance of ATF's mission and briefed the Senior Leadership Team on the test results. TPD officials said the Taser increases the Special Agents' confidence that they can achieve control and "levels the playing field," especially in situations where a Special Agent is confronting a subject who is physically much larger than the Special Agent.

Following the pilot testing, ATF executives authorized acquiring additional Tasers. ATF purchased the majority of its Tasers in the fall of 2005, and those weapons were disseminated to field offices in January 2006. According to ATF officials, all ATF field offices have Tasers, with the number of units predicated on the offices' staffing levels (approximately two Tasers per office).

BOP

During the period covered by our review, the only new less-lethal weapon that the BOP acquired was the PepperBall system. The BOP's decision to acquire the PepperBall system was driven in part by the fact that using pepper spray in confined spaces exposed the correctional staff to the effects of the chemical spray, making it more difficult for them to obtain control over the situation that gave rise to the need for use of some weapon.

The BOP's basic requirement for a less-lethal weapon is that it must serve as an effective deterrent to an inmate by inducing a high degree of discomfort or pain, but remain a weapon that cannot cause an inmate's death under any conditions. Before acquiring a new weapon (either lethal or less-lethal), the BOP has several layers of review to ensure that the weapon will meet its requirements and provide the necessary safety to inmates and officers. These reviews include assessments by its Correctional Services Administration, General Counsel, medical staff, and its Office of Science and Technology (OST).

In 2000, the OST identified the PepperBall system as a weapon that it believed had the potential to be a better delivery system of oleoresin capsicum (OC) than pepper spray.¹⁰⁷ Additionally, the OST officials stated that they believed the PepperBall system would augment the existing inventory of less-lethal weapons. The OST found that although the PepperBall system had the same effect on a subject as pepper spray, a correctional officer can use the PepperBall system from a distance and avoid the effects of the OC powder. In

¹⁰⁷ Oleoresin capsicum is the active chemical agent in pepper spray. The BOP's approval of the PepperBall system followed the completion of the pilot testing in October 2001. Thus, the BOP's acquisition of the PepperBall system falls within the scope of the OIG's review.

addition, the impact of a PepperBall system round hitting an inmate provides a blunt trauma deterrent. The BOP's existing chemical agents (pepper spray or tear gas) were deemed not effective in various situations, such as encounters between correctional officers and inmates in confined spaces. Additionally, the bean bag round the BOP had acquired could result in a debilitating injury or death if used inappropriately or if the bean bag round struck an inmate's head or other sensitive body area.

According to OST officials, before initiating pilot testing for the PepperBall system, the OST looked at the technology and assessed the likely effects from the blunt trauma of the PepperBall rounds' impact on inmates as well as the effectiveness of delivering the OC powder, including reviewing studies of paintball weapons.¹⁰⁸ Given the similarities of the delivery systems, the BOP reviewed information from the paintball industry on the likely effects of a PepperBall system's impact on the human body. The OST prepared a proposal for a pilot testing and presented it to the BOP's Executive Staff. Upon approval, the BOP worked with the PepperBall system vendor to train specified BOP staff, who subsequently provided instruction to certify other BOP staff on use of the weapon.

The OST then initiated the pilot testing to evaluate the weapon. During the testing, the BOP provided 6 penitentiaries with at least 2 PepperBall systems and provided training to over 200 staff.¹⁰⁹ During the 16-month pilot test, correctional staff responded to several disturbances armed with the PepperBall system, but discharged the weapon in only one instance. In that one case, the PepperBall system enabled BOP staff to control a non-compliant inmate in a recreation yard after a significant amount of pepper spray had proved ineffective. The most successful PepperBall system application occurred during a significant disturbance at the BOP's Terre Haute penitentiary. Although, not a single PepperBall round was fired, the sight of four Disturbance Control Team members carrying PepperBall systems caused the inmates to disperse and return to their cells. The facility's Warden stated that the PepperBall system "played a major role in quelling what could have been a major incident."¹¹⁰

¹⁰⁸ OST officials stated that they reviewed an NIJ study on blunt trauma projectiles and a National Institutes of Health report on eye injuries caused by paintball weapons.

¹⁰⁹ In addition, the OST demonstrated the PepperBall system at each of the BOP's Regional Crisis Management Training events and at correctional administrators meetings. The OST also surveyed BOP personnel on their assessments of the demonstration.

¹¹⁰ BOP PepperBall System After-Action Report, October 2001.

Following the completion of the pilot testing, the OST prepared an after-action report that concluded that the PepperBall system's superb accuracy, at up to 30 feet, made it an ideal chemical dispensing system for targeting specific inmates. Thus, the OST decided that the PepperBall system would improve the BOP's arsenal of alternative less-lethal weapons and recommended that the PepperBall system be approved for the BOP's medium- and high-security facilities.

As part of its recommendation, the OST suggested a national certification and training program be established to ensure that the PepperBall system was implemented appropriately. The BOP Correctional Services Administration accepted the OST's recommendations concerning the PepperBall system. As part of its use of the PepperBall system, the BOP has implemented a certification and training program that ensures BOP personnel who use the weapon are certified annually.

USMS

During the period covered by the OIG's review, the USMS approved the acquisition of the Taser for Deputy Marshals. The USMS's Research and Evaluations Committee (Committee) is the entity responsible for deciding whether to acquire new equipment, including less-lethal weapons for Deputy Marshals. The Committee reviews devices and technologies ranging from handcuffs and batons to conducted energy devices.

According to USMS officials, their assessment of the Taser device as a weapon for Deputy Marshals began in approximately 2003.¹¹¹ After seeing videos about the Taser, USMS officials became interested in whether the Taser could be an effective alternative to batons and pepper spray, especially in situations when hand-to-hand grappling or pepper spray would not be an effective choice. According to USMS officials, they were familiar with the limitations of older conducted energy devices that were predicated upon producing "pain compliance" rather than the newer versions that are designed to incapacitate the subject.

Training officials at the USMS Training Academy began researching the device and contacted state and local agencies as well as other Department

¹¹¹ The USMS Special Operations Group (SOG) began using Tasers in 2000. The SOG is a specially trained and highly disciplined tactical unit and self-supporting response team capable of responding to emergencies anywhere in the United States. The group's missions include apprehending fugitives, protecting dignitaries, providing court security, transporting high-profile and dangerous prisoners, providing witness security, and seizing assets. According to SOG officials, the success of SOG's Taser program was a factor in the USMS's expanding the use of Tasers to all of the USMS.

components, including ATF. The training officials read information from Taser International Inc. and other sources, including safety evaluations by independent organizations, such as the U.S. Air Force. USMS officials also attended a Taser instructor certification program where they observed that the device performed as advertised. Based on their firsthand observations at this program, USMS officials stated they believed the device demonstrated stopping capability with immediate cessation of the impact once the weapon was disengaged.

Based on a presentation and documentation that had been compiled by the USMS Training Academy, the Committee assessed deploying the Taser to Deputy Marshals and made preliminary recommendations to the Director of the USMS in 2004. Initially, the Committee made no final recommendations regarding the Taser, waiting for additional information about the flammability risks posed by the use of Tasers in conjunction an alcohol-based pepper spray.¹¹² The USMS Training Academy had identified alternatives, such as a water-based pepper spray, but needed to test the water-based spray's effectiveness.

