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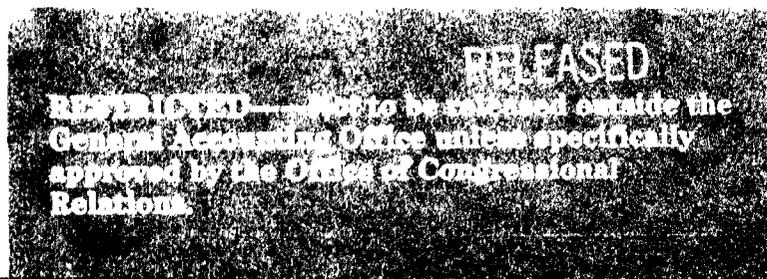
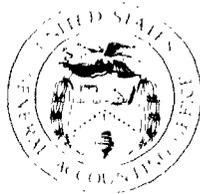
United States General Accounting Office

Briefing Report to the Honorable
Edward M. Kennedy, U.S. Senate

April 1991

DRUG CONTROL

Implementation of the Chemical Diversion and Trafficking Act of 1988



GAO/GGD-91-56BR



United States
General Accounting Office
Washington, D.C. 20548

General Government Division
B-243007

April 3, 1991

The Honorable Edward M. Kennedy
United States Senate

Dear Senator Kennedy:

This briefing report responds to your request for information on the Drug Enforcement Administration's (DEA) implementation of the Chemical Diversion and Trafficking Act (CDTA) of 1988. In September 1990, we briefed your staff on the following aspects of DEA's role under the CDTA: (1) identifying chemical companies subject to the CDTA, (2) establishing threshold quantities that trigger the CDTA's record keeping and reporting requirements, (3) identifying transactions for investigation, and (4) addressing the need for international controls over chemicals used in making illegal drugs. At this briefing, we also provided information on our comparison of amendments to proposed legislation dealing with chemical control. Following the briefing, you requested a written summary of our presentation. This report summarizes and updates the issues raised in the briefing.

BACKGROUND

The clandestine manufacture of illegal drugs from chemicals diverted from legitimate industry is a long recognized problem.

In a November 1981 report, we analyzed DEA's efforts to eliminate clandestine drug laboratories and recommended that DEA strengthen its chemical liaison program and increase its efforts to automate a chemical information system.¹ Although DEA implemented our recommendations and continued to encourage the chemical industry to notify DEA of suspicious sales and orders, the problem of diverted chemicals continued.

In 1988, Congress passed the CDTA to address the continuing problem of chemical diversion. The CDTA gives the Attorney General the authority, which has been delegated to the

¹Stronger Crackdown Needed on Clandestine Laboratories Manufacturing Dangerous Drugs (GAO/GGD-82-6, Nov. 6, 1981)

Administrator of DEA, to regulate chemicals used in manufacturing and processing illegal drugs such as cocaine, heroin, phencyclidine (PCP), lysergic acid diethylamide (LSD), and methamphetamine.

The CDTA requires chemical handlers--manufacturers, distributors, exporters, and importers--to identify customers, notify DEA of any orders determined to be suspicious, and report to DEA import and export transactions before shipment. The CDTA also requires chemical handlers to retain "retrievable" records of domestic transactions for inspection by DEA. The CDTA empowers DEA to suspend exports and imports and to prohibit chemical handlers from shipping chemicals to individuals under investigation by DEA.

RESULTS IN BRIEF

The CDTA does not require chemical handlers to register with the federal government. DEA is left to identify chemical handlers. Initially, DEA identified handlers through the use of questionnaires. As of December 1990, DEA had identified 2,859 domestic chemical handlers subject to the CDTA. According to DEA's Deputy Assistant Administrator responsible for the CDTA program, DEA is making good progress in identifying chemical handlers subject to the CDTA. However, the Deputy Assistant Administrator also pointed out that new firms are continuously entering the market, and the process of identifying chemical handlers is dynamic.

As required by the CDTA, DEA, in consultation with the chemical industry, established "threshold" quantities for chemicals on the basis of DEA's (1) criteria for defining major drug traffickers and (2) determination of standard shipping quantities. When planned shipments of chemicals meet or exceed threshold quantities, chemical handlers are required to follow the CDTA's record keeping and reporting requirements.

DEA is using the import/export provisions of the CDTA as key mechanisms for targeting transactions for investigation and other enforcement action. Under the CDTA, U.S. importers and exporters are required to report shipments that meet or exceed threshold quantities to DEA 15 days before the shipment. However, the CDTA allows importers and exporters to apply to DEA for a waiver of this requirement in favor of a special status for shippers and customers with whom they have an established business relationship. As of February 1991, DEA had denied this special "regular customer" status

for 84 customers of U.S. exporters. DEA believes this action resulted in decreased U.S. exports of chemicals to Latin America from 1988 to 1989.

According to DEA, while U.S. exports decreased, Colombian imports from European countries of chemicals used in cocaine processing increased sharply from 1988 to 1989. DEA data show that from 1988 to 1989 Colombian imports of four chemicals used in processing cocaine more than doubled.

DEA has encouraged a number of initiatives to strengthen international controls over chemicals diverted for illegal drug production. For example, in an effort to focus on European responsibilities to help control chemical diversion, DEA cosponsored an international chemical conference of 41 countries in Brussels, Belgium, in June 1990.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this report was to address the following four questions:

- How did DEA identify chemical firms subject to the CDTA?
- How did DEA establish threshold quantities that trigger the CDTA's transaction record keeping and reporting requirements?
- How does DEA identify transactions for investigation?
- How has DEA addressed the need for international controls over chemicals used in the production of illegal drugs?

We did our audit work at DEA headquarters in Arlington, Va., and DEA's Los Angeles Field Division. We did fieldwork in California because of the high number of clandestine laboratory seizures in California--this high number of labs indicates a large use of chemicals in manufacturing dangerous drugs such as methamphetamine.

To answer the four questions, we (1) interviewed DEA headquarters officials, DEA supervisors at its Los Angeles Field Division, and California Bureau of Narcotic Enforcement officials in Sacramento; (2) reviewed the CDTA and its implementing regulations, including comments furnished by chemical industry representatives and congressional testimonies relating to the CDTA; (3) reviewed DEA's Chemical Handler's Manual and a September 1990 DEA briefing book that

contains information on DEA's chemical program; (4) obtained information on DEA's domestic field survey to identify chemical handlers; (5) obtained information on the results of DEA's implementation efforts attributable to the CDTA; (6) obtained DEA statistics on exports of chemicals to Latin American countries and statistics on DEA seizures of clandestine laboratories; and (7) obtained information on DEA's international initiatives, including a trip report on a DEA cosponsored European chemical conference held in Brussels, Belgium, in mid-June 1990.

To spot-check the completeness of DEA's domestic field survey, which involved mailing questionnaires to identify chemical firms subject to the CDTA, we (1) obtained a list of chemical companies registered under California law to handle chemicals; (2) identified chemical firms on the California list that handled chemicals subject to the CDTA; (3) compared the California list to DEA's list of California chemical handlers obtained from DEA's CHEMS database, (4) provided DEA headquarters with the results of our comparison, which included names of California registered chemical firms not on DEA's list; and (5) obtained the results of DEA headquarters' review of our comparison. We provided our comparison to DEA headquarters officials in December 1990 and received their response in December.

We discussed this briefing report with DEA officials. The officials agreed with the information presented, and we have included their comments in this briefing report where appropriate.

We did our work from May 1990 to February 1991 in accordance with generally accepted government auditing standards.

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As agreed with your office, we plan no further distribution of this briefing report until 30 days after its date, unless you publicly release its contents earlier. At that time, we will send copies to the Attorney General; the Director, Office of National Drug Control Policy; DEA; and other interested parties. Copies will also be made available to others upon request.