While the USMS tested the water-based pepper spray in conjunction with the Taser, USMS Training Academy officials began to draft a Taser Policy Directive and developed Taser training and use policies, which were reviewed by the USMS Office of the General Counsel. Upon resolving the pepper spray flammability issue, the Committee made a recommendation to the USMS Director to provide Deputy Marshals with Tasers. In April 2006, the Taser was approved for use by Deputy Marshals.¹¹³ Even though the USMS has switched to a water-based pepper spray, the USMS Taser training curriculum continues to address the dangers of deploying both an alcohol-based pepper spray and a Taser because Deputy Marshals operate in situations that include other law enforcement personnel who may be carrying alcohol-based pepper spray.

In September 2007, the Academy was provided \$300,000 to purchase Tasers and distributed 350 units to the district offices to augment the offices' existing number of Tasers.

¹¹² The combination of the electric current generated by a Taser and alcohol has been identified as a known risk. The dangers of using the Taser in association with an alcohol-based spray are addressed in both the USMS and ATF Taser training policies. These risks are similar to those posed by using a Taser in environments where other flammable elements are present (e.g., at a gas station).

¹¹³ Only USMS operational personnel are equipped with the Taser. Court Security Officers are not provided with, trained on, or authorized to use USMS-issued Tasers.

APPENDIX IV: DEPARTMENT OF JUSTICE RESPONSE

U.S. Department of Justice
Washington, D.C. 20530
MAY 01 2009

Mr. Michael D. Gullledge
Assistant Inspector General for Evaluations and Inspections
United States Department of Justice
Suite 6100
1425 New York Avenue, NW
Washington, DC 20530

Re: OIG Review of the Department of Justice's Use of Less-Lethal Weapons

Dear Mr. Gullledge:

The Department of Justice appreciates the opportunity to review and respond to your draft report titled *Review of the Department of Justice's Use of Less-Lethal Weapons*, Number A-2008-007 (hereinafter "Report").

The Report describes how Department law enforcement and correctional personnel may use less-lethal weapons when circumstances require the use of some force, but use of deadly force would not be appropriate. Several types of less-lethal weapons are used by the Bureau of Alcohol, Tobacco, Firearms and Explosives, Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Federal Bureau of Prisons, and the United States Marshals Service. FBI and DEA personnel use only batons and pepper spray. The Office of the Inspector General (OIG) found that there have been no reported fatalities resulting from the use of less-lethal weapons by Department components. However, the OIG found that fatalities have occurred at the state and local level. State and local law enforcement personnel often work with Department personnel on task forces. Also, some state and local jurisdictions have policies on the use of less-lethal weapons.

The OIG observed that the use of less-lethal weapons varies widely by component and that the Department does not have a Department-wide policy on the use of less-lethal weapons. Also, the OIG noted that the Department has not promulgated guidelines for its components to follow when they create their own policies. Further, the Department has not mandated that state and local officers working on task forces with Department personnel abide by policies

issued by any of the Department components. Consequently, the OIG recommended to the Department that:

1. The Department coordinate and ensure that its components develop appropriate and consistent policies to specifically address the use of less-lethal weapons, including conducted energy devices, by Departmental personnel and state and local law enforcement officers serving on Department task forces.

2. The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.

The Department concurs with the recommendations. The Department will convene a working group under the direction of the Management and Planning Staff (MPS) of the Justice Management Division to consider the creation of a Department-wide policy or guidelines for the creation of appropriate and consistent policies among the components on the use of less-lethal weapons. The working group will draw membership from the pertinent DOJ components and prepare recommendations for consideration by the Attorney General. The working group will hold its first meeting no later than July 2009 and meet thereafter as needed. The working group will provide a status report to the Office of the Deputy Attorney General by no later than the end of November 2009. A final recommendation will be presented by the working group by the end of February 2010. The working group will provide periodic reports to the OIG pursuant to mutually agreed upon schedule adopted by the OIG and MPS.

Thank you for the opportunity to provide comments on the draft report. If you have any questions regarding this response, please contact Mike Allen, Deputy Assistant Attorney General for Policy, Management and Planning, Justice Management Division, on (202) 514-3101.

Respectfully submitted,

Neil MacBride
Associate Deputy Attorney General

APPENDIX V: OIG ANALYSIS OF DEPARTMENT OF JUSTICE RESPONSE

The Office of the Inspector General provided a draft of this report to the Department of Justice for its comments. The report contained four recommendations: Recommendation 1 was directed to the Department; Recommendation 2 was directed to the Department and its law enforcement components; Recommendation 3 was directed to the law enforcement components; and Recommendation 4 was directed to the law enforcement components, the National Institute of Justice, and the Civil Rights Division.

The Department responded to Recommendations 1 and 2 and that response is included in Appendix IV of this report. The OIG's analysis of the Department's response and the actions necessary to close the recommendations are discussed below.

Recommendation 1. The Department coordinate and ensure that its components develop appropriate and consistent policies to specifically address the use of less-lethal weapons, including conducted energy devices, by Department personnel and state and local law enforcement officers serving on Department task forces.

and

Recommendation 2. The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.

Status. Resolved – open.

Summary of Department's Response. The Department concurred with the recommendations and stated that the Management and Planning Staff of the Justice Management Division will convene a working group to consider the creation of a Department-wide policy or guidelines for the creation of appropriate and consistent policies among the components on the use of less-lethal weapons. The Department also stated that the working group will consist of representatives from pertinent Department components and will prepare recommendations for consideration by the Attorney General.

OIG Analysis. The actions planned by the Department are responsive to our recommendations to coordinate and ensure that its components develop appropriate and consistent policies to specifically address the use of less-lethal weapons. Regarding Recommendation 2, we believe the Department's working group should require the components to establish procedures to ensure that

state and local task force members are informed of and adhere to the components' less-lethal weapons policies and any subsequent Department-wide policy or guidelines created by the working group. In light of the fatalities that have occurred following the use of less-lethal weapons on the state and local levels, specifically conducted energy devices, we believe that state and local law enforcement officers participating on Department task forces should be made aware of and abide by the component or Department policies and guidance on the appropriate use of less-lethal weapons.

The Department has stated that the working group will hold its first meeting no later than July 2009, provide a status report to the Office of the Deputy Attorney General by November 2009, and present a final recommendation by the end of February 2010. In addition, the working group will provide periodic reports to the OIG. Please provide the OIG with a status report relating to these meetings, including the date, location, an agenda, and a list of participants

APPENDIX VI: ATF RESPONSE

U.S. Department of Justice
Bureau of Alcohol, Tobacco,
Firearms and Explosives
Office of the Director
Washington, DC 20226
May 7, 2009

Mr. Michael D. Gullledge
Assistant Inspector General
for Evaluations and Inspections
United States Department of Justice
1425 New York Avenue, N.W.
Suite 6100
Washington, DC 20530

Dear Mr. Gullledge:

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has reviewed and appreciates the opportunity to comment on the Office of the Inspector General's (OIG) draft report entitled "Review of the Department of Justice's Use of Less-Lethal Weapons."

OIG's Recommendation Number 2: The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.

ATF's Response: ATF concurs with this recommendation and currently ensures that State and local task force members are informed of and abide by ATF policy regarding less-lethal weapons. State and local members receive initial training upon entering the task force and receive additional training that covers policy and usage throughout the year. In order to ensure compliance with Bureau policies, task force members are also subject to the same "use of force" reviews as ATF special agents.

OIG's Recommendation Number 3: The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in use of such weapons.

ATF's Response: ATF concurs with the OIG's recommendation. Yearly training and conferences are conducted to ensure the up-to-date assessment of Bureau

issued less-lethal weapons and emerging technology in this field. Currently, Firearms Instructor Coordinators and Division Tactical Advisors meet yearly in order to analyze less-lethal weapons and their use.

OIG's Recommendation Number 4: The National Institute of Justice (NIJ) and the Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

ATF's Response: ATF strongly concurs with this recommendation and currently works closely with members from the Civil Rights Division through ATF's Office of Professional Responsibility and Security Operations.

Should you have any questions regarding this response, please contact Kelvin N. Crenshaw, Assistant Director, Office of Professional Responsibility and Security Operations, at (202) 648-7500.

Sincerely yours,

Kenneth Melson,
Acting Director

APPENDIX VII: OIG ANALYSIS OF ATF RESPONSE

The Office of the Inspector General provided a draft of this report to the Bureau of Alcohol, Tobacco, Firearms and Explosives for its comments. The report contained four recommendations: Recommendation 1 was directed to the Department; Recommendation 2 was directed to the Department and its law enforcement components; Recommendation 3 was directed to the law enforcement components; and Recommendation 4 was directed to the law enforcement components, the National Institute of Justice, and the Civil Rights Division.

ATF's response is included in Appendix VI of this report. The OIG's analysis of ATF's response and the actions necessary to close the recommendations are discussed below.

Recommendation 2. The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.

Status. Resolved – open.

Summary of ATF Response. ATF concurred with this recommendation and stated that it currently ensures that state and local task force members are informed of and abide by ATF policy regarding use of less-lethal weapons. ATF also said state and local task force members receive initial training upon joining ATF task forces and additional training that covers policy and usage throughout the year.

OIG Analysis. ATF's actions are responsive to our recommendation. So that we may close this recommendation, please provide copies of the training agenda provided to state and local task force members upon joining ATF task forces as well as the number of state and local task force members by task force who received ATF training since fiscal year 2003. In addition, because ATF has established guidelines for its state and local task force members, ATF will be able to contribute valuable input to the Justice Management Division's working group when it considers creating Department-wide policy or guidelines on the use of less-lethal weapons. (See Appendix IV.) So that we may close this recommendation, please provide the training information by July 31, 2009.

Recommendation 3. The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.

Status. Resolved – open.

Summary of ATF Response. ATF concurred with this recommendation and stated that Firearms Instructor Coordinators and Division Tactical Advisors meet yearly to analyze less-lethal weapons and their use.

OIG Analysis. The actions taken by ATF are responsive to our recommendation. By July 31, 2009, please provide any reports or summaries describing (1) how Firearms Instructor Coordinators and Division Tactical Advisors analyzed less-lethal weapons and (2) how ATF management used the findings resulting from such analyses.

Recommendation 4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department’s law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ’s and the Civil Rights Division’s work products.

Status. Resolved – open.

Summary of ATF Response. ATF concurred with this recommendation and stated that it works closely with the Civil Rights Division through ATF’s Office of Professional Responsibility and Security Operations.

OIG Analysis. The actions taken by ATF are responsive to our recommendation. To fully implement this recommendation, ATF should work with the NIJ to disseminate to ATF employees the results of any NIJ research concerning the use of less-lethal weapons. This can be done through participation in OJP’s Less-Lethal Technology Working Group. OJP stated in its response that participation on the working group will enable the Department’s law enforcement components to stay abreast of less-lethal weapon research, testing, and issues related to policies and practices. (See Office of Justice Programs response to Recommendation 4, Appendix XVI.) So that we may close this recommendation, please provide the OIG with a status report on the specific protocols developed for the appropriate dissemination of NIJ and Civil Rights Division work products on the use of less-lethal weapons by July 31, 2009.

APPENDIX VIII: DEA RESPONSE

U. S. Department of Justice
Drug Enforcement Administration
Washington, D.C. 20537
MAY 04 2009

MEMORANDUM

TO: Michael D. Gullledge
Assistant Inspector General
for Evaluation and Inspections

FROM: Kevin M. Foley
Acting Deputy Chief Inspector
Office of Inspections

SUBJECT: DEA's Response to the OIG's Draft Report: *Review of the Department of Justice's Use of Less-Lethal Weapons, Report Number A-2008-007*

The Drug Enforcement Administration (DEA) has reviewed the Department of Justice (DOJ), Office of the Inspector General's (OIG) draft audit report, entitled: *Review of the Department of Justice's Use of Less-Lethal Weapons, Report Number A-2008-001*. DEA acknowledges OIG for its efforts in conducting a review of the Department's use of less-lethal weapons. As a result of this review, DEA concurs with the three recommendations directed to the DOJ components in the draft report and will take the necessary steps to implement the recommendations.

DEA appreciates that OIG noted that there have been no reported fatalities resulting from the use of less-lethal weapons by Department components. OIG also noted that for the DEA, use of less-lethal weapons by state and local law enforcement officers participating on DEA Task Forces are subject to DEA's general use of force policies as well as policies concerning baton and pepper spray.

OIG's recommendation 1 was directed to the Department; therefore, DEA provides the following responses to the OIG's recommendations 2, 3, and 4 below:

Recommendation 2. The law enforcement components establish

procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.

DEA concurs with the recommendation. DEA's Offices of Training (TR) and Operations Management will jointly develop a policy governing the utilization of less-lethal weapons by DEA Special Agents (SA) and Task Force Officers (TFO). This policy will include protocols for DEA TFOs who are trained and certified by their parent agencies in the use of conducted energy devices.

Recommendation 3. The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.

DEA concurs with the recommendation. The development of a DEA policy governing the use of less-lethal weapons by DEA SAs and TFOs will also include procedures to conduct an analysis of any injuries, fatalities, or misuse occurring during the deployment of these devices. TR will utilize these analyses to assess the effectiveness of such devices.

Recommendation 4. The NIJ, Civil Rights Division, and Department components share the result of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components.

DEA concurs with the recommendation. DEA will coordinate with the NIJ, Civil Rights Division, and other DOJ components to develop a procedure to supply the results of any research, reviews, or investigations conducted by DEA to these entities. Once this procedure has been established, it will be incorporated into DEA's policy governing the utilization of less-lethal weapons.