B-243007

Major contributors to this briefing report are listed in Appendix VIII. If you need additional information on the contents of this report, please contact me on (202) 275-8389.

Sincerely yours,

A handwritten signature in cursive script that reads "Lowell Dodge".

Lowell Dodge
Director, Administration of
Justice Issues

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ABBREVIATIONS

CDTA	Chemical Diversion and Trafficking Act of 1988
DEA	Drug Enforcement Administration
LSD	lysergic acid diethylamide
PCP	phencyclidine

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DEA IDENTIFICATION OF CHEMICAL COMPANIES

How Did DEA Identify Chemical Companies?

- Domestic field survey
 - DEA developed a list of chemical companies
 - DEA field offices mailed questionnaires to companies
 - 2,859 companies subject to CDTA identified
-

HOW DID DEA IDENTIFY CHEMICAL COMPANIES?

To identify chemical handlers subject to the CDTA, DEA carried out a domestic field survey. DEA officials said that DEA used information from chemical associations and the telephone book yellow pages to develop lists of companies that potentially handled chemicals subject to the CDTA. Using these lists, DEA field divisions through questionnaires identified 2,859 chemical handlers subject to the CDTA as of December 1990.

We reviewed DEA's Los Angeles Field Division efforts to identify chemical handlers. According to Los Angeles Field Division supervisors, they mailed questionnaires to 562 chemical companies. Los Angeles Field Division investigators contacted companies that responded that they did handle a listed chemical to verify their responses. The investigators obtained a list of the companies' suppliers and customers and contacted these suppliers and customers to determine if they were subject to the CDTA.

According to the supervisors, Los Angeles Field Division investigators also telephoned companies that responded they did not handle any CDTA chemicals as listed in the questionnaire to verify their responses. The supervisors told us that the investigators mailed certified letters as a follow-up to companies that did not respond to the questionnaire to determine if they had moved or were out of business.

California state law is more stringent than the CDTA by requiring registration of companies handling precursor chemicals, which are used as ingredients in manufacturing illegal drugs.

As of August 1990, California had registered 20 companies that handle precursor chemicals regulated by the CDTA. We compared California's list of registered companies with DEA's list of companies identified from its CHEMS database as chemical handlers located in California. We provided the results of our comparison to DEA headquarters, and its review showed that 11 of the 20 chemical firms on California's list were not in DEA's CHEMS database.

According to DEA's Deputy Assistant Administrator responsible for the CDTA program, DEA is making good progress in identifying chemical handlers subject to the CDTA. However, the Deputy Assistant Administrator also pointed out that new firms are continuously entering the market, and the process for identifying chemical handlers is dynamic.

DEA ESTABLISHMENT OF THRESHOLD QUANTITIES

How Did DEA Establish Threshold Quantities?

- Consulted with the chemical industry
 - Precursor chemical thresholds based on criteria for defining major drug traffickers
 - Essential chemical thresholds based on standard shipping quantities
-

HOW DID DEA ESTABLISH THRESHOLD QUANTITIES?

DEA established a threshold quantity for each chemical listed in the CDTA after substantial internal study and discussions with the chemical industry. Depending on the chemical, threshold quantities are expressed in grams, kilograms, liters, or gallons. When a chemical handler has any transactions in a calendar month that meet or exceed the threshold quantity, the chemical handler must maintain readily retrievable records of the transactions. In addition, importers and exporters must report the transactions to DEA.

Precursor chemicals are used as ingredients in manufacturing illegal drugs such as methamphetamine, LSD, and PCP. DEA set thresholds for precursors by weight. For example, the threshold for ephedrine, which can be used in manufacturing methamphetamine, is one kilogram. DEA established thresholds for the 12 precursor chemicals listed in the CDTA on the basis of its system for classifying drug traffickers. DEA established each threshold at the approximate quantity of the precursor chemical needed to produce that quantity of an illegal drug consistent with the amount DEA uses to define a major drug trafficker, e.g., drug kingpins, smugglers, and other drug traffickers that deal in large quantities of illegal drugs. For example, one kilogram of ephedrine is needed to produce 200,000 dosage units of methamphetamine. DEA uses the 200,000 dosage units as part of its criteria in classifying a drug suspect or defendant as a major methamphetamine trafficker. Accordingly, one kilogram is the threshold quantity for ephedrine.