DEA anticipates developing the above-mentioned policy in 180 days. Documentation detailing DEA's efforts to implement the actions will be provided to the OIG on a quarterly basis, until such time that all corrective actions have been completed. If you have any questions regarding DEA's responses to the OIG's recommendations, please contact Senior Inspector Michael Stanfill at 202-307-8200.

APPENDIX IX: OIG ANALYSIS OF DEA RESPONSE

The Office of the Inspector General provided a draft of this report to the Drug Enforcement Administration for its comments. The report contained four recommendations: Recommendation 1 was directed to the Department; Recommendation 2 was directed to the Department and its law enforcement components; Recommendation 3 was directed to the law enforcement components; and Recommendation 4 was directed to the law enforcement components, the National Institute of Justice, and the Civil Rights Division.

The DEA's response is included in Appendix VIII of this report. The OIG's analysis of the DEA's response and the actions necessary to close the recommendations are discussed below.

Recommendation 2. The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.

Status. Resolved – open.

Summary of DEA Response. The DEA concurred with this recommendation and stated that it will develop a policy governing the use of less-lethal weapons by DEA Special Agents and task force officers that will include protocols for task force officers who are trained and certified by their home agencies in the use of conducted energy devices.

OIG Analysis. The actions planned by the DEA are responsive to our recommendation. So that we may close this recommendation, please provide the OIG with a copy of the final approved policy or a status report regarding the development of the policy, including what types of less-lethal weapons will be addressed by the new DEA policy, by July 31, 2009.

Recommendation 3. The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.

Status. Resolved – open.

Summary of DEA Response. The DEA concurred with this recommendation and stated that development of a DEA policy governing the use of less-lethal weapons by DEA Special Agents and task force officers will also include procedures to conduct an analysis of any injuries, fatalities, or

misuse occurring during the deployment of these devices. The DEA also stated that its Office of Training will use these analyses to assess the effectiveness of such devices.

OIG Analysis. The actions planned by the DEA are partially responsive to our recommendation. In its response, the DEA did not state when the use of less-lethal weapons would be analyzed (e.g., quarterly, annually) or how analytical reports will be used by management. To ensure the use of less-lethal weapons is periodically reviewed and that benefits and trends in the use of these weapons are assessed, by July 31, 2009, please describe how often the use of less-lethal weapons will be analyzed and how DEA management will use the findings resulting from such analyses.

Recommendation 4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

Status. Resolved – open.

Summary of DEA Response. The DEA concurred with this recommendation and stated that it will coordinate with the NIJ, Civil Rights Division, and other components to develop a procedure to provide the results of research, reviews, or investigations the DEA conducts to these entities. The DEA also stated that it will incorporate this procedure into its policy governing the utilization of less-lethal weapons. The DEA anticipated developing the policy in 180 days.

OIG Analysis. The actions planned by the DEA are responsive to our recommendation. We believe that any research, reviews, or investigations the DEA conducts regarding the use of less-lethal weapons will be beneficial to the NIJ, the Civil Rights Division, and other components. However, developing DEA procedures to ensure that work products developed by the NIJ and the Civil Rights Division regarding the use of less-less weapons would assist the DEA in identifying new less-lethal weapons, in developing use policies and training curriculum, and in ensuring proper use of these weapons. So that we may close this recommendation, please provide the OIG with a status report on the specific protocols developed for the appropriate dissemination of NIJ and Civil Rights Division work products on the use of less-lethal weapons by July 31, 2009.

APPENDIX X: CIVIL RIGHTS DIVISION RESPONSE

U. S. Department of Justice
Civil Rights Division
*Office of the Assistant Attorney
General Washington, D.C. 20035*

MEMORANDUM

TO: Michael D. Gullledge
Assistant Inspector
General for Evaluation
and Inspections

FROM: Loretta King
Acting Assistant Attorney General
Civil Rights Division

SUBJECT: Response to the Office of the Inspector General's (OIG) Draft
Report: Review of the Department of Justice's Use of Less-Lethal Weapons

This responds to the Office of the Inspector General's (OIG) Draft Report: Review of the Department of Justice's Use of Less-Lethal Weapons. This response is limited to the recommendations directed to the Civil Rights Division (CRT).

Recommendation 1. The Department coordinate and ensure that its components develop appropriate and consistent policies to specifically address the use of less-lethal weapons, including conducted energy devices, by Department personnel and state and local law enforcement officers serving on Department task forces.

Response: CRT concurs with the recommendation, and understands "components" to include CRT.

Status: CRT will work with other Department components to develop protocols for coordination to ensure that CRT input can be considered in the development of policies addressing the use of less-lethal weapons.

Recommendation 4. The NIJ and Civil Rights Division share the results of

any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of this information, the Department components should ensure appropriate dissemination of the NIJ's and Civil Rights Division's work products.

Response: CRT concurs with the recommendation. CRT routinely posts its technical assistance letters and settlement agreements regarding its police misconduct investigations on the Special Litigation Section website, www.usdoj.gov/crt/split.

Status: CRT will work with other Department components to develop protocols for the appropriate dissemination of CRT work products.

If you have any questions concerning this subject, please contact Thomas Skeeter, Special Assistant to the Executive Officer, at (202) 616-9974.

APPENDIX XI: OIG ANALYSIS OF CIVIL RIGHTS DIVISION RESPONSE

The Office of the Inspector General provided a draft of this report to the Civil Rights Division for its comments. The report contained four recommendations: Recommendation 1 was directed to the Department; Recommendation 2 was directed to the Department and its law enforcement components; Recommendation 3 was directed to the law enforcement components; and Recommendation 4 was directed to the law enforcement components, the National Institute of Justice, and the Civil Rights Division.

The Division's response is included in Appendix X of this report. The OIG's analysis of the Division's response and the actions necessary to close the recommendations are discussed below.

Recommendation 1. The Department coordinate and ensure that its components develop appropriate and consistent policies to specifically address the use of less-lethal weapons, including conducted energy devices, by Department personnel and state and local law enforcement officers serving on Department task forces.

Status. Resolved – closed.

Summary of Civil Rights Division Response. The Civil Rights Division concurred with this recommendation and stated that it will work with other Department components to develop protocols for coordination to ensure that the Division's input can be considered in the development of policies addressing the use of less-lethal weapons.

OIG Analysis. In response to our recommendation, which was directed to the Department, the Management and Planning Staff of the Department's Justice Management Division will convene a working group to consider the creation of a Department-wide policy or guidelines for the components to use in formulating their policies on the use of less-lethal weapons (see Department of Justice response, Appendix IV). The OIG encourages the Civil Rights Division to participate on the working group and raise its concerns with other participants. No further status reports are required from the Civil Rights Division concerning Recommendation 1.

Recommendation 4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department

components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

Status. Resolved – open.

Summary of Civil Rights Division Response. The Civil Rights Division concurred with this recommendation and stated that it will work with other Department components to develop protocols for the appropriate dissemination of the Division's work products.

OIG Analysis. The actions planned by the Civil Rights Division are responsive to our recommendation. So that we may close this recommendation, please provide the OIG with a summary of the Division's efforts to work with other components to develop protocols for the appropriate dissemination of Civil Rights Division work products by July 31, 2009.