Essential chemicals--solvents, reagents, and catalysts used to process illegal drugs such as cocaine--are sold in large quantities and have various industrial uses. DEA established thresholds for the eight essential chemicals after consulting with the chemical industry to determine standard shipping quantities and set thresholds at those quantities. DEA established two sets of thresholds--one for import/export transactions, and one for domestic transactions. For example, the threshold for acetone, which can be used in processing cocaine from coca leaves, is 500 gallons for export/import transactions and 50 gallons for domestic transactions.

As of January 1991, DEA was in the process of establishing threshold quantities for the 12 additional precursor chemicals added by the Crime Control Act of 1990, Public Law 101-647.

DEA IDENTIFICATION OF TRANSACTIONS FOR INVESTIGATION

How Does DEA Identify Transactions for Investigation?

- Investigates suspicious orders
 - Uses import/export provisions of CDTA
 - Plans to inspect domestic chemical companies' records for investigative leads
-

HOW DOES DEA IDENTIFY TRANSACTIONS FOR INVESTIGATION?

According to DEA, the reporting of suspicious orders by chemical handlers is important in identifying transactions for investigation. Chemical handlers are often familiar with their customers and the circumstances surrounding the orders they process. To assist the chemical industry, DEA has developed guidelines on identifying suspicious orders. A chemical handler who has a suspicious order is instructed by the guidelines to notify the appropriate DEA field office. According to DEA, suspicious orders are investigated by DEA field offices and are not tracked by DEA headquarters.

According to DEA's Deputy Assistant Administrator responsible for the CDTA program, DEA is using the import/export provisions of the CDTA as key mechanisms for targeting transactions for investigation and other enforcement action. Under the CDTA, U.S. importers and exporters are required to report shipments of chemicals that meet or exceed threshold amounts to DEA 15 days before shipment. Nonetheless, the CDTA allows importers and exporters to apply to DEA for a waiver of this requirement in favor of "regular shipper/regular customer" status for shippers and customers with whom they have an established business relationship. As of February 1991, DEA had denied "regular customer" status for 84 customers of U.S. exporters. Both the advance reporting requirement (15 days before shipment) and the process for determining "regular customer" status provided DEA time to investigate the legitimacy of exports and customers receiving exports of chemicals that can be used in illegal drug production.

In February 1991, DEA issued guidelines to its domestic field offices outlining objectives, procedures, and requirements for a Domestic Chemical Program. The objectives of the program include (1) targeting firms that sell or are suspected of selling chemicals to clandestine laboratories and (2) inspecting domestic chemical handlers' records required under the CDTA for investigative leads. DEA field offices were instructed to implement the program immediately. According to DEA officials, DEA's approved fiscal year 1991 budget provides for 28 additional investigators, who will be used in part to further implement DEA's chemical program.

A NEED FOR INTERNATIONAL CONTROLS

Is There a Need for International Controls?

- DEA believes international cooperation critical to curbing the flow of chemicals
 - U.S. exports of chemicals to Latin America are down
 - Colombian imports of chemicals from Europe are up
-

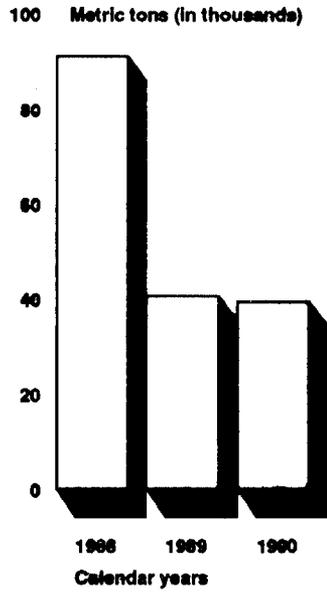
IS THERE A NEED FOR INTERNATIONAL CONTROLS?

According to DEA, there is a critical need for international cooperation to control the flow of both precursor and essential chemicals to Latin America. U.S. exports to Latin America of four chemicals essential to cocaine processing declined from 1988 to 1989. (See fig. IV.1.) Specifically, DEA statistics show that U.S. exports of these four chemicals to Colombia decreased from 7,933 metric tons in 1988 to 6,912 metric tons in 1989. DEA projected that 1990 exports to Colombia would further decrease to 3,172 metric tons.

DEA attributes the decrease in U.S. exports to Latin America to its denials of "regular customer" status for 64 Latin American customers of U.S. exporters. According to DEA, after it denied "regular customer" status, U.S. exporters simply stopped exporting chemicals to many of these customers.

According to DEA, while U.S. exports decreased, Colombian imports of chemicals essential to cocaine processing from all sources more than doubled from 1988 to 1989. Further, DEA data show that the amount of Colombian imports of those chemicals from European countries increased by over 340 percent from 1988 to 1989.

Figure IV.1:
U.S. Exports of Essential Chemicals to Latin America



Note: Combined acetone, ethyl ether, MEK and Toluene exports to Latin America. Tons for 1990 are through August 31.

Source: DEA.

HOW DEA HAS ADDRESSED THE NEED FOR INTERNATIONAL CONTROLS

How Has DEA Addressed Need for International Controls?

- Encouraged international initiatives
 - Encouraged adoption of United Nations Convention
 - Cosponsored European chemical convention in Brussels
-

HOW HAS DEA ADDRESSED THE NEED FOR INTERNATIONAL CONTROLS?

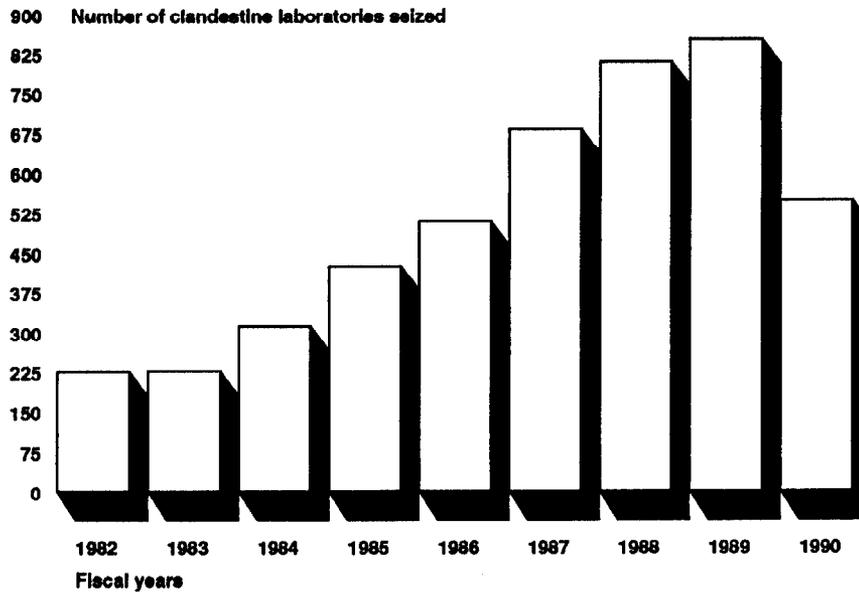
DEA is involved in a series of international initiatives with chemical-producing countries and illicit drug-producing countries to familiarize them with the CDTA and encourage them to enact similar laws. For example, DEA has been encouraging these countries to ratify the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This convention contains a number of provisions to control precursor and essential chemicals that can be used in manufacturing and processing illegal drugs. According to the February 1991 National Drug Control Strategy, 33 countries--including the United States--had ratified the convention as of January 1991. Ratification of the convention by other countries remains a key objective of U.S. international antidrug initiatives.