APPENDIX XII: FBI RESPONSE

U.S. Department of Justice
Federal Bureau of Investigation
Washington, D. C. 20535-0001
May 4, 2009

Mr. Michael D. Gullledge
Assistant Inspector General
for Evaluation and Inspections
Office of the Inspector General
U.S. Department of Justice
Suite 6100
1425 New York Avenue
Washington, D.C. 20005

Dear Mr. Gullledge:

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and respond to your report entitled, "Review of the Department of Justice's Use of Less-Lethal Weapons" (hereinafter, "Report").

We have completed our review of the Report and welcome your observations, evaluations and final recommendations. Enclosed is the FBI's response to your preliminary findings and recommendations. The response has undergone a classification and sensitivity review which is enclosed with this letter.

The FBI appreciates the professionalism exhibited by your staff in working with our representatives throughout this audit process, assessing the Department of Justice's policies and use of less-lethal weapons. Please feel free to contact me on (202) 324-2901 should you have any questions.

Sincerely yours,
Kevin L. Perkins
Assistant Director
Inspection Division

Enclosure

**The Federal Bureau of Investigation's (FBI) Response to the Office of the
Inspector General's Audit Review of the Department of Justice's Use of
Less-Lethal Weapons, Report Number A-2008-007**

Recommendation #2: "The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies."

FBI Response to Recommendation #2: RESOLVED -The Federal Bureau of Investigation (FBI) concurs with this recommendation. When understandings and guidelines for the components are developed by the Department of Justice (DOJ), the FBI will ensure that state and local task force members are informed of DOJ less-lethal weapons policies. However, as with lethal weapons, the FBI believes that task force members should follow their own agency's policies with respect to the use of less-lethal weapons.

Recommendation #3: "The law enforcement components periodically analyze their use of lesslethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons."

FBI Response to Recommendation #3: RESOLVED -The FBI concurs with this recommendation. The FBI's Defensive Systems Unit is tasked with evaluating all weapons issued to FBI personnel. As part of their mission, they continually evaluate any weapons systems' performance and the benefits of its continued use. While the FBI has had very limited use of such weapons in the past, any use, in the future, of these weapons will be analyzed and assessments made on a periodic basis and provided to the DOJ as requested.

Recommendation #4: "The NIJ, Civil Rights Division, and Department components share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components."

FBI Response to Recommendation #4: RESOLVED -The FBI concurs with this recommendation. The FBI will ensure that the results of any research, reviews or investigations on the use of less-lethal weapons, if conducted by the FBI, will be shared with the appropriate law enforcement community parties.

APPENDIX XIII: OIG ANALYSIS OF FBI RESPONSE

The Office of the Inspector General provided a draft of this report to the Federal Bureau of Investigation for its comments. The report contained four recommendations: Recommendation 1 was directed to the Department; Recommendation 2 was directed to the Department and its law enforcement components; Recommendation 3 was directed to the law enforcement components; and Recommendation 4 was directed to the law enforcement components, the National Institute of Justice, and the Civil Rights Division.

The FBI's response is included in Appendix XII of this report. The OIG's analysis of the FBI's response and the actions necessary to close the recommendations are discussed below.

Recommendation 2. The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.

Status. Resolved – open.

Summary of FBI Response. The FBI concurred with this recommendation and stated that when memoranda of understandings and guidelines for the components are developed by the Department, the FBI will ensure that state and local task force members are informed of Department less-lethal weapons policies.

OIG Analysis. The actions planned by the FBI are responsive to our recommendation. So that we may close this recommendation, please provide the OIG with a copy of the final approved FBI policy or a status report regarding the development of procedures, including what types of less-lethal weapons will be addressed by FBI policy. Please provide this response by July 31, 2009.

Recommendation 3. The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.

Status. Resolved – open.

Summary of FBI Response. The FBI concurred with this recommendation and stated that it will continually evaluate any weapon systems' performance and the benefits of the weapons' continued use. The FBI

also stated that any use of the less-lethal weapons in the future will be analyzed and assessed on a periodic basis and these assessments will be provided to the Department as requested.

OIG Analysis. The actions planned by the FBI are partially responsive to our recommendation. The FBI did not provide information on when the use of less-lethal weapons will be analyzed (e.g., quarterly, annually) or how these reports will be used by FBI management. So that we may close this recommendation to ensure the use of less-lethal weapons is periodically analyzed and that benefits and trends of the use of these weapons are assessed, please provide the OIG by July 31, 2009, information on how often the use of less-lethal weapons will be analyzed and how FBI management will use the findings resulting from such analyses.

Recommendation 4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

Status. Resolved – open.

Summary of FBI Response. The FBI concurred with this recommendation and stated that it will ensure the results of any research, reviews, or investigations on the use of less-lethal weapons, if conducted by the FBI, will be shared with appropriate law enforcement partners.

OIG Analysis. The actions planned by the FBI are partially responsive to our recommendation. We believe that any research, reviews, or investigations conducted by the FBI regarding the use of less-lethal weapons will be beneficial to the NIJ, the Civil Rights Division, and other Department components. However, work products developed by the NIJ and the Civil Rights Division on the use of less-lethal weapons would also assist the FBI in identifying new less-lethal weapons, developing use policies and training curriculum, and ensuring proper use of these weapons. To ensure that Department law enforcement components are fully informed of the NIJ's research in the area of less-lethal devices, the NIJ plans to invite the components to participate in its Less-Lethal Technology Working Group (see Office of Justice Programs response, Appendix XVI). So that we may close this recommendation, please provide the OIG with a status report on the specific protocols developed for the appropriate dissemination to FBI employees of NIJ and Civil Rights Division work products on the use of less-lethal weapons by July 31, 2009.

APPENDIX XIV: BOP RESPONSE

U.S. Department of Justice
Federal Bureau of Prisons
Office of the Director
Washington, DC 20534

May 1, 2009

MEMORANDUM FOR MICHAEL D. GULLEDGE
ASSISTANT INSPECTOR GENERAL
FOR EVALUATION AND INSPECTIONS

FROM: Harley G. Lappin, Director

SUBJECT: Response to the Office of Inspector General's (OIG) Final
Report: Review of the Department of Justice's Use of Less-
Lethal Weapon Report Number A-2008-007

The Bureau of Prisons (BOP) appreciates the opportunity to respond to the recommendations from OIG's final draft report entitled Review of the Department of Justice's Use of Less-Lethal Weapons Report Number A-2008-007.

Please find the Bureau's response to the recommendations below:

Recommendation #3: The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.

Response: The BOP agrees with the recommendation. In order to periodically analyze our use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons, the BOP will require all incidents involving the use of less-lethal weapons be reported utilizing the TRUINTEL Program. TRUINTEL is an intelligence/reporting database that will allow the BOP to more efficiently and effectively gather and analyze information to be able to make informed management decisions. It is a three tiered system including Intelligence, Security Threat Groups, and Incident Reporting. Incident reporting will allow the institution level user to easily input the information in a standardized manner.