DEA's Deputy Assistant Administrator responsible for the CDTA program has tried to bring attention to the need for international control of chemicals through testimony and news conferences. DEA also cosponsored an international chemical conference of 41 countries in Brussels, Belgium, in June 1990 in an effort to focus on European suppliers' and brokers' responsibilities to help control chemical diversion.

DEA SEIZURES OF CLANDESTINE LABS,
FISCAL YEARS 1982 THROUGH 1990

DEA Seizures of Clandestine Labs, FYs 1982 Through 1990

Figure VI.1:
Number of Clandestine Labs Seized by DEA, FY 1982-1990



Note: Includes seizures made by DEA and DEA cooperative task forces.

Source: DEA.

DEA SEIZURES OF CLANDESTINE LABS,
FISCAL YEARS 1982 THROUGH 1990

Drug traffickers, using inexpensive precursor chemicals as ingredients, manufacture illegal drugs such as methamphetamine--a potent and powerful stimulant--in clandestine laboratories. As shown in figure VI.1, DEA seizures of clandestine laboratories in the United States increased steadily from 225 seizures in fiscal year 1982 to 852 seizures in fiscal year 1989. However, in fiscal year 1990, DEA's seizures declined sharply to 549 seizures, a 35.6 percent decrease from 1989. According to DEA's Deputy Assistant Administrator responsible for the CDTA program, the decrease in clandestine laboratory seizures in 1990 is an indicator of the impact of the CDTA.

Because of the downturn in clandestine laboratory seizures, DEA did a statistical assessment in October 1990. According to the statistical assessment, several DEA field division offices--San Francisco, Houston, and Dallas--that have had extensive involvement in clandestine laboratory investigations and seizures identified the CDTA as a primary factor in restricting the availability of chemicals used in illicit drug production. DEA's San Diego Field Division identified California's chemical law as the primary factor frustrating clandestine laboratory operators.

RECENT PROPOSED AND ENACTED LEGISLATION
AFFECTING CHEMICAL CONTROL

Recent Proposed and Enacted Chemical Control Legislation

- Proposed legislation
 - S.1970 would have expanded precursor list and added controls over precursors
 - H.R.5269 would have expanded precursor list

 - Enacted legislation
 - S.3266 (P.L. 101-647) expanded precursor list
-

RECENT PROPOSED AND ENACTED CHEMICAL CONTROL LEGISLATION

The Omnibus Crime Bill (S.1970), which was passed by the Senate on July 11, 1990, contained provisions to (1) expand the list of precursor chemicals that would come under federal control and (2) add controls over chemicals used in manufacturing illegal drugs. The amendments to add controls over chemicals, primarily precursors would have

- required the Attorney General to license persons who manufacture, distribute, import, or export precursor chemicals;
- provided the Attorney General with authority to audit licensed chemical handlers' inventories of precursor chemicals;
- eliminated threshold requirements for precursor chemicals (The requirement that a "threshold" amount be met before a precursor transaction comes under the record keeping and reporting requirements of the CDTA would be deleted. All transactions for precursor chemicals, regardless of quantities involved, would be subject to the CDTA's record keeping and reporting requirements.);
- required the Attorney General to provide state authorities with information on regulated transactions of precursor chemicals; and
- required the Attorney General to enter into international negotiations to regulate precursor and other chemicals essential to the manufacture of illegal drugs.

The Omnibus Crime Bill (H.R.5269), which was passed by the House on October 5, 1990, also provided for expanding the list of precursor chemicals under federal regulation but did not contain additional controls over regulated chemicals.

Neither S.1970 nor H.R.5269 was enacted. However, on October 27, 1990, the House and Senate passed S.3266, the Crime Control Act of 1990. It became Public Law 101-647 and was signed into law on November 29, 1990. Title XXIII--Chemical Diversion and Trafficking--amended the Controlled Substance Act by adding 12 additional precursor chemicals for regulation by DEA but did not include additional controls over chemicals.

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