The data entered into the program can be easily retrieved to generate reports. A report for each specific weapon or munition can be acquired for periodic monitoring. The capabilities of the program will allow users to compile information by incident to eliminate duplicate entries.

Nationwide training on the TRUIINTEL Program is scheduled to commence in June 2009. Once the necessary institution staff are trained in the use of the TRUIINTEL program, the application will be activated. The BOP is set for complete activation by July 2009. We believe these actions will meet the intent of the recommendation. Therefore, we request our part of the recommendation be closed.

Recommendation #4: The NIJ, Civil Rights Division, share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

Response: The BOP agrees with the recommendation. Following receipt of results of any research, reviews, or investigations concerning the use of less-lethal weapons from the NIJ, Civil Rights Division, the BOP Executive Staff will be briefed on the findings during their scheduled quarterly meetings. We believe these actions will meet the intent of the recommendation. Therefore, we request our part of the recommendation be closed.

If you have any questions regarding this response, please contact VaNessa P. Adams, Senior Deputy Assistant Director, Program Review Division, at (202) 353-3206.

APPENDIX XV: OIG ANALYSIS OF BOP RESPONSE

The Office of the Inspector General provided a draft of this report to the Federal Bureau of Prisons for its comments. The report contained four recommendations: Recommendation 1 was directed to the Department; Recommendation 2 was directed to the Department and its law enforcement components; Recommendation 3 was directed to the law enforcement components; and Recommendation 4 was directed to the law enforcement components, the National Institute of Justice, and the Civil Rights Division.

The BOP's response is included in Appendix XIV of this report. The BOP did not respond to Recommendation 2 as it does not use task forces. The OIG's analysis of the BOP's response and the actions necessary to close the recommendations are discussed below.

Recommendation 3. The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.

Status. Resolved – open.

Summary of BOP Response. The BOP concurred with this recommendation and stated that it will require that all incidents involving the use of less-lethal weapons be reported utilizing the TRUINTEL Program, which will allow the BOP to more efficiently and effectively gather and analyze information and report the use of a specific weapon or munitions for monitoring. The BOP also stated that nationwide training on the TRUINTEL Program is scheduled to commence in June 2009 and that complete activation is set for July 2009.

OIG Analysis. The actions planned by the BOP are partially responsive to our recommendation. We believe that the BOP may have resolved the problems we identified with its method of recording information about its use of less-lethal weapons. However, the BOP did not identify when the use of less-lethal weapons would be analyzed (e.g., quarterly, annually) or how analysis of these reports will be used by management. So that we may close this recommendation, please provide the OIG with printed screen views showing the TRUINTEL Program's method of recording information by July 31, 2009, as well as a description of how often the use of less-lethal weapons will be analyzed and how BOP management will use the findings resulting from such analyses.

Recommendation 4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

Status. Resolved – open.

Summary of BOP Response. The BOP concurred with this recommendation and stated that following receipt of results of any research, reviews, or investigations concerning the use of less-lethal weapons from the NIJ or Civil Rights Division, the BOP Executive Staff will be briefed on the findings during their scheduled quarterly meetings.

OIG Analysis. The actions planned by the BOP are responsive to our recommendation. So that we may close this recommendation, please provide the OIG with a status report on the specific protocols developed for dissemination to BOP officials of NIJ and Civil Rights Division work products on the use of less-lethal weapons by July 31, 2009.

APPENDIX XVI: OJP RESPONSE

U.S. Department of Justice
Office of Justice Programs
Office of the Assistant Attorney General
Washington, D.C. 20531

May 04, 2009

MEMORANDUM TO: Glenn A. Fine
Inspector General
United States Department of Justice

THROUGH: Michael D. Gullledge
Assistant Inspector General
for Evaluation and Inspections
Office of the Inspector General
United States Department of Justice

FROM: Laurie O. Robinson
Acting Assistant Attorney General

SUBJECT: Response to Office of the Inspector General's Draft
Audit Report, *Review of the Department of Justice's Use
of Less-Lethal Weapons*

This memorandum provides a response to the recommendations directed to the Office of Justice Programs (OJP) included in the Office of the Inspector General's (OIG's) draft audit report entitled, *Review of the Department of Justice's Use of Less-Lethal Weapons*. The draft audit report contains four recommendations and no questioned costs, of which Recommendation Number 4 pertains to the OJP.

The Office of Justice Programs' response to Recommendation Number 4 is detailed below. For ease of review, the draft audit report recommendation is restated in bold and is followed by OJP's response.

4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate

dissemination of the NIJ's and the Civil Rights Division's work products.

To ensure that Department of Justice law enforcement components are fully informed of the National Institute of Justice's (NIJ's) research in the area of less-lethal devices, the NIJ will invite the Department's law enforcement components to participate in its Less-Lethal Technology Working Group. The purpose of the working group is to advise the NIJ on research and development in the area of less-lethal devices, related equipment standards and testing activities, and evolution of policy and practice. The working group is principally comprised of knowledgeable representatives of State and local law enforcement agencies, but also currently includes a representative from the Federal Bureau of Prisons. The working group meets formally twice a year to discuss relevant NIJ research and development efforts and the evolving needs of the field. The working group representatives are also involved in technology assessments and participate on relevant NIJ solicitation peer review panels. Participation on the working group will enable the DOJ law enforcement components to stay abreast of less-lethal research, testing, and issues related to policies and practices.

Thank you for your continued cooperation. If you have any questions regarding this response, please contact LeToya Johnson, Deputy Director, Office of Audit, Assessment, and Management, on (202) 514-0692.

cc: Beth McGarry
Deputy Assistant Attorney General
for Operations and Management

Kristina Rose
Acting Director
National Institute of Justice

Maureen A. Henneberg
Director
Office of Audit, Assessment, and Management

LeToya A. Johnson
Deputy Director, Audit and Review Division
Office of Audit, Assessment, and Management

Richard A. Theis
Assistant Director, Audit Liaison Group

Justice Management Division

APPENDIX XVII: OIG ANALYSIS OF OJP RESPONSE

The Office of the Inspector General provided a draft of this report to the Office of Justice Programs for its comments. The report contained four recommendations: Recommendation 1 was directed to the Department; Recommendation 2 was directed to the Department and its law enforcement components; Recommendation 3 was directed to the law enforcement components; and Recommendation 4 was directed to the law enforcement components, the National Institute of Justice, and the Civil Rights Division.

OJP's response is included in Appendix XVI of this report. The OIG's analysis of OJP's response and the actions necessary to close the recommendation are discussed below.

Recommendation 4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

Status. Resolved – open.

Summary of OJP Response. OJP concurred with this recommendation and stated that the NIJ will invite the Department's law enforcement components to participate in its Less-Lethal Technology Working Group. OJP stated that participation on the working group will enable the Department's law enforcement components to stay abreast of less-lethal weapon research, testing, and issues related to policies and practices. The working group meets formally twice a year to discuss relevant NIJ research and development efforts.

OIG Analysis. The actions planned by OJP are responsive to our recommendation. So that we may close this recommendation, by July 31, 2009, please provide the OIG with the date, location, agenda, and a list of participants at the meeting of the Less-Lethal Technology Working Group. If the meeting will occur after July 31, 2009, please apprise the OIG when the next meeting will occur and provide the requested information after the meeting.

APPENDIX XVIII: USMS RESPONSE

U.S. Department of Justice
United States Marshals Service
Office of the Director
Washington, DC 20530-1000

May 7, 2009

MEMORANDUM TO: Michael D. Gullledge
Assistant Inspector General
for Evaluation and Inspections

FROM: John F. Clark
Director

SUBJECT: Review of the Department of Justice's Use of Less
Lethal Weapons, Report Number A-2008-007

The following is provided in response to your recent memorandum regarding the Office of the Inspector General (OIG) draft report on the Department of Justice's Use of Less-Lethal Weapons, Report Number A-2008-007.

General Comments:

Amnesty International Report: The USMS questions the use of the Amnesty International report entitled *Less Than Lethal?* as a source for the OIG audit report. In performing our ongoing review of the Taser program, we found this report flawed in its methodology and assertions. This report is at least the third major report by the human rights group over the past six years on the use of stun weapons by the United States law enforcement community. Over the course of the three reports, Amnesty International has changed its position from a call for a complete ban of all Taser electronic control devices (ECDs) to a position in its latest report which acknowledges the value of less lethal weapons in policing. The latest report states, "Amnesty International is calling on departments which deploy such weapons to limit their use to situations where officers are faced with an immediate threat of death or serious injury that cannot be contained through less extreme options, in order to avoid the resort to firearms." It should be further noted that Amnesty International has conducted no medical studies and has performed no direct evaluation of Taser ECDs, but instead incorporates media headlines and other open source

materials in its published "findings." The following is taken directly from page 8 of the latest Amnesty International report: *"Amnesty International's review is not a scientific study, nor is the organization in a position to reach conclusions regarding the role of the Taser in each case. It can be difficult to determine through autopsy alone whether Taser shocks caused or contributed to a fatal arrhythmia as there are often no direct pathological signs."* Despite this admission, Amnesty International continues to discuss a number of Taser-related deaths. This is not only misleading and inaccurate, but also unsupported by medical or academic science. We believe that the inclusion of Amnesty International's flawed data in the OIG report detracts from an overall beneficial review.

Increase in Use of Taser (Pages 21 and 22): The report notes an increase in the use of the Taser from 2003 to 2008 and affirms the USMS conclusion that the Taser is possibly being used in lieu of pepper spray. However, the overall inference is that the USMS is using the Taser at ever-increasing levels. The report does not mention what we believe to be the primary and most logical reason for the increase, that over the five year period, the USMS has acquired more than 1,000 devices and has trained an increasing number of investigators to use them.

Taser Use and Injuries (Page 37): OIG references an increase in injuries sustained by Deputy United States Marshals (DUSMs) from 2007 to 2008, amounting to a 16 percent increase over the previous five years. In the next paragraph, the report notes that this information "indicates that the USMS's use of the Taser may not have resulted in one of the principal benefits that the Taser was' supposed to provide--reduction in significant officer injuries."

The CA-1 injury data provided to OIG could not be correlated to Taser use because, at present, USMS injury data and USMS use of force data are maintained separately. There is no data element or field that provides a nexus between the two. The CA-1 data provided to OIG included every type of injury reported under all reportable circumstances (with no distinction made between injuries occurring as a result of a car accident, in the gym, while effecting arrest--with or without a Taser, etc.). The OIG inference that Taser use may not have resulted in a reduction in injuries is misleading, as there is no data to support that Taser use has not resulted in a reduction in injuries. In fact, in 2004 the USMS had more DUSM injuries than in 2007 or 2008, but only one Taser discharge for the entire fiscal year.

Recommendation 1:

That the Department coordinate and ensure that its components develop appropriate and consistent policies to specifically address the use of less-lethal

weapons, including conducted energy devices, by Department personnel and state and local law enforcement officers serving on Department task forces.

USMS Response: (Disagree) While it appears reasonable to recommend that the Department of Justice (DOJ) seek a "coordinated less-lethal weapons policy for the components," we would stress that the components' missions are very diverse. Consequently, the individuals encountered by each component range from white collar criminals and repeat violent offenders to individuals in a correctional environment. This variance in missions does not lend itself to a uniform, across-the-board DOJ policy.

Recommendation 2:

That the law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components' less-lethal weapons policies.

USMS Response: (Disagree) USMS Fugitive Task Forces are made up of members from local and state agencies (some on an ad-hoc basis). A majority of these Task Forces' fugitive warrants are generated by the contributing members. If state and local agencies are held to USMS less-lethal policy, any differences between the USMS less-lethal policy and the local/state less-lethal policy create the potential for officer safety and decision-making issues, such as vacillation, confusion, delayed reactions to spontaneous situations, and elevated risk to officers and suspects. Additionally, from a legal liability perspective, it should be noted that while state and local agencies operate under their own policies and procedures, the USMS is not liable for their actions. Lastly, this recommendation, if adopted, could deter state or local agencies from participating in federal task forces.

Recommendation 3:

That the law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.

USMS Response: (Agree) The USMS Training Academy currently analyzes use of force reports from the field to assess less-lethal weapons usage and the effectiveness of that usage. We also use this analysis to modify our less-lethal training programs. The USMS and other *DOJ* components could benefit from more in-depth analyses of less-lethal devices and correlate this data with reported injuries sustained by DUSMs. USMS offices currently collecting CA-1 and Use of Force data will be directed to work collaboratively to determine the

best means of capturing collected information to produce meaningful trends and analyses. This work will begin immediately.

Recommendation 4:

That the NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

USMS Response: (Agree) The USMS currently reviews studies and investigations pertaining to less-lethal devices. The USMS welcomes any additional research provided by the NIJ and Civil Rights Division. If sensitive in nature, these studies could be provided to the USMS Training Division for analysis, summarization, and distribution to other USMS divisions.

APPENDIX XIX: OIG ANALYSIS OF USMS RESPONSE

The Office of the Inspector General provided a draft of this report to the United States Marshals Service for its comments. The report contained four recommendations: Recommendation 1 was directed to the Department; Recommendation 2 was directed to the Department and its law enforcement components; Recommendation 3 was directed to the law enforcement components; and Recommendation 4 was directed to the law enforcement components, the National Institute of Justice, and the Civil Rights Division.

The USMS provided general comments on three areas of the report, including the OIG's use of a report by Amnesty International, analysis of increased use of the Taser, and analysis of Taser use and injuries. The USMS's response to the recommendations is included in Appendix XVIII of this report. The OIG's analysis of the USMS's general comments and responses, as well as the actions necessary to close the recommendations, are discussed below.

General Comments

Amnesty International Report

Summary of USMS Response. The USMS expressed concerns about the OIG's use of a report by Amnesty International and stated that the USMS found the report's methodology and data flawed. The USMS stated that the Amnesty International report is misleading and inaccurate and is not supported by medical or academic science. The USMS stated that the OIG's use of the report otherwise "detracts from an overall beneficial review."

OIG Analysis. We did not assess the accuracy of the Amnesty International data, but rather cited the data as an example of the number of deaths following the use of Tasers as reported by one source. However, we also cited several studies that conclude that deaths following such discharges may not be the result of the conducted energy devices' use. OIG staff discussed these concerns regarding the Amnesty International report with USMS personnel and other components prior to issuance of the formal draft report and incorporated appropriate disclaimers in the draft regarding the data used by Amnesty International (see footnote, pages ii and 6).

Increase in Use of Taser

Summary of USMS Response. The USMS believes the overall inference made by the OIG is that the USMS is using the Taser at “ever-increasing levels” and that the report does not mention that the USMS may have more usage because it has acquired more devices and has trained an increasing number of investigators to use them.

OIG Analysis. The OIG’s report does not state that the USMS’s use of the Taser is “ever-increasing.” The OIG’s analysis of the use of force data the USMS provided simply states that the USMS is increasing its use of the Taser. Table 3 (page 22) indicates that the USMS’s use of the Taser has increased in each of the past 6 fiscal years (FY). Specifically, the USMS reported to us that it has increased its use of the Taser from 0 discharges in FY 2003 to 138 discharges in FY 2008. Additionally, on page 19 we state that the USMS has acquired approximately 1,000 Tasers for use by approximately 3,000 Deputy Marshals operating at its field offices since it approved usage of Tasers in FY 2006. While the increase in Taser use can be seen as stemming at least partially from the general increase in the number of Tasers issued to Deputy Marshals, the fact that the USMS has issued more Tasers does not explain the approximately five-fold increase in total uses of less-lethal force by Deputy Marshals over the 6 years we reviewed.

Taser Use and Injuries

Summary of USMS Response. The USMS stated that the injury data it provided to the OIG could not be correlated to the use of Tasers because injury data and use of force data are maintained separately. The USMS stated that there is no data element or field that provides a nexus between the two statistics. The USMS also stated that the OIG inference that Taser use may not have resulted in a reduction in injuries is misleading as there is no data to support that Taser use has not resulted in a reduction in injuries.

OIG Analysis. We agree that the injury data and use of force data could not be directly correlated to the USMS’s use of the Taser. Our report specifically addresses the likelihood of additional factors that could be causing an increased injury rate for USMS personnel and states that other factors (such as the types of fugitives encountered by USMS personnel) could have led to an increased number of injuries to Deputy Marshals. Nevertheless, it is important for the USMS to determine what impact (if any) the use of the Taser by its Deputy Marshals is having on its injury rates. One of the principal benefits that the Taser is supposed to provide is a reduction in significant officer injuries. To determine what factors may be driving up the USMS’s injury rates, the USMS should analyze the effect of equipping Deputy Marshals with Tasers.

Recommendation 1. The Department coordinate and ensure that its components develop appropriate and consistent policies to specifically address the use of less-lethal weapons, including conducted energy devices, by Department personnel and state and local law enforcement officers serving on Department task forces.

Status. Resolved – closed.

Summary of USMS Response. The USMS disagreed with this recommendation and stated that while the recommendation appears reasonable, the components’ missions are very diverse and the variance in missions does not lend itself to a uniform, across-the-board Department policy.

OIG Analysis. In response to our recommendation, which was directed to the Department, the Management and Planning Staff of the Department’s Justice Management Division will convene a working group to consider the creation of a Department-wide policy or guidelines for the components to use in formulating their policies on the use of less-lethal weapons (see Department of Justice response, Appendix IV). Therefore, while we recognize the need for flexibility in components’ policies to address their diverse missions, the OIG encourages the USMS to participate on the working group and discuss its concerns with the other participants.

Recommendation 2. The law enforcement components establish procedures to ensure that state and local task force members are informed of and adhere to the components’ less-lethal weapons policies.

Status. Resolved – open.

Summary of USMS Response. The USMS disagreed with this recommendation and stated that if state and local agencies are held to USMS less-lethal policies, any differences between a USMS less-lethal policy and the state and local agency policies could create the potential for officer safety and decision-making issues. The USMS also stated that the USMS is not liable for state and local personnel’s actions while they are acting under state and local agencies’ policies, and that this recommendation, if adopted, could deter state and local agencies from participating in federal task forces.

OIG Analysis. We believe, and the Department has concurred, that state and local law enforcement officers participating on Department task forces should be made aware of and abide by the component or Department policies and guidance on the appropriate use of less-lethal weapons. As discussed in our report, one local agency participating on a USMS task force was found by the Civil Rights Division to have deficiencies in its use of and

policy on conducted energy devices. Given that fatalities have occurred after state and local officers have used conducted energy devices (although that has not yet occurred while the officers were operating on a Department task force), we believe component policies should govern state and local task force officers' use of less-lethal weapons while they are participating on Department-led task forces.

Moreover, the Department concurred with this recommendation and plans to coordinate and ensure that the components develop appropriate and consistent policies to specifically address the use of less-lethal weapons, including use by task force officers. Therefore, we consider this recommendation "resolved – open" and anticipate that this issue will be addressed by the Department's coordinated approach.

So that we may close this recommendation, please provide the OIG with a copy of the final approved USMS procedures or a status report regarding the development of procedures to ensure that state and local task force members are informed of and adhere to USMS less-lethal weapons policy, including what types of less-lethal weapons are addressed by the policy, by July 31, 2009.

Recommendation 3. The law enforcement components periodically analyze their use of less-lethal weapons, including any injuries, fatalities, or misuse; analyze benefits from use of such weapons; and assess emerging trends in the use of such weapons.

Status. Resolved – open.

Summary of USMS Response. The USMS concurred with this recommendation and stated that the offices currently collecting injury data and use of force data will be directed to immediately begin working collaboratively to determine the best means of capturing collected information to produce meaningful trends and analysis.

OIG Analysis. The actions planned by the USMS are partially responsive to our recommendation. The USMS did not state when the use of less-lethal weapons would be analyzed (e.g., quarterly, annually) or how analytical reports will be used by management. To ensure the use of less-lethal weapons is periodically analyzed and that the benefits of and trends in the use of these weapons are assessed, please describe by July 31, 2009, how often the use of less-lethal weapons will be analyzed and how USMS management will use the findings resulting from such analyses.

Recommendation 4. The NIJ and Civil Rights Division share the results of any research, reviews, or investigations concerning the use of less-lethal weapons with the Department's law enforcement components. Given the sensitive nature of some of this information, the Department components should develop protocols to ensure appropriate dissemination of the NIJ's and the Civil Rights Division's work products.

Status. Resolved – open.

Summary of USMS Response. The USMS concurred with this recommendation and stated that it welcomes any additional reviews, studies, and investigations provided by the NIJ and Civil Rights Division. The USMS further stated that if sensitive in nature these work products could be provided to the USMS Training Division for analysis, summarization, and distribution to other USMS divisions.

OIG Analysis. The actions planned by the USMS are responsive to our recommendation. So that we may close this recommendation, please provide the OIG with a status report on the specific protocols developed for the appropriate dissemination of NIJ and Civil Rights Division work products on the use of less-lethal weapons by July 31, 2009